



# NAMBUCCA VALLEY COUNCIL

## PUBLIC INTEREST DISCLOSURES

### POLICY NO: G 08

### *Our Vision*

Nambucca Valley ~ Living at its best

### *Our Mission Statement*

'The Nambucca Valley Council will value and protect its natural environment, maintain its assets and infrastructure and develop opportunities for its people.'

---

## Background

Under section 3D of the *Public Interest Disclosures Act 2022* (PID Act), public authorities are required to have a policy and procedures for receiving, assessing and dealing with public interest disclosures. Council's policy is based on the NSW Ombudsman's model policy.

This policy:

- shows Council's commitment to high standards of ethical and accountable conduct and confirms that it will not tolerate any form of wrongdoing
- conforms with Council's Code of Conduct Policies
- addresses the relevant provisions of the PID Act
- states that staff and Councillors who come forward and report wrongdoing are helping to promote integrity, accountability and good management within the Council
- outlines Council's broader responsibilities under the PID Act, such as reporting on public interest disclosures
- refers to other relevant policies or procedures, such as the Council's code of conduct policy, and provides information about how staff can access that information
- is publicly available on Council's website
- be implemented by the Council through staff awareness training.

## History

Department:	Governance	Last Reviewed	Resolution Number
Policy Category	Council	4 August 2011	2995/11
Endorsed By:	General Manager	5 March 2012	by General Manager
Approval Authority	Council	1 April 2019	By Director Corporate Services (DCS)
Policy Owner	Director Corporate Services	11 November 2021	460/21
Contact Officer	Director Corporate Services	28 September 2023	359/23
Document No.	45469/2023 Supersedes 57093/2021	27 February 2024	Minor updates by DCS for position titles
First Adopted	19 February 2009	29 April 2024	Minor updates by DCS for position titles
Resolution No:	1004/09		
Review Date:	September 2024		



## Contents

<b>1. Purpose and context of the policy</b>	5
1.1 Accessibility of this policy	5
1.2 Further information about this policy	5
<b>2. Definitions</b>	6
<b>3. Organisational commitment</b>	7
<b>4. Who does this policy apply to?</b>	8
<b>5. Roles and responsibilities</b>	9
5.1 The role of Council staff and Councillors	9
5.2 The role of Nambucca Valley Council	9
5.3 Roles of key positions	10
<b>6. What is serious wrongdoing?</b>	13
6.1 Corrupt conduct	13
6.2 Serious Maladministration	13
6.3 Serious and substantial waste of public money	14
6.4 Breach of the GIPA Act	14
6.5 Local government pecuniary interest contravention	14
6.6 Privacy contravention	14
<b>7. How to make a report of serious wrongdoing</b>	15
7.1 Reports, complaints and grievances	15
7.2 When will a report be a PID?	15
7.3 When will a report be treated as a voluntary public interest disclosure?	15
7.4 Who can make a voluntary PID?	16
7.5 Making a report to a public official who works for Council:	16
7.6 Making a report to a recipient outside of Council:	17
<b>8. Assessment of reports</b>	17
<b>9. What Council will do if an investigation finds that serious wrongdoing has occurred?</b>	18
<b>10. Who can receive a report within the Nambucca Valley Council?</b>	18
<b>11. Who can receive a report outside of the Nambucca Valley Council?</b>	19
11.1 Investigating authorities	19
11.2 Members of Parliament or journalists	20
11.3 Other external reporting	20
<b>12. How to make a voluntary PID report</b>	21
12.1 What should I include in my report?	21
12.2 What if I am not sure if my report is a PID?	21
12.3 Deeming that a report is a voluntary PID	21
<b>13. How we deal with Voluntary PIDs.</b>	22
13.1 How Council will acknowledge that we have received a report and keep the person who made it informed? 22	
13.2 How Council will deal with voluntary PIDs	22
13.3 Where the report is a voluntary PID	23

13.4	Where the report is not a voluntary PID	23
13.5	Cease dealing with report as voluntary PID	23
13.6	How Council will protect the confidentiality of the maker of a voluntary PID	23
13.7	How Council will assess and minimise the risk of detrimental action	24
<b>14.</b>	<b>Can a report be anonymous?</b>	<b>24</b>
<b>15.</b>	<b>Feedback to staff who report wrongdoing</b>	<b>25</b>
15.1	Acknowledgement	25
15.2	Progress updates	25
15.3	Feedback	25
<b>16.</b>	<b>Maintaining confidentiality</b>	<b>26</b>
<b>17.</b>	<b>Managing the risk of reprisal and workplace conflict</b>	<b>26</b>
<b>18.</b>	<b>Protection against reprisals</b>	<b>26</b>
18.1	Protections for people who make mandatory and witness PIDs:	28
18.2	Responding to allegations of detrimental action offence	29
18.3	Protection against legal action	30
<b>19.</b>	<b>Reporting detrimental action</b>	<b>30</b>
<b>20.</b>	<b>Support for those reporting wrongdoing</b>	<b>30</b>
<b>21.</b>	<b>Sanctions for making false or misleading statements</b>	<b>30</b>
<b>22.</b>	<b>The rights of persons the subject of a report</b>	<b>31</b>
<b>23.</b>	<b>Review and dispute resolution</b>	<b>31</b>
23.1	Internal review	31
23.2	Voluntary dispute resolution	31
<b>24.</b>	<b>Other agency obligations</b>	<b>32</b>
24.1	Record-keeping requirements	32
24.2	Reporting of voluntary PIDs and Council annual return to the Ombudsman	32
24.3	How Council will ensure compliance with the PID Act and this policy	32
<b>25.</b>	<b>Related documents</b>	<b>32</b>
<b>26.</b>	<b>Forms and other resources</b>	<b>33</b>
<b>27.</b>	<b>Review</b>	<b>33</b>
<b>28.</b>	<b>More information</b>	<b>33</b>
<b>29.</b>	<b>Flow chart of PID reporting process</b>	<b>34</b>
<b>30.</b>	<b>Contact Resources for integrity agencies</b>	<b>35</b>
	Nambucca Valley Council PID risk assessment	37
	Nambucca Valley Council Report Form	41
	Checklist for Completion by Recipient of Report	42
	Initial assessment of report to be completed by the Disclosures Officer	43
	Draft Acknowledgement Letter to Person Making a Report	45
	Draft Letter to Person Making a Report that the Report has been determined as Voluntary PID	46
	Assessment of a report against the criteria in the Public Interest Disclosures Act 2022	48
<b>31.</b>	<b>ANNEXURE - Nominated Disclosure Officers &amp; Work Sites</b>	<b>50</b>

## 1. Purpose and context of the policy

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).

Council takes 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 staff, volunteers, contractors and subcontractors speaking up when they become aware of wrongdoing.

This policy sets out:

- how Council will support and protect you if you come forward with a report of serious wrongdoing.
- how we will deal with the report and our other responsibilities under the PID Act.
- who to contact if you want to make a report.
- how to make a report.
- the protections which are available to you 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.

### 1.1 Accessibility of this policy

This policy is available on Council's publicly available website.

A copy of the policy is also sent to all staff on their commencement. A hard copy of the policy can be requested from the Director of Corporate Services or the Manager Human Resources.

### 1.2 Further information about this policy

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

- confidentially contact a nominated disclosure officer within Council
- contact the PID Advice Team within the NSW Ombudsman by phone: (02) 9286 1000 or email: [pidadvice@ombo.nsw.gov.au](mailto:pidadvice@ombo.nsw.gov.au), or
- access the NSW Ombudsman's PID guidelines which are available on its website.

If you require legal advice with respect to the PID Act or your obligations under the PID Act, you may need to seek independent legal advice.

The purpose of this policy is to establish a reporting system for staff, Councillors, volunteers and contractors, and other public officials, to report wrongdoing without fear of reprisal. The policy sets out who you can report wrongdoing to in Nambucca Valley Council, 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 PID Act.

This policy is just one in the suite of Nambucca Valley Council's complaint handling policies which include the Code of Conduct, Unreasonable Complainant Conduct Policy and Procedures, Requests and Complaints Policy and Privacy Management Plan. Other related legislation includes;

- *Public Interest Disclosures Act 2022*
- *Independent Commission Against Corruption Act 1988*
- *Government Information (Public Access) Act 2009*
- *Local Government State Award*
- *Standard Contract of Employment – General Manager and Senior Staff (other than General Managers)*
- *NSW Ombudsman's Developing your Public Interest Disclosure policy guideline*

The reporting system established under this policy is not intended to be used for staff grievances, which should be raised in accordance with the Local Government State Award Grievance provisions. If a staff member makes a report under this policy which is substantially a grievance, the matter will be referred to the Manager Human Resources to be dealt with in accordance with the grievance provisions under the Award (see <https://www.industrialrelations.nsw.gov.au/industries/key-industries-in-nsw/local-government/> ).

