

Public Interest Disclosures Internal Reporting Policy 2024

POL037



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Policy Title:	Public Interest Disclosures Policy
Section Responsible:	Corporate and Community Services
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1. INTENT

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)* - as a Local Government Authority, Narrandera Shire Council is therefore an Agency.

At Narrandera Shire Council (Council) we take reports of serious wrongdoing seriously. We are 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 agency relies upon our Councillors, staff, volunteers, contractors and subcontractors speaking up when they become aware of wrongdoing.

This policy has an accompanying procedures manual that sets out:

- how Council will support and protect a person who comes 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 that are available under the PID Act.

This policy also documents our 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 known as the Public Interest Disclosure Act.

This policy should be read in conjunction with the adopted Agency Information Guide, Code of Conduct, Complaints Management Policy, Customer Service Charter, Privacy Management Policy, Statement of Business Ethics Policy and the Unreasonable Complainant Conduct Policy.

This policy is available on our Narrandera Shire Council publicly available website as well as on the intranet of Narrandera Shire Council.

A copy of this policy and the procedures manual will also be provided to all staff of Narrandera Shire Council on their commencement. A hard copy of the policy and the procedures manual can be requested from the Governance and Engagement Manager – see the procedures manual for contact details.

2. SCOPE

Who does this policy apply to?

This policy applies to, and for the benefit of, all public officials in NSW. You are a public official if you are:

- a person employed in or by an agency or otherwise in the service of an agency
- a person having public official functions or acting in a public official capacity whose conduct or activities an integrity agency is authorised by another Act or law to investigate
- an individual in the service of the Crown
- a statutory officer
- a person providing services or exercising functions on behalf of an agency, including a contractor, subcontractor or volunteer
- an employee, partner or officer of an entity that provides services, under contract, subcontract or other arrangement, on behalf of an agency or exercises functions of an agency, and are involved in providing those services or exercising those functions
- a judicial officer
- a Member of Parliament (MP), including a Minister
- a person employed under the [Members of Parliament Staff Act 2013](#).

The General Manager, also other nominated disclosure officers and managers within Narrandera 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 who do not work for Narrandera Shire Council may use this policy if they want information on who they can report wrongdoing to within Council.

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, however you can still make a voluntary PID.

3. OBJECTIVE

For Council to be able to deal effectively with reports of wrongdoing, it must have the right culture. Narrandera Shire Council will:

- create a climate of trust, where Councillors, staff, volunteers, contractors and subcontractors are comfortable and confident about reporting wrongdoing
- encourage Councillors, staff, volunteers, contractors and subcontractors to come forward if they have witnessed what they consider to be wrongdoing within the Council
- keep the identity of the Councillor, staff, volunteer, contractor or subcontractor disclosing wrongdoing confidential, wherever possible and appropriate
- protect Councillors, staff, volunteers, contractors and subcontractors who make disclosures from any adverse action motivated by their report
- deal with reports thoroughly and impartially and if some form of wrongdoing has been found, take appropriate action to rectify it
- keep complainants who make reports informed of their progress and the outcome
- encourage Councillors, staff, volunteers, contractors and subcontractors to report wrongdoing within the Council but respecting any decision to disclose wrongdoing outside the Council – provided that disclosure outside the Council is made in accordance with the provisions of the PID Act
- ensure that the General Manager, Deputy General Managers, Managers, Supervisors and Team Leaders at all levels within the organisation understand the benefits of reporting wrongdoing, are familiar with this policy, and aware of the needs of those who report wrongdoing.
- by providing adequate resources, both financial and in person, to:
 - encourage reports of wrongdoing
 - protect and support those who make them
 - provide training about how to make reports and the benefits of internal reports to the Council and the public interest generally
 - properly assess and investigate or otherwise deal with allegations
 - properly manage any workplace issues that the allegations identify or create
 - correct any problem that is identified.

4. POLICY STATEMENT

This policy provides information on the following:

- ways you can make a voluntary PID to Narrandera Shire Council under the PID Act
- the names and contact details for the Principal Disclosure Officers in Narrandera Shire Council
- the roles and responsibilities of people who hold particular roles under the PID Act and who are employees of Narrandera Shire Council
- what information you will receive once you have made a voluntary PID
- protections available to people who make a report of serious wrongdoing under the PID Act and what we will do to protect you
- Narrandera Shire Council procedures for dealing with disclosures
- Narrandera Shire Council procedures for managing the risk of detrimental action and reporting detrimental action
- Narrandera Shire Council record-keeping and reporting requirements
- how Narrandera Shire Council will ensure it complies with the PID Act and this policy.

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 Narrandera Shire Council (see the accompanying procedures manual for contact details)
- contact the PID Advice Team within the NSW Ombudsman by phone: (02) 9286 1000 or email: 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.

5. PROTECTIONS

(a) How is the maker of a voluntary PID protected?

When a voluntary PID is made, special protections are actioned under the PID Act.

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

Council will not tolerate any form of detrimental action being taken against a person making a report, the person who may have made a report or a person 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 has been made by someone employed or otherwise associated with Council, a risk assessment will be undertaken 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: 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.

(b) 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.

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

5.1 Reporting detrimental action

If the person making the report experiences adverse treatment or detrimental action, such as bullying or harassment, this needs to be reported immediately. The reporting of any experience of adverse treatment or detrimental action should be made direct to Council or an integrity agency. A list of integrity agencies is located at Annexure B of the accompanying procedures manual.