## 2. Definitions

Term	Definition
public interest disclosure	<p>A report of wrongdoing by a public official.</p> <p>Under the PID Act a public interest disclosure means:</p> <ul style="list-style-type: none"> <li>(a) a voluntary public interest disclosure, or</li> <li>(b) a witness public interest disclosure, or</li> <li>(c) a mandatory public interest disclosure.</li> </ul> <p>A disclosure may be called various names, for example, 'report', 'statement', 'complaint' or 'grievance' and may be provided by various formats, for example, an email, file note, statement, or using a complaint reporting form. An orally provided report must be documented.</p>
public official	<ul style="list-style-type: none"> <li>• a person employed in or by an agency or otherwise in the service of an agency</li> <li>• 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</li> <li>• an individual in the service of the Crown</li> <li>• a statutory officer</li> <li>• a person providing services or exercising functions on behalf of an agency, including a contractor, subcontractor or volunteer</li> <li>• an employee, partner or officer of an entity that provides services, under contract, subcontract or other</li> </ul>

	<p>arrangement, on behalf of an agency or exercises functions of an agency, and are involved in providing those services or exercising those functions</p> <ul style="list-style-type: none"> <li>• a judicial officer</li> <li>• a Member of Parliament (MP), including a Minister</li> <li>• a person employed under the <i>Members of Parliament Staff Act 2013</i>.</li> </ul>
serious wrongdoing	<p>The PID Act defines serious wrongdoing as:</p> <p>(a) corrupt conduct,</p> <p>(b) a government information contravention,</p> <p>(c) a local government pecuniary interest contravention,</p> <p>(d) serious maladministration,</p> <p>(e) a privacy contravention,</p> <p>(f) a serious and substantial waste of public money.</p>

### 3. Organisational commitment

Council is committed to:

- creating a climate of trust, where people are comfortable and confident about reporting wrongdoing
- encouraging staff to come forward if they are aware of wrongdoing within the Council
- keeping the identity of the public official disclosing wrongdoing confidential, where this is possible and appropriate
- protecting public official's from any adverse action resulting from them making a report
- dealing with reports thoroughly and impartially and if some form of wrongdoing has been found, taking appropriate action to address it
- keeping public official's who make a report informed of their progress and the outcome
- encouraging the reporting of wrongdoing within the Council, but respect 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
- reviewing the policy periodically to ensure it is relevant and effective
- providing adequate resources, to:
  - encourage reports of wrongdoing
  - protect and support those who make them
  - provide training for staff about how to make reports and the benefits of reports to the Council and the public interest generally
  - properly assess and investigate or otherwise deal with allegations
  - properly manage any issues that the allegations identify or that result from a report

- appropriately address any identified problems.

#### 4. 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 Nambucca Valley Council
- employees of contractors providing services to Nambucca Valley 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 serious wrongdoings.**

**There is no provision under the PID Act for members of the public to make disclosures.** Members of the public are referred to other complaints mechanisms, including the Code of Conduct available on Council's website.

The General Manager, other nominated disclosure officers and managers within Council have specific responsibilities under the PID Act. This policy also provides information on how people in these roles will fulfil their responsibilities. Other public officials who work in and for the public sector, but do not work for Council may use this policy if they want information on who they can report wrongdoing to within Council.

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.

This means that if you are not a public official, this policy does not apply to your complaint (there are some circumstances where a complaint can be deemed to be a voluntary PID, see Section 7.3 of this policy for more information).

However, you can still make a complaint to Council by:

- Reporting an issue, fault, or request via the Council's Business Service Unit over the phone, online and face-to-face. Issues can also be logged to the Council's online Customer Service Request portal or through Council's Antenno Community Engagement App, for further information see:

Customer Service Request portal:

<https://my.nambucca.nsw.gov.au/do-it-online/problems-requests-submissions>

Antenno Community Engagement App:

<https://www.nambucca.nsw.gov.au/Residents/Antenno-Mobile-App/Antenno>



- Lodging a complaint about Council's conduct by contacting Council, for further information see:

<https://www.nambucca.nsw.gov.au/files/assets/public/council/complianceformspolicies-amp-reporting/policies/corporate-services/cs03-requests-and-complaints-28168-2008.pdf> Complaints about Council or staff conduct should be made in writing.

Under the new PID Act every 'permanently maintained worksite' must have a disclosure officer.

The following people are automatically considered to be disclosure officers by the PID Act:

- the head of an agency
- the most senior ongoing employee who ordinarily works at a permanently maintained worksite where more than one employee works

See Annexure A for Nominated Disclosure Officers and Work Sites.

## 5. Roles and responsibilities

### 5.1 The role of 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 reporting process must adhere to the Council's Code of Conduct policies. A breach of the Code could result in disciplinary action.

### 5.2 The role of Nambucca Valley 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. 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 from all public officials including staff and Councillors and deal with them appropriately. Once wrongdoing has been reported, Council takes 'ownership' of the matter. This means it is up to us to decide whether a report should be investigated, and if so, how it should be investigated 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.

Council must report on its obligations under the PID Act and statistical information about public interest disclosures in its annual report and to the NSW Ombudsman every six months.

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.

### **5.3 Roles of key positions**

#### General Manager (or person acting in that role)

The General Manager has ultimate responsibility for maintaining the reporting system and workplace reporting culture, and ensuring Council complies with the PID Act. The General Manager has a responsibility to:

- foster a workplace culture where reporting is encouraged.
- receive disclosures from public officials.
- ensure the Council complies with this policy and the PID Act.
- implement section 34 of the PID Act to refer evidence of a detrimental action offence to—
  - the Commissioner of Police, and
  - the Independent Commission Against Corruption.
- implement corrective action if serious wrongdoing is found to have occurred.
- 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 detrimental action and manage workplace conflict that may arise in relation to a report
- make decisions following any investigation or appoint an appropriate decision-maker
- refer actual or suspected corrupt conduct to the Independent Commission Against Corruption (ICAC)
- undertake and maintain awareness and training in PID and processes for receiving disclosures.

#### Disclosures Coordinator (Director Corporate Services - or person acting in that role)

The Disclosures Coordinator has a central role in Nambucca Valley Council's reporting system. The Disclosures Coordinator can receive and assess disclosures from public officials, and is the primary point of contact in Council for the reporter. The Disclosures Coordinator has a responsibility to:

- foster a workplace culture where reporting is encouraged
- ensure there is a system in place for receiving and assessing disclosures
- refer reports to the NSW Ombudsman, including where the Council does not investigate a PID, or to request to conciliate the matter.
- communicate and/or refer reports received to the Manager Human Resources for assessment under relevant policy, processes, and for industrial relations requirements.
- ensure that the 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
- complying with reporting obligations regarding allegations or findings of detrimental action
- complying with yearly reporting obligations to the NSW Ombudsman.
- 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 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 a detrimental action offence 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 reporters and other staff involved in the reporting or investigation process, including protecting the interests of any officer the subject of a report
- undertake and maintain awareness and training in PID and processes for receiving disclosures.

*Manager Human Resources (or person acting in that role)*

The Manager Human Resources is an additional point of contact within the reporting system. They can provide advice about the system and the PID policy, receive reports of wrongdoing and assist staff and Councillors to make reports.

The Manager Human Resources has a responsibility to:

- foster a workplace culture where reporting is encouraged.
- support public officials who make voluntary PIDs, including by minimising the risk of detrimental action.
- make recommendations to the General Manager on implementing corrective action if serious wrongdoing is found to have occurred.
- communicate and/or refer reports received relevant to PID to the Director Corporate Services for assessment under these requirements.
- undertake and maintain awareness and training in PID and processes for receiving disclosures.
- 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 detrimental action or workplace conflict
- carry out preliminary assessment and forward reports to the Disclosures Coordinator or General Manager for full assessment.

### 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 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 detrimental action offence 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 detrimental action offence under section 34 of the PID Act to the Commissioner of Police or the ICAC.
- undertake and maintain awareness and training in PID and processes for receiving disclosures.

### Disclosures Officers

Disclosure Officers have a responsibility to:

- be aware of the PID policy
- foster a workplace culture where reporting is encouraged.
- receive disclosures from public officials and to promptly refer those disclosures to the Director Corporate Services and/or Manager Human Resources in the case of staff grievances.
- ensure that any oral reports that have been received are recorded in writing.
- undertake and maintain awareness and training in PID and processes for receiving disclosures.

Note: At Council, Disclosure Officers are identified by the functions of their role and their supervisory responsibility. Disclosures Officers are distributed across the various workplace locations. It is not a requirement that officials make a disclosure to their direct supervisor.

Refer to Annexure A of this policy for a list of disclosure officers.

### Supervisors

Supervisors play an important role in managing the immediate workplace of those involved in or affected by the reporting process. Supervisors should be aware of the PID policy. They have a responsibility to:

- encourage staff to report known or suspected wrongdoing within the organisation and support staff when they do i.e. foster a workplace culture where reporting is encouraged.
- receive disclosures from employees under their supervision and to promptly refer those disclosures to a Disclosures Officer, the Director Corporate Services, or the Manager Human Resources in the case of staff grievances.
- ensure that any oral reports that have been received are recorded in writing.

- implement local management strategies, in consultation with the Disclosures Coordinator, to minimise the risk of detrimental action 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 detrimental action as a result of reporting wrongdoing, or in the case of suspected detrimental action by the General Manager, notify the Mayor.

### Employees

Employees have a responsibility to:

- 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 Nambucca Valley 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. What is serious wrongdoing?**

When you make your report, you do not need to state to Council what category of serious wrongdoing you are reporting or that you are reporting serious wrongdoing.

### **6.1 Corrupt conduct**

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

For example, this could include:

- the improper use of knowledge, power or position for personal gain (such as a public official accepting a bribe) 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.

### **6.2 Serious Maladministration**

Serious maladministration is conduct that involves action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive or improperly discriminatory or based wholly or partly on improper motives.

For example, this could include:

- making a decision and/or taking action that is unlawful
- refusing to grant an approval for reasons that are not related to the merits of their application.
- issuing an order against a person without giving them procedural fairness.
- awarding contracts and tenders to private parties that are related by family, friendship or association
- an agency systemically failing to comply with proper recruitment processes when hiring staff

### **6.3 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.

For example, this could include:

- not following a competitive tendering process when contracting with entities to undertake government work.
- having bad or no processes in place for a system involving large amounts of public funds.
- misappropriation or misuse of public property
- the purchase of unnecessary or inadequate goods or services
- overstaffing in particular areas
- staff being remunerated for skills they do not have, but are required to have under the terms or conditions of their employment
- programs not achieving their objectives and therefore the program's costs being clearly ineffective and inefficient.
- poor project management practices leading to projects running over time

### **6.4 Breach of the GIPA Act**

A breach of the *Government Information (Public Access) Act 2009* (GIPA Act) is a failure to properly fulfil functions under that Act.

For example, this could include:

- destroying, concealing or altering records to prevent them from being released under a Government Information Public Access application.
- knowingly making decisions that are contrary to the legislation
- directing another person to make a decision that is contrary to the legislation.

### **6.5 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.

For example, this could include:

- 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.

### **6.6 Privacy contravention**

This could include unlawfully accessing a person's personal information on an agency's database.

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

### 7.1 Reports, complaints and grievances

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

Some internal complaints or internal grievances may also be PIDs, as long as they have the features of a PID. If an internal complaint or grievance is a report of serious wrongdoing, we will consider whether it is a PID. If it is a PID, we will deal with it as set out in this policy, but we will also make sure we follow our Employee Grievance Resolution Policy.

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

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

There are three types of PIDs in the PID Act. These are:

- *Voluntary PID*: This is a PID where a report has been made by the public official because they decided, of their own accord, to come forward and disclose what they know.
- *Mandatory PID*: This is a PID where the public official has made a report about serious wrongdoing because they have a legal obligation to make that report, or because making that report is an ordinary aspect of their role or function in an agency.
- *Witness PID*: This is a PID where a person discloses information during an investigation of serious wrongdoing following a request or requirement of an investigator.

This policy mostly relates to making a voluntary PID and how we will deal with voluntary PIDs. People who make a mandatory PID or a witness PID are still entitled to protection. More information about protections is available in Section 18 of this policy.

You can find more information about mandatory and witness PIDs in the Ombudsman's guidelines 'Dealing with mandatory PIDs' and 'Dealing with witness PIDs'.

### 7.3 When will a report be treated as a voluntary public interest disclosure?

Voluntary PIDs are the kind of PIDs most people have in mind when they think about public interest reporting and 'whistleblowing'. They involve a public official making a report because they have information that they believe shows (or tends to show) serious wrongdoing, where they are not under a legal obligation to make that report and where it is not an ordinary part of their role to report such wrongdoing.

A report is a voluntary PID if it has the following five (5) features, which are set out in sections 24 to 27 of the PID Act:

1. A report is made by a public official,
2. It is made to a person who can receive voluntary PIDs,
3. The public official honestly and reasonably believes that the information that they are providing shows (or tends to show) serious wrongdoing,
4. The report was made orally or in writing, and
5. The report is voluntary (meaning it is not a mandatory or witness PID).

If the report has all five features, it is a voluntary PID.

The six categories of serious wrongdoing – corrupt conduct (i.e. a public official accepting a bribe), serious maladministration (i.e. an agency systemically failing to comply with proper recruitment processes when hiring staff), serious and substantial waste of public money (i.e. an agency not

following a competitive tendering process when contracting with entities to undertake government work), a privacy contravention (i.e. unlawfully accessing a person's personal information on an agency's database, breach of the GIPA Act (such as destroying, concealing or altering records to prevent them from being released under a Government Information Public Access application), or local government pecuniary interest contravention (i.e. such as a senior council staff member recommending a family member for a council contract and not declaring the relationship).

You will not be expected to prove that what you reported actually happened or is serious wrongdoing. You do have to honestly believe, on reasonable grounds, that the information you are reporting shows or tends to show serious wrongdoing.

Even though you do not have to prove the serious wrongdoing happened or provide evidence, a mere allegation with no supporting information is unlikely to meet this test.

If we make an error and do not identify that you have made a voluntary PID, you will still be entitled to the protections under the PID Act.

If you make a report and believe we have made an error by not identifying that you have made a voluntary PID, you should raise this with a nominated disclosure officer or your contact officer for the report. If you are still not satisfied with this outcome, you can seek an internal review or we may seek to conciliate the matter. You may also contact the NSW Ombudsman. Further information on rights to internal review and conciliation is found in Section 23 of this policy.

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

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

#### **7.4 Who can make a voluntary PID?**

Any public official can make a voluntary PID. You are a public official if:

- you are employed by Nambucca Valley Council,
- you are a contractor, subcontractor or volunteer who provides services, or exercises functions, on behalf of Council, or
- you work for an entity (such as a non-government organisation) who is contracted by Council to provide services or exercise functions on behalf of Council — if you are involved in undertaking that contracted work.

A public official can make a PID about serious wrongdoing relating to **any** agency, not just the agency they are working for. This means that we may receive PIDs from public officials outside our agency. It also means that you can make a PID to any agency, including an integrity agency like the Independent Commission Against Corruption (ICAC) and the NSW Ombudsman. Refer to Section 30 of this policy for the list of integrity agencies.

#### **7.5 Making a report to a public official who works for Council:**

For a report to be a voluntary PID, you can make a report to:

- the General Manager,
- the Director Corporate Services,
- the Manager Human Resources,
- a disclosure officer for Council — a list of disclosure officers can be found at Annexure A of this policy, or



- your manager — this is the person who directly, or indirectly, supervises you. It can also be the person who you directly, or indirectly, report to. You may have more than one manager. Your manager will make sure that the report is communicated to a disclosure officer on your behalf or may accompany you while you make the report to a disclosure officer.

## 7.6 Making a report to a recipient outside of Council:

You can also make your report to a public official in another agency (meaning an agency you do not work for) or an integrity agency. For a report to be a voluntary PID, these include:

- the *head of another agency* — this means the head of any public service agency.
- an *integrity agency* — a list of integrity agencies is located at Section 30 of this policy.
- a *disclosure officer for another agency* — ways to contact disclosure officers for other agencies is located in an agency's PID policy which can be found on their public website.
- a *Minister or a member of a Minister's staff* but the report *must be made in writing*.

If you choose to make a disclosure outside of Council, it is possible that your disclosure will be referred back to Council so that appropriate action can be taken.

For further information relating to making a report of wrongdoing as a voluntary PID to an MP or journalist see Section 11.2 of this policy.

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

Reports about the six categories of serious misconduct – corrupt conduct, maladministration, serious and substantial waste of public money, breach of the GIPA Act, a privacy contravention, 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. See below for details about these types of conduct. More information about what can be reported under the PID Act can be found in the NSW Ombudsman's *Guideline B2: What should be reported?* Refer link below.

[https://www.ombo.nsw.gov.au/data/assets/pdf\\_file/0007/125773/Guideline\\_B2\\_What-should-be-reported.pdf](https://www.ombo.nsw.gov.au/data/assets/pdf_file/0007/125773/Guideline_B2_What-should-be-reported.pdf)

All other wrongdoing or suspected wrongdoing should be reported to a supervisor, to be dealt with in line with the relevant policies. These might include:

- bullying and harassment prevention policy
- practices that endanger the health or safety of staff or the public.
- alcohol and other drugs policy

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

## 8. 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.

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

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

Corrective action can include:

- a formal apology.
- improving internal policies to adequately prevent and respond to similar instances of wrongdoing.
- providing additional education and training to staff where required.
- taking employment action against persons involved in the wrongdoing (such as termination of employment, relocation, a caution or reprimand).
- payment of compensation to people who have been affected by serious wrongdoing or other misconduct.

Refer to Council's Employee Grievance Resolution Policy and the Disciplinary Procedures of the Local Government (State) Award for further information.

## **10. Who can receive a report within the Nambucca Valley Council?**

Staff are encouraged to report general wrongdoing to their supervisor. However the PID Act requires that, for a report to be a public interest disclosure, it must be made to certain public officials identified in this policy or any supporting procedures.

The following positions are the key contacts at Council who are authorised to receive a public interest disclosure. The broader responsibilities of these positions and other Nambucca Valley Council staff who are able to receive a public interest disclosure are outlined under Roles and Responsibilities (Section 5.3).

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 Mayor.

General Manager

- [bede.spannagle@nambucca.nsw.gov.au](mailto:bede.spannagle@nambucca.nsw.gov.au)
- *Phone No:* 6568 0200
- *Mobile Phone No:* 0427 993 342

Mayor (for reports about the Acting General Manager/General Manager only)

- [mayor@nambucca.nsw.gov.au](mailto:mayor@nambucca.nsw.gov.au)
- *Phone No:* 6569 5556
- *Mobile Phone No:* 0408 661 412

Disclosures Coordinator (Director Corporate Services)

- [matthew.sykes@nambucca.nsw.gov.au](mailto:matthew.sykes@nambucca.nsw.gov.au)
- Phone No: 6868 0205
- Mobile Phone No: 0447 887 790

Manager Human Resources

- [joanne.hudson@nambucca.nsw.gov.au](mailto:joanne.hudson@nambucca.nsw.gov.au)
- Phone No: 6568 0216
- Mobile Phone No.: 0418 208 212

## 11. Who can receive a report outside of the Nambucca Valley Council?

Staff and Councillors are encouraged to report wrongdoing within the Nambucca Valley Council, but internal reporting is not your only option. You can also make a public interest disclosure to:

- An investigating authority.
- A Member of Parliament or a journalist, but only in the limited circumstances outlined below.