5.2 General support

If you do not feel comfortable speaking openly about issues to people within Narrandera Shire Council or persons from an integrity agency, Council offers an Employee Assistance Program that provides confidential and professional assistance for employees and their family who are experiencing difficulties.

The Employee Assistance Program is advertised through the internal publication called the Communique, posters which are placed at strategic locations or by contacting the Human Resources Department of Narrandera Shire Council.

5.3 Roles and responsibilities of Narrandera Shire Council employees

A range of people within Narrandera Shire Council have responsibilities under the PID Act – please refer to Annexure A of the accompanying procedures manual.

(a) The General Manager (or Head of Agency) 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 that Narrandera Shire Council complies with this policy and the PID Act
- ensuring that Narrandera Shire 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.

(b) Principal Disclosure officers

Disclosure Officers are responsible for:

- receiving reports from public officials
- receiving reports when they are passed on to them by managers
- 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.
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(c) Managers/Supervisors/Team Leaders

The responsibilities include:

- receiving reports from persons that report to them or that they supervise
- passing on reports they receive to a Disclosure Officer or accompanying the person considering making a report to talk to a Disclosure Officer.

(d) 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 Narrandera Shire 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.

6. REVIEW AND DISPUTE RESOLUTION

(a) Internal review

People who make voluntary PIDs can seek internal review of the following decisions made by Narrandera Shire Council:

- that Narrandera Shire Council is not required to deal with the report as a voluntary PID
- to stop dealing with the report because Narrandera Shire 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.

Narrandera Shire Council will ensure internal reviews are conducted in compliance with the PID Act.

If an application is made for an internal review, the applicant must apply in writing within 28 days of being informed of the decision of Narrandera Shire Council. The application should state the reasons why the decision made by Narrandera Shire Council should not have been made – additional information may also be submitted to support the application.

(b) Voluntary dispute resolution

If a dispute arises between Narrandera Shire 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 Narrandera Shire Council and the maker of the report are willing to resolve the dispute.

7. OTHER AGENCY OBLIGATIONS

(a) Record-keeping requirements

Narrandera Shire Council must keep full and accurate records with respect to all information received in connection with the PID Act. This ensures that Narrandera Shire Council complies with its obligations under the *State Records Act 1998*.

(b) Reporting of voluntary PIDs and Narrandera Shire Council annual return to the Ombudsman

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

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

(c) How Narrandera Shire Council will ensure compliance with the PID Act and this policy

It is important to remain compliant with amendments to the legislation with Narrandera Shire Council committed to continuing to receive email updates issued from the NSW Ombudsman's Office, this policy shall be reviewed on a 4 year cyclic basis and also schedule this policy and procedures for internal audit.

8. RELATED LEGISLATION

- *Government Information (Public Access) Act 2009*
- *Independent Commission Against Corruption Act 1988*
- *Local Government Act 1993*
- *Ombudsman Act 1974*
- *Public Interest Disclosure Act 2022*

9. RELATED POLICIES AND DOCUMENTS

- Complaints Management Policy
- Disciplinary Policy
- Equal Employment Opportunity Policy
- Grievance Handling
- NSC Code of Conduct

- Statement of Business Ethics Policy
- Volunteer Policy
- Work Health Safety Policy

10. MORE INFORMATION

Members of Council staff and Councillors can access further advice and guidance from the disclosure coordinator and the NSW Ombudsman's website at www.ombo.nsw.gov.au.

11. VARIATION

Council reserves the right to review, vary or revoke this policy in accordance with legislation, regulation and award changes, where applicable. Council may also make charges to this policy and the relevant procedures from time-to-time to improve the effectiveness of its operation.


For any advice or guidance about this review, contact the NSW Ombudsman's Public Interest Disclosures Unit.

12. PREVIOUS VERSIONS

Reference to a superseded policy number and/or name is also considered a reference to the new policy number. This policy was previously named:

- ES150 Public Interest Disclosures Internal Reporting Policy (2011-20)
- ES150 Protected Disclosures Policy (2009-11)
- S5100 Protected Disclosures Policy (2007-09)
- P5200 Protected Disclosures Policy (1997-07).

POLICY HISTORY

Responsible Officer	Governance and Engagement Manager		
Approved by	General Manager		
Approval Date	21/11/2023		
GM Signature (Authorised staff to insert signature)			
Next Review	1 November 2027		
Version Number	Endorsed by ELT	Endorsed by Council	Date signed by GM
1 Adopted	-	-	29/04/1997
2 Reviewed	-	-	25/03/2002

3 Reviewed	17/07/2007	24/07/2007	24/07/2007
4 Reviewed	-	21/04/2009	21/04/2009
5 Reviewed	-	23/08/2011	23/08/2011
6 Reviewed	24/11/2014	10/12/2014	16/12/2014
7 Reviewed	8/12/2020	16/03/2021	3/05/2021
8 Reviewed	14/02/2023	21/03/2023	3/04/2023
9 Reviewed	14/09/2023	21/11/2023	09/01/2024

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Annexure A — Training acknowledgement if necessary

I hereby acknowledge that I have received, read and understood a copy of Council's Public Interest Disclosures Internal Reporting Policy.	
Employee Name	
Position Title	
Signature	
Date	