### 11.1 Investigating authorities

The PID Act lists a number of investigating authorities in NSW that staff, Councillors and other public officials can report serious wrongdoing to and the type of serious wrongdoing each authority can deal with. In certain circumstances it may be preferable to make a report of serious wrongdoing to an investigating authority, for example a report about either the General Manager or the Mayor.

The relevant investigating authorities for the Nambucca Valley Council are:

- the Independent Commission Against Corruption (ICAC) — for disclosures about corrupt conduct
- the NSW Ombudsman — for disclosures about serious maladministration
- the Auditor-General of the NSW Audit Office — for disclosures about serious and substantial waste of public money auditable by agencies
- the Information Commissioner — for disclosures about a breach of the GIPA Act and privacy contraventions
- the Office of Local Government – for disclosures about serious wrongdoings in a local council

You should contact the relevant investigating authority for advice about how to make a disclosure to them. Contact details for each investigating authority are provided at Section 30 of this policy.

You should be aware that the investigating authority may well discuss any such reports with Council. We 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.

We will also provide appropriate support and assistance to staff or Councillors who report wrongdoing to an investigating authority regardless of whether their report is treated as a public interest disclosure, if we are made aware that this has occurred. Council will ensure that staff or Councillors 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.

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, Manager Human Resources, or their nominated support contact.

All supervisors must notify the Disclosures Coordinator if they believe a staff member is suffering any detrimental action as a result of disclosing wrongdoing.

## **11.2 Members of Parliament or journalists**

To have the protections of the PID Act, staff reporting wrongdoing to a Member of Parliament (MP) or a journalist must have already made substantially the same disclosure ('previous disclosure') to one of the following:

- the General Manager
- a person nominated in this policy who can receive disclosures, including the Mayor for reports about the General Manager
- an investigating authority.

Also you can only disclose a report of a serious wrongdoing as a voluntary PID to an MP or journalist in the following circumstances:

- The previous disclosure must be substantially true.
- You did not make the previous disclosure anonymously.
- You did not give a written waiver of your right to receive information relating to your previous disclosure.
- You did not receive the following from Council:
  - notification that Council will not investigate the serious wrongdoing and will also not refer the previous disclosure to another agency, or
  - the following information at the end of the investigation period:
    - o notice of Council decision to investigate the serious wrongdoing,
    - o a description of the results of an investigation into the serious wrongdoing, or
    - o details of proposed or recommended corrective action as a result of the previous disclosure or investigation.

Investigation period means:

- after six months from the previous disclosure being made, or
- after 12 months if you applied for an internal review of the agency's decision within six months of making the disclosure.

If all the above requirements are met, your disclosure to an MP or journalist may be a voluntary PID.

## **11.3 Other external reporting**

If you report wrongdoing to a person or authority that is not listed in this policy, 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 our code of conduct – by, for example, disclosing confidential information.

For more information about reporting wrongdoing outside the Nambucca Valley 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).

## **12. How to make a voluntary PID report**

You can report wrongdoing in writing - this could be an email or letter to a person who can receive voluntary PIDs - (refer to Annexure A of this policy) or verbally i.e. have a private discussion with a person who can receive voluntary PIDs - this can be face-to-face, via telephone or virtually. 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 ask the person making the report to sign this record. The reporter should keep a copy of this record.

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

You should provide as much information as possible so we can deal with the report effectively. The type of information you should include is:

- date, time and location of key events,
- names of person(s) involved in the suspected wrongdoing, their role, title and how they are involved,
- your relationship with the person(s) involved, such as whether you work closely with them,
- your explanation of the matter you are reporting,
- how you became aware of the matter you are reporting,
- possible witnesses, and
- other information you have that supports your report.

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

You should report all wrongdoing you become aware of regardless of whether you think it is serious wrongdoing. It is important for Council to understand what is or may be occurring.

We are then responsible for making sure your report is handled appropriately under the PID Act, or if it is not a PID, in line with our other procedures. Even if your report is not a PID, it may fall within another one of the Council's policies for dealing with reports, allegations, or complaints. Refer to Section 20 Support for those that report wrongdoing.

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

The General Manager or the Director Corporate Services (as the General Manager's delegate and Disclosures Coordinator) can, in certain circumstances, determine that a report is a voluntary PID even if the report does not otherwise have all the features of a voluntary PID. This is known as the 'deeming power'.

By deeming that a report is a voluntary PID, it ensures that reporters are provided with protections under the PID Act.

If you make a report that has not met all the requirements of a voluntary PID, you can refer your matter to the General Manager or the Director Corporate Services (as the General Manager's delegate and Disclosures Coordinator) to request that they consider deeming your report to be a voluntary PID.

A decision to deem a report to be a voluntary PID is at the discretion of the General Manager or the Director Corporate Services (as the General Manager's delegate and Disclosures Coordinator). For more information about the deeming power, see the Ombudsman's guideline 'Deeming that a disclosure is a voluntary PID'.

## 13. How we deal with Voluntary PIDs.

### 13.1 How Council will acknowledge that we have received a report and keep the person who made it informed?

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

- You will receive an acknowledgment (see at the end of this policy 'Draft Acknowledgement Letter to Person Making a Report') that the report has been received. This acknowledgment will:
  - state that the report will be assessed to identify whether it is a PID.
  - state that the PID Act applies to how Council deals with the report.
  - provide clear information on how you can access this PID policy.
  - provide you with details of a contact person and available supports.
- If the report is a voluntary PID, we will **inform** you as soon as possible how we intend to deal with the report. This may include:
  - that we are investigating the serious wrongdoing.
  - that we will refer the report to a different agency (if appropriate) to deal with the voluntary PID. If we do this, we will provide you with details of this referral.
  - If we decide to not investigate the report and to not refer it to another agency for it to be investigated, we will tell you the reasons for this decision. We will also notify the NSW Ombudsman of this decision.
- If we decide to investigate the serious wrongdoing, we will provide you with updates on the investigation at least every three months.
  - If we investigate the serious wrongdoing, we will provide you with the following information once the investigation is complete:
    - a description of the results of the investigation — that is, we will tell you whether we found that serious wrongdoing took place.
    - information about any corrective action because of the investigation/s — this means we will tell you what action we took in relation to the person who engaged in the serious wrongdoing or if the serious wrongdoing was by our agency, what we have put in place to address that serious wrongdoing.
  - Corrective action could include taking disciplinary action against someone or changing the practices, policies and procedures that we have in place which led to the serious wrongdoing.

There may be some details about both the findings made because of the investigation and the corrective action taken that cannot be revealed to you. We will always balance the right of a person who makes a report to know the outcome of that report, with other legal obligations we have.

If you have made an anonymous report, in many cases we may not be able to provide this information to you.

### 13.2 How Council will deal with voluntary PIDs

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

steps are followed. If it is a voluntary PID, we will ensure that we comply with the requirements in the PID Act.

### **13.3 Where the report is a voluntary PID**

If the report is a voluntary PID:

- In most cases we will conduct an investigation to make findings about whether the serious wrongdoing disclosed in the report occurred, who was involved, who was responsible, and whether the people involved, or the agency engaged, in serious wrongdoing. There may be circumstances where we believe an investigation is not warranted — for example, if the conduct has previously been investigated.
- There may also be circumstances where we decide that the report should be referred to another agency, such as an integrity agency. For example, reports concerning possible corrupt conduct may be required to be reported to the ICAC in accordance with section 11 of the *Independent Commission Against Corruption Act 1988*.
- Before referring a matter, we will discuss the referral with the other agency, and we will provide you with details of the referral and a contact person within the other agency.
- If we decide not to investigate a report and to not refer the matter to another agency, we must let you know the reasons for this and notify the NSW Ombudsman.

### **13.4 Where the report is not a voluntary PID**

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

If the report is not a voluntary PID, we will let you know that the PID Act does not apply to the report and how we will deal with the concerns raised in the report.

If you are not happy with this assessment or otherwise disagree with it, you can raise it with the person who has communicated the outcome with you (being, the General Manager, Disclosures Coordinator (Director Corporate Services), Manager Human Resources), request an internal review, or request that the matter be conciliated. Council can, but do not have to, request the NSW Ombudsman to conciliate the matter.

### **13.5 Cease dealing with report as voluntary PID**

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

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

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

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

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

- where the person consents in writing to the disclosure.
- where it is generally known that the person is the maker of the voluntary PID because of their voluntary self-identification as the maker.

- when the public official or Council reasonably considers it necessary to disclose the information to protect a person from detriment.
- where it is necessary the information be disclosed to a person whose interests are affected by the disclosure.
- where the information has previously been lawfully published.
- when the information is disclosed to a medical practitioner or psychologist for the purposes of providing medical or psychiatric care, treatment or counselling to the individual disclosing the information.
- when the information is disclosed for the purposes of proceedings before a court or tribunal.
- when the disclosure of the information is necessary to deal with the disclosure effectively.
- if it is otherwise in the public interest to disclose the identifying information.

We will not disclose identifying information unless it is necessary and authorised under the PID Act.

We will put in place steps to keep the identifying information of the maker and the fact that a report has been made confidential. It may not be possible for us to maintain complete confidentiality while we progress the investigation, but we will do all that we practically can to not unnecessarily disclose information from which the maker of the report can be identified.

Refer to Section 16 Confidentiality.

### **13.7 How Council will assess and minimise the risk of detrimental action**

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

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

Council will take steps to assess and minimise the risk of detrimental action by assessing the risk of detrimental action related to or likely to arise out of a report, and develop strategies to manage any risk identified.

## **14. Can a report be anonymous?**

There will be some situations where you may not want to identify yourself when you make a report. Although these reports will still be dealt with by Council, it is best if you identify yourself. This allows us to provide you 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.

To make an anonymous report write an email or letter or call a person who can receive PIDs to make a report without providing your name or anything that might identify you as the maker of the report. A report will only be considered anonymous if there is no reasonable or practical way of communicating with the person making the report.

Even if you choose to remain anonymous, you will still attract the protections of the PID Act. It may be difficult, however, for Council to investigate the matter(s) you have disclosed if we cannot contact you for further information.

It is important to realise that an anonymous disclosure may not prevent you from being identified by the subjects of the report or your colleagues. If we do not know who made the report, it is very difficult for us to prevent any detrimental action should others identify you. In this case, anonymous reporters



should consider if they come forward to identify themselves to the Disclosures Coordinator or to an integrity agency. For further information please refer to the *Ombudsman's Guideline* at the following link:

[https://www.ombo.nsw.gov.au/\\_data/assets/pdf\\_file/0011/138998/Dealing-with-anonymous-voluntary-PIDs.pdf](https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0011/138998/Dealing-with-anonymous-voluntary-PIDs.pdf)

## **15. Feedback to staff who report wrongdoing**

Public officials who report wrongdoing will be told what is happening in response to their report.

### **15.1 Acknowledgement**

When you make a report, Council will contact you 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
- information about the internal and external resources or services available that you can access for support.
- We will provide this information to you within ten working days from the date you make your report. We will also advise you if we decide to treat your report as a public interest disclosure and provide you with a copy of this policy at that time, as required by the PID Act.

Please note, if you make a report which meets the requirements of the PID Act but the report was made under a statutory or legal obligation or incidental to the performance of your day to day functions, you will not receive an acknowledgement letter or a copy of this policy.

### **15.2 Progress updates**

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

- 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.

### **15.3 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.

## **16. Maintaining confidentiality**

Council realises reporters may want their identity and the fact they have made a report to remain confidential. This can help to prevent any action being taken against them for reporting wrongdoing.

Where possible and appropriate we will take steps to keep your identity, and the fact you have reported wrongdoing, confidential. We will discuss with you whether it is possible to keep your identity confidential.

If confidentiality cannot be maintained, we will develop a plan to support and protect you from risks of reprisal in consultation with you.

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 Mayor. The fewer people who know about your report, before and after you make it, the more likely it will be that we can protect you from any reprisal.

Any public officials 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 handling the report.

## **17. Managing the risk of reprisal and workplace conflict**

When a public official reports serious wrongdoing, Council will undertake a thorough risk assessment to identify the risk to you 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
- 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.

## **18. Protection against reprisals**

The Nambucca Valley Council will not tolerate any detrimental action against public officials who report serious wrongdoing or are believed to have reported serious wrongdoing.

The PID Act provides protection for those persons that have made a voluntary 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 against a person is an act or omission that causes, comprises, involves or encourages detriment to a person or a threat of detriment to a person (whether express or implied).

Detriment to a person includes:

- injury, damage or loss
- property damage
- reputational damage
- intimidation, bullying or harassment
- discrimination, prejudice or adverse treatment
- unfavourable treatment in relation to another person’s job
- disciplinary proceedings or disciplinary action, or
- any other type of disadvantage.

Detrimental action does not include:

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


A person who is found to have committed a detrimental action 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.

When you make a voluntary PID you receive protections under the PID Act.

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

We will not tolerate any type of detrimental action being taken against you because you have made a report, might make a report or are believed to have made a report.

The maker of a voluntary PID is protected in the following ways:

Protection	Voluntary PID
<p><i>Protection from detrimental action</i></p> <ul style="list-style-type: none"> <li>– 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.</li> <li>– Once we become aware that a voluntary PID by a person employed or otherwise associated with Council that concerns serious wrongdoing relating to Council has been made, Council will undertake a risk assessment and take steps to mitigate the risk of detrimental action occurring against the person who made the voluntary PID.</li> <li>– 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</li> </ul>	

Protection	Voluntary PID
<p>punishable by a maximum penalty of 200 penalty units or imprisonment for five years or both.</p> <ul style="list-style-type: none"> <li>– A person may seek compensation where unlawful detrimental action has been taken against them.</li> <li>– 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).</li> </ul> <p><i>Note</i> that a person who makes a PID can still be subject to reasonable management action (such as ordinary performance reviews and performance management). Provided such action is not taken because of the PID, it is not detrimental action under the PID Act.</p>	
<p><i>Immunity from civil and criminal liability</i></p> <p>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.</p> <p>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.</p>	✓
<p><i>Confidentiality</i></p> <p>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.</p>	✓
<p><i>Protection from liability for own past conduct</i></p> <p>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.</p>	✓

### 18.1 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.

The maker of a mandatory or witness PID is protected in the following ways:

Protection	Mandatory PID	Witness PID
<p><i>Detrimental action</i> 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.</p>	✓	✓
<p><i>Right to compensation</i> A person can initiate proceedings and seek compensation for injury, damage or loss suffered as a result of detrimental action being taken against them.</p>	✓	✓
<p><i>Ability to seek injunction</i> 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.</p>	✓	✓
<p><i>Immunity from civil and criminal liability</i> 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:</p> <ul style="list-style-type: none"> <li>• breaching a duty of secrecy or confidentiality, or</li> <li>• breaching another restriction on disclosure.</li> </ul>	✓	✓

It is important for public officials 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 the Council has reasonable grounds to take such action.

## 18.2 Responding to allegations of detrimental action offence

If you believe that detrimental action offence has been or is being taken against you or someone else in reprisal for reporting serious wrongdoing, you should tell your supervisor (for Council staff), 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 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 Mayor can alternatively be notified.

If Council becomes aware of an allegation that a detrimental action offence has occurred or may occur, 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
- take all steps possible to stop the action and protect the person(s).
- take appropriate disciplinary action against anyone that has taken detrimental action.

- refer any breach of Part 8 of the Council's code of conduct (reprisal action) by a Councillor or the General Manager to the Office of Local Government.
- refer any evidence of a detrimental action offence under section 34 of the PID Act to the ICAC or Commissioner of Police, or the Law Enforcement Conduct Commission (whichever is applicable).
- notify the NSW Ombudsman about the allegation of a detrimental action offence being committed.

If you allege detrimental action, 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 serious 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.

### **18.3 Protection against legal action**

If you make a public interest disclosure in accordance with the PID Act, you will not be subject to any liability, and no action, claim or demand can be taken against you for having made the public interest disclosure. You will not have breached any confidentiality or secrecy obligations and you will have the defence of absolute privilege in defamation.

## **19. Reporting detrimental action**

If you experience adverse treatment or detrimental action, such as bullying or harassment, you should report this immediately. You can report any experience of adverse treatment or detrimental action directly to Council (General Manager, Director Corporate Services, or Manager Human Resources), or to an integrity agency. A list of integrity agencies is located at Section 30 of this policy.

## **20. Support for those reporting wrongdoing**

Council will make sure that staff who have reported serious 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.

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

Staff are also reminded that they can get further support under Council's Employee Assistance Program by calling 1300 550 276.

All supervisors must notify the Disclosures Coordinator if they believe a staff member is suffering any detrimental action as a result of disclosing a wrongdoing.

## **21. Sanctions for making false or misleading statements**

It is important for all public officials to be aware that it is a criminal offence under section 84 of the PID Act to wilfully make a false or misleading statement when reporting wrongdoing. Council will not support staff or Councillors who wilfully make false or misleading reports. 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.

## **22. 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 serious 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.

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

## **23. Review and dispute resolution**

### **23.1 Internal review**

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

- that Council is not required to deal with the report as a voluntary PID.
- to stop dealing with the report because Council decided it was not a voluntary PID.
- to not investigate the serious wrongdoing and not refer the report to another agency.
- to cease investigating the serious wrongdoing without either completing the investigation or referring the report to another agency for investigation.

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

If you would like to make an application for an internal review, you must apply in writing within 28 days of being informed of Council decision. The application should state the reasons why you consider Council decision should not have been made. You may also submit any other relevant material with your application.

### **23.2 Voluntary dispute resolution**

If a dispute arises between Council and a person who has made a report which is, or may be, a voluntary PID, we may request the NSW Ombudsman to conciliate the dispute. Conciliation is a voluntary process and will only be suitable for disputes where Council and the maker of the report are willing to resolve the dispute.

## 24. Other agency obligations

### 24.1 Record-keeping requirements

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

### 24.2 Reporting of voluntary PIDs and Council annual return to the Ombudsman

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

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

This statistical annual return is then provided to the Annual Report and the Audit, Risk and Improvement Committee.

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

Council will enact this policy which is taken from the NSW Ombudsman model for PID compliance and best practice. Furthermore, the Council will periodically review this policy, and will provide training to Disclosures Officers.

## 25. Related documents

This document should be read in conjunction with:

Legislation	Other documentation
<ul style="list-style-type: none"><li>• <i>Public Interest Disclosures Act 2022</i> (NSW)</li><li>• <i>State Records Act 1998</i> (NSW)</li><li>• <i>Local Government Act 1993</i> (NSW)</li><li>• <i>Independent Commission Against Corruption Act 1988</i> (NSW)</li></ul>	<ul style="list-style-type: none"><li>• Code of Conduct</li><li>• Fraud and Corruption Prevention Policy</li><li>• Bullying and Harassment Prevention Policy</li><li>• NSW Ombudsman <u>Guideline B2 - What should be reported</u></li><li>• NSW Ombudsman <u>Guideline B3 - What is not a public interest disclosure</u></li><li>• NSW Ombudsman <u>Guideline C4 - Assessing risk of reprisals and conflict.</u></li><li>• NSW Ombudsman <u>Guideline D4 - Preventing and containing reprisals and conflict</u></li><li>• NSW Ombudsman <u>Guideline D5 - Responding to allegations of reprisal guidelines</u></li><li>• NSW Ombudsman <u>Guideline E1 - Model for internal reporter support</u></li></ul>



	<ul style="list-style-type: none"> <li>• NSW Ombudsman <a href="#">Guideline D3 - Internal reporters involved in wrongdoing</a></li> <li>• NSW Ombudsman <a href="#">Guideline D1 - Internal reporter support strategy</a></li> </ul>
--	---

## 26. Forms and other resources

The NSW Ombudsman provides a series of forms and templates for the use of Disclosures Coordinators and Disclosures Officers when receiving disclosures. The Council has adapted these templates for Council purposes (templates are at the end of this policy document):

- Initial Assessment by Recipient of a Report
- Assessment of an internal report against the criteria in the *Public Interest Disclosures Act 2022*
- PID risk assessment
- Checklist for Completion by Recipient of Report

Also included at the end of the policy document are templates for:

- Council Report Form
- Draft Acknowledgement Letter to Person Making a Report
- Draft Letter to Person Making a Report that the Report has been determined as Voluntary PID

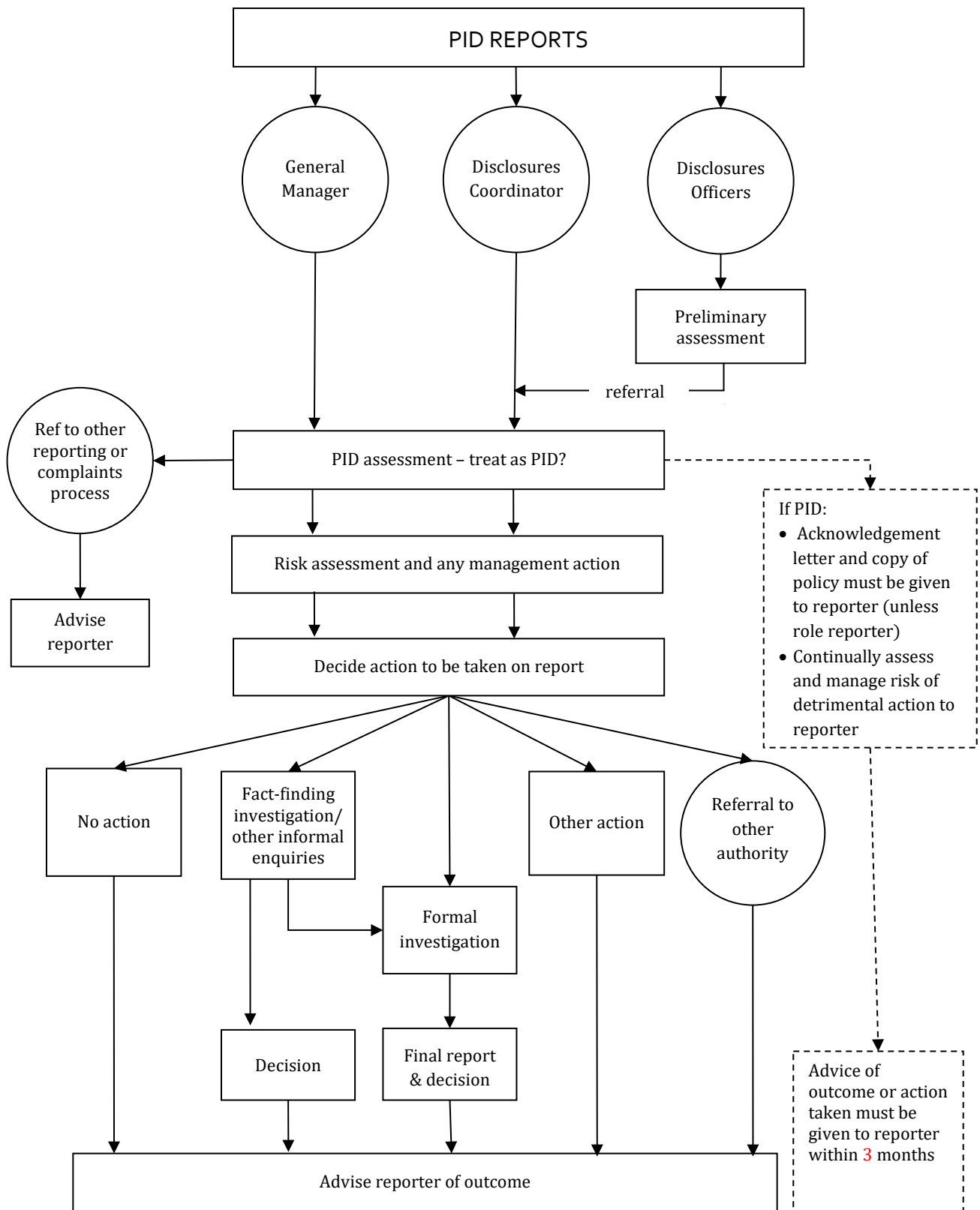
## 27. Review

This policy will be reviewed by Council every two years. For any advice or guidance about this review, contact the NSW Ombudsman's Public Interest Disclosures Unit.

## 28. More information

More information around public interest disclosures is available on the NSW Ombudsman's website at [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au).

## 29. Flow chart of PID reporting process



### 30. Contact Resources for integrity agencies

The contact details for external investigating authorities that staff, Councillors or other public officials can make a public interest disclosure to or seek advice from are listed below.

<p><b>For disclosures about corrupt conduct:</b></p> <p>Independent Commission Against Corruption (ICAC)          Phone: 02 8281 5999 or Toll free 1800 463 909 (between 9 am and 3 pm, Monday to Friday).          If you're deaf or have a hearing impairment or speech impairment, you can contact them through the National Relay Service NRS Speak and Listen telephone 1300 555 727 and ask for 02 8281 5999          Email: <a href="mailto:icac@icac.nsw.gov.au">icac@icac.nsw.gov.au</a>          Web: <a href="https://www.icac.nsw.gov.au/reporting/report-corruption">https://www.icac.nsw.gov.au/reporting/report-corruption</a>          Street Address: Level 7, 255 Elizabeth Street, Sydney NSW 2000          Postal Address: GPO Box 500 Sydney NSW 2001</p>	<p><b>For making a public interest disclosure (whistleblowing) about serious maladministration by most agencies and public officials (but not NSW Police, judicial officers or MPs):</b></p> <p>NSW Ombudsman          Phone: 02 9286 1000          Toll free (outside Sydney metro): 1800 451 524 (Monday to Friday between 9am to 4pm)          Telephone Interpreter Service (TIS): 131 450 -          If you're deaf or have a hearing impairment or speech impairment, you can contact them through the National Relay Service NRS Speak and Listen telephone 1300 555 727 and ask for 1800 451 524          Email: <a href="mailto:nswombo@ombo.nsw.gov.au">nswombo@ombo.nsw.gov.au</a>          Web: <a href="https://www.ombo.nsw.gov.au/Making-a-complaint/making-a-public-interest-disclosure-whistleblowing">https://www.ombo.nsw.gov.au/Making-a-complaint/making-a-public-interest-disclosure-whistleblowing</a></p> <p><b>Online Complaint Form:</b>  <a href="https://www.ombo.nsw.gov.au/Making-a-complaint/how-to-make-a-complaint/make-a-complaint-online">https://www.ombo.nsw.gov.au/Making-a-complaint/how-to-make-a-complaint/make-a-complaint-online</a>          Address: Level 24, 580 George Street, Sydney NSW 2000</p>
<p><b>For disclosures about serious and substantial waste of public money by auditable agencies:</b></p> <p>Auditor-General of the NSW Audit Office          Phone: 02 9275 7100</p>	<p><b>For disclosures about serious wrongdoings in a local council:</b></p> <p>Office of Local Government          Phone: 02 4428 4100</p>

<p>Email: <a href="mailto:mail@audit.nsw.gov.au">mail@audit.nsw.gov.au</a>  Web: <a href="https://www.audit.nsw.gov.au/make-a-public-interest-disclosure">https://www.audit.nsw.gov.au/make-a-public-interest-disclosure</a>  Public Official Reporting Form (which can be emailed to <a href="mailto:governance@audit.nsw.gov.au">governance@audit.nsw.gov.au</a>):  <a href="https://www.audit.nsw.gov.au/sites/default/files/documents/Public%20official%20reporting%20form%20-%20current%20version.docx">https://www.audit.nsw.gov.au/sites/default/files/documents/Public%20official%20reporting%20form%20-%20current%20version.docx</a>  Postal Address: Audit Office of New South Wales, Enquiries, GPO Box 12, Sydney NSW 2001</p>	<p>(Monday to Friday 9.00am – 4.30 pm)  Email: <a href="mailto:olg@olg.nsw.gov.au">olg@olg.nsw.gov.au</a>  Web:  <a href="https://www.olg.nsw.gov.au/public/complaints-against-councils/olg-complaint-handling/understanding-olg-complaint-handling/">https://www.olg.nsw.gov.au/public/complaints-against-councils/olg-complaint-handling/understanding-olg-complaint-handling/</a>  Address: 5 O’Keefe Avenue, Nowra, NSW 2541  Postal Address: Locked Bag 3015, NOWRA NSW 2541</p>
<p><b>For disclosures about breaches of the GIPA Act and privacy contraventions:</b></p> <p>Information &amp; Privacy Commissioner  Toll free: 1800 472 679 (9am to 5pm, Monday to Friday)  Email: <a href="mailto:ipcinfo@ipc.nsw.gov.au">ipcinfo@ipc.nsw.gov.au</a>  Web: <a href="https://www.ipc.nsw.gov.au/privacy/citizens/make-complaint">https://www.ipc.nsw.gov.au/privacy/citizens/make-complaint</a>  Address: Level 15, McKell Building, 2-24 Rawson Place, Haymarket NSW 2000  Postal Address: GPO Box 7011, Sydney NSW 2001</p>	<p><b>For serious maladministration by the ICAC or the ICAC officers:</b></p> <p>The Inspector of the Independent Commission Against Corruption</p> <p>Telephone: 02 9228 3023  Web:  <a href="https://www.oicac.nsw.gov.au/public-interest-disclosures/">https://www.oicac.nsw.gov.au/public-interest-disclosures/</a>  Postal Address: PO Box 5341, Sydney NSW 2001  Email:  <a href="mailto:oiicac_executive@oiicac.nsw.gov.au">oiicac_executive@oiicac.nsw.gov.au</a></p>
<p><b>For serious maladministration by the NSW Police Force or the NSW Crime Commission:</b></p> <p>The Law Enforcement Conduct Commission  Telephone: 02 9321 6700 or 1800 657 079  Web: <a href="https://www.lecc.nsw.gov.au/complaints">https://www.lecc.nsw.gov.au/complaints</a>  Postal Address: GPO Box 3880, Sydney NSW 2001  Email: <a href="mailto:contactus@lecc.nsw.gov.au">contactus@lecc.nsw.gov.au</a></p>	<p><b>For serious maladministration by the LECC and LECC officers:</b></p> <p>The Inspector of the Law Enforcement Conduct Commission</p> <p>Telephone: 02 9228 3023</p> <p>Web:  <a href="https://www.oilecc.nsw.gov.au/making-a-complaint/">https://www.oilecc.nsw.gov.au/making-a-complaint/</a>  Postal Address: GPO Box 5341, Sydney NSW 2001  Email: <a href="mailto:oilecc_executive@oilecc.nsw.gov.au">oilecc_executive@oilecc.nsw.gov.au</a></p>

## Nambucca Valley Council PID risk assessment

To be completed by the disclosures coordinator after a PID is made or if a report has been made anonymously

### Details of reporter

Reporter's name:

Role:

### Details of assessor

Assessor's name:

Role:

### Stage 1. Identify the risks

**Are the reporter's expectations reasonable?**  Yes  No  Not applicable

**Prompts:** Explain the internal reporting process and likely outcomes. What outcome does the reporter expect? Is the outcome they are seeking unlikely or unrealistic?

**Is the reporter's identity known?**  Yes  Not Currently Known  Not applicable

If you answered 'Yes' to the question above, what are the circumstances in which the identity of the reporter is known?

**Prompts:** The PID Act recognises that there are circumstances where it may be necessary for information to be disclosed that may identify the person who has reported wrongdoing. This information may be disclosed by an investigating authority, public authority or public official who receives a PID if:

- The person consents in writing to the disclosure of the information.
- It is 'generally known' that the person has made the PID as they have voluntarily identified themselves as the person who made the PID.
- It is essential for the identifying information to be disclosed to a person to satisfy the principles of natural justice.
- It is necessary for the information to be disclosed for the effective investigation of the matter.
- It is otherwise in the public interest to do so.

If you answered 'Not currently known' to the question above, could the reporter's identity become known?  Yes  No  Not applicable

**Prompts:** Has the reporter told anyone else that they have made or intended to make a report? Have they raised their concerns previously? Is the nature of the report such that their identity is easily identified? Has the reporter previously been identified as the maker of disclosures of a similar nature or about the same subject officer(s)? Is it a small workplace?

**Is the reporter at risk of reprisal?**  Yes  No  Not applicable

**Prompts:** Does the reporter work at the same location as the subject officer(s)? Has the reporter expressed fear of reprisal? Has the subject officer(s) previously engaged in reprisal or poor conduct? Is the subject officer(s) the reporter's line manager? Is the reporter being performance managed? Are there effective supervisory arrangements to monitor the conduct of the subject officer(s)? Is the reporter employed part-time, on a casual basis or on contract?

**Is any subject officer(s) at risk of adverse consequences?**  Yes  No  Not applicable

**Prompts:** When will the subject officer(s) be made aware of the allegations? How will they be provided with support?

**Is there a risk to the authority's functions, services and/or reputation?**  Yes  No  Not applicable

**Prompts:** Will business continuity be affected by the PID being investigated? Could there be media interest in the allegations raised?

#### **Human resources**

Are there known mitigating factors or potential risks in the workplace for the reporter and/or subject officer(s)?  Yes  No  Not applicable

**Prompts:** Is there a history of conflict in the workplace, particularly involving the reporter or subject officer(s)? Has the reporter received a threat or experienced recent bullying or harassment in the workplace? Is a restructure of the workplace planned?

## **Stage 2. Risk Analysis and evaluation.**

Analyse the risks to determine how they might affect the reporter, subject officer(s) and authority.

**Consequence(s)** What is the potential impact of the risks to the reporter, subject officer(s) and the authority?

**Likelihood** What is the likelihood of the risks occurring, particularly if confidentiality cannot be maintained?

**Controls** Are there strategies in place to control or eliminate the risks?

**Prompts:** Refer to a list of suggested strategies in stage 3. risk treatment

**RISK RATING** Select a risk rating based on all of the available information (examples or risks are below).

**Low risk**

The reporter's identity can be maintained or the reporter's identity is known and the reporter and assessor are confident that no reprisals will be taken against the reporter in response to having made a PID. The subject officer is unaware that a PID has been made/an investigation is progressing. The authority is compliant with the internal reporting policy and the authority's obligations under the PID Act.

**Medium risk**

The reporter's identity cannot be maintained. Potential for low level reprisals against the reporter, workplace conflict or other difficulties in response to making a PID. Concerns about the conduct of the parties involved. i.e. reporter and subject officer. Possibility the authority is not compliant with the internal reporting policy and the authority's obligations under the PID Act.

**High risk**

Detrimental action against the reporter that is substantially in reprisal for the reporter making a PID. Detrimental action means causing, comprising or involving any of the following (PID Act, s.32(1)): a) injury, damage or loss caused to the person, b) damage caused to the person's property, c) damage caused to the person's reputation, d) intimidation, bullying or harassment, e) unfavourable treatment in relation to the person's career, profession, employment or trade, f) discrimination, prejudice or adverse treatment, whether in relation to employment or otherwise, g) disciplinary proceedings or disciplinary action. Conflict involving the reporter and the subject officer(s). The reporter will not comply with the internal reporting policy. The authority is not compliant with the internal reporting policy and the authority's obligations under the PID Act.

### **Stage 3. Risk treatment**

Develop strategies to eliminate, minimise or manage risks to the reporter, subject officer(s) and authority.

**Prompts:** Possible strategies:

- Keep the identity of the reporter and subject officer(s) confidential.
- Develop a reporter support strategy.
- Communicate with managers and supervisors about keeping the identity of the reporter confidential, monitoring and managing workplace risks.
- Communicate with the reporter and subject officer(s) at regular intervals.
- Take proactive management intervention by warning the subject officer(s) about taking reprisal action.
- Provide general awareness or training.
- Ensure the report is dealt with in an appropriate timeframe.
- Facilitate alternative dispute resolution options.
- Consult with the reporter about whether they want to change employment arrangements.
- Change supervisory arrangements.
- Consider the timing and process of any restructure.
- Independently verify the work performance of the reporter.

[Refer to Guideline D4: Preventing and containing reprisals and conflict].

### **SIGNATURE**

Risks may need to be reviewed at various points in the process, such as when a decision is made to investigate, during the investigation into the report and once the outcome of an investigation is known.

Signature of assessor: ..... Date: / / Review date: / /



## Nambucca Valley Council Report Form

To be completed by a reporter and submitted to the Disclosures Coordinator or Disclosure officer

<b>History</b>		
<b>Details of reporter</b> <i>(You can make an anonymous report by leaving this section blank)</i>		
Name:		
Position:		
Division/Unit:		<b>Preferred method of contact</b>
Telephone:		<input type="checkbox"/> Phone
Email:		<input type="checkbox"/> Email
Postal address:		<input type="checkbox"/> Post
<b>Details of the wrongdoing being reported</b>		
Description: What happened? Where did this happen? When did this happen? Is it still happening? [Attach an additional page if required]		
How did you become aware of this?		
Name and position of people involved in the serious wrongdoing:	Name	Position
Attach any additional relevant information or indicate where supporting evidence may be found:	Supporting evidence	Attached
		<input type="checkbox"/>
		<input type="checkbox"/>
		<input type="checkbox"/>
Name and position of other people who may have additional information:	Name	Position
<b>Statement</b>		
I honestly believe that the above information shows or tends to show wrongdoing.		
X		
_____ Signature of reporter (Do not sign if you want to make an anonymous report)	_____ Date report submitted (Essential information)	

## Checklist for Completion by Recipient of Report

Report	
Report received by:	
Date report received:	<input type="checkbox"/> Verbal <input type="checkbox"/> Written <input type="checkbox"/> Anonymous
If the report was made <b>verbally</b> , the report has been documented in writing and signed:	<input type="checkbox"/> Yes <input type="checkbox"/> No
The reporter has been thanked for coming forward with their concerns:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Confidentiality / Risk of detrimental action	
Who else knows that the report has been made?	
Is the reporter concerned their identity will become known in the workplace? Why?	
Is the reporter concerned that they may suffer detrimental action for making the report if their identity becomes known? From whom?	
What professional relationship does the reporter have with any subject(s) of the report?	
Previous reporting	
<input type="checkbox"/> Yes <input type="checkbox"/> No                      The reporter has raised this matter to another person within your organisation.	
If <b>yes</b> , who was it reported to, when was it reported, what action was/is being taken?	
Support	
<input type="checkbox"/> Yes <input type="checkbox"/> No                      The reporter has been advised of our employee assistance program.	
<input type="checkbox"/> Yes <input type="checkbox"/> No                      The reporter requires support.	
If the reporter requires support, what type of support?	
Reporter's expectations	
What does the reporter expect from this process?	
What does the reporter expect will happen to any subject(s) of allegations?	
Additional information the recipient of a report may be aware of	
<input type="checkbox"/> Yes <input type="checkbox"/> No                      The reporter is currently/has previously been the subject of performance issues.	
<input type="checkbox"/> Yes <input type="checkbox"/> No                      The reporter is currently/has previously been the subject of disciplinary proceedings relating to this matter.	
<input type="checkbox"/> Yes <input type="checkbox"/> No                      The reporter is currently/has previously been the subject of criminal investigation related to this matter.	
<input type="checkbox"/> Yes <input type="checkbox"/> No                      The reporter is currently/has previously been the subject of workplace changes.	
If <b>yes</b> to any of the above, provide any known details.	
<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Signature of recipient	<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Date

## Initial assessment of report to be completed by the Disclosures Officer

Public Interest Disclosures – General Criteria			Comments
1	Is the reporter a public official?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Anonymous	<p>Under the <i>Public Interest Disclosures (PID) Act 2022</i>, A <i>public official</i> includes:</p> <ul style="list-style-type: none"> <li>○ a person employed in or by an agency or otherwise in the service of an agency</li> <li>○ 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</li> <li>○ an individual in the service of the Crown</li> <li>○ a statutory officer</li> <li>○ a person providing services or exercising functions on behalf of an agency, including a contractor, subcontractor or volunteer</li> <li>○ 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</li> <li>○ a judicial officer</li> <li>○ a Member of Parliament (MP), including a Minister</li> <li>○ a person employed under the <i>Members of Parliament Staff Act 2013</i>.</li> </ul> <p>If the reporter is not a <i>public official</i> the report is not likely to be a PID</p> <p>If the reporter is anonymous, the content of the report may tend to indicate that the reporter is a public official. In such cases it is always best to assume the reporter is a public official until there is evidence to indicate the reporter is not a public official.</p>
2	Is the report about the conduct of a public official or a public authority?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<p>If the report is not about the conduct of a <i>public official</i> or <i>public authority</i> the report is not likely to be a PID.</p>
3	Is the report about one of these categories of conduct?  <input type="checkbox"/> Serious Maladministration	<input type="checkbox"/> Yes <input type="checkbox"/> No	<p>Generally speaking, a grievance, such as a complaint about bullying, is not about one of these categories of conduct. If the report is not about one of these categories of conduct it is not likely to be a PID and does not need to be forwarded to the disclosures coordinator for assessment.</p>

<input type="checkbox"/> A serious and substantial waste of public money <input type="checkbox"/> Breach of the GIPA Act <input type="checkbox"/> LG pecuniary interest contravention <input type="checkbox"/> Corrupt conduct <input type="checkbox"/> A privacy contravention		For line managers/supervisors: PIDs must be made to a person authorised to receive PIDs under the public authority's PID policy (for example a nominated disclosure officer). <b>If you are not authorised to receive PIDs but suspect the report could be a PID, you should direct staff member to a nominated disclosures officer or show support and go with them.</b>
---	--	---

**Contact details of reporter**

Name:		Preferred method of contact
Telephone:		<input type="checkbox"/> Telephone
Email:		<input type="checkbox"/> Email
Postal address:		<input type="checkbox"/> Post

**Assessment and comments**

<p>Based on this <b>initial assessment</b>, could this report be a Public Interest Disclosure (PID)?</p> <p><input type="checkbox"/> Yes   <input type="checkbox"/> No</p> <p>Reasons for this initial assessment:</p> <p>_____</p> <p>Signature of nominated disclosures officer</p> <p>Date:</p>	<p>If <b>yes</b>,</p> <p><input type="checkbox"/> Forward this report to the Disclosures Coordinator for formal assessment.</p> <p>Date forwarded:</p> <p>If <b>no</b>, the following steps will be taken:</p> <p><input type="checkbox"/> Referred to:</p> <p>For:</p> <p>Date referred:</p> <p><input type="checkbox"/> Complainant notified.   Date notified</p>
--	---

## Draft Acknowledgement Letter to Person Making a Report

Name and Address

Dear [Mr/Ms] Surname

### **RE: Report of Suspected Serious Wrongdoing**

I am writing in relation to your [letter/email] addressed to [Officer's Name], received [date]. You reported [brief description of report].

[or]

I am writing in relation to your conversation with [Officer's Name], on [date]. I understand that you reported [brief description of report]

Thank you for coming forward to bring to our attention the suspected serious wrongdoing. I am enclosing a copy of our Public Interest Disclosures Policy for your reference. As the Disclosures Coordinator I can receive and assess disclosures from public officials, and I am the primary point of contact in Council for the reporter.

Please note that the *Public Interest Disclosures Act 2022* (the PID Act) applies to how Council deals with your report.

### Support options

Council acknowledges that making a report can be difficult, and we appreciate that you have brought this to our attention.

If you are Council staff or Councilors experiencing difficulties or require support you can contact Council's employee assistance program on 1300 550 267. If you require additional support throughout this process, please contact me to arrange a support officer.

You are welcome to call me direct on 6568 0205 if you have any questions about this letter or would like further information about how Council will be dealing with your report.

Yours sincerely

[Disclosures Coordinator]

## Draft Letter to Person Making a Report that the Report has been determined as Voluntary PID

Name and Address

Dear [Mr/Ms] Surname

### RE: Report of Suspected Serious Wrongdoing

I am writing in relation to your [letter/email] addressed to [Officer's Name], received [date]. You reported [brief description of report].

[or]

I am writing in relation to your conversation with [Officer's Name], on [date]. I understand that you reported [brief description of report]

### What we will do with your report

Having received your report, it is now up to Council to decide how to deal with this information and to take appropriate action. This may include:

- that we are investigating the serious wrongdoing.
- that we will refer the report to a different agency (if appropriate) to deal with the voluntary PID. If we do this, we will provide you with details of this referral.
- If we decide to not investigate the report and to not refer it to another agency for it to be investigated, we will tell you the reasons for this decision. We will also notify the NSW Ombudsman of this decision.

We expect you to assist us in this process and provide further information you may be aware of, if requested.

We will advise you of what action we have taken or intend to take by [date no later than three months after date received]. Please be aware, however, that we [may/will] not be able to provide you with personal or employment related information about those involved in the conduct you have reported.

### Protection from reprisal

As you may be aware, under Section 34 of the PID Act it is a criminal offence for someone to take detrimental action against another person which is substantially in reprisal for that person having made a public interest disclosure.

Council will take appropriate steps to help protect you from reprisal action that may result from having made a report. If practicable, we will make every effort to keep your identity confidential. Please be aware however that this may not be possible or appropriate in some circumstances. We will be in contact in the near future to discuss whether maintaining confidentiality is possible and appropriate in your case.

To minimise the risk of your identity being disclosed it is important that you only discuss this matter with me, the General Manager, or the Manager Human Resources who are authorised to deal with this matter. In particular, do not inform any person involved in the alleged wrongdoing that you have made a report about them.

Failure to maintain confidentiality may limit Council's ability to protect you from reprisal action and could be detrimental to any investigation.

**[Optional line where concerns reporter has intentionally breached confidentiality]:**

Wilfully disregarding these instructions will be treated as a serious matter and may be a breach of the Code of Conduct.

Please contact me immediately if you believe someone has taken, or intends to take, detrimental action against you in reprisal for making this report. My phone number is 6568 0205.

Support options

Council acknowledges that making a report in the workplace can be difficult, and we appreciate that you have brought this to our attention.

If you are experiencing difficulties or require support you can contact Council's employee assistance program on 1300 550 267. If you require additional support throughout this process, please contact me to arrange a support officer.

You are welcome to call me direct on 6568 0205 if you have any questions about this letter or would like further information about how Council will be dealing with your report.

Yours sincerely

[Disclosures Coordinator]

**Assessment of a report against the criteria in the Public Interest Disclosures Act 2022** completed by Disclosures Coord.

**Comments**

1	Is the reporter a public official?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Anonymous	If the reporter is not a <i>public official</i> , the report is not a PID. If the reporter is anonymous, the content of the report may indicate that the reporter is a public official. In such cases it is always best to assume the reporter is a public official unless there is evidence to indicate the reporter is not a public official.
2	Is the report about the conduct of a public official or a public authority?	<input type="checkbox"/> Yes <input type="checkbox"/> No	If the report is not about the conduct of a <i>public official</i> or <i>public authority</i> , as defined in the PID Act, the report is not a PID.
3	Is the report about one of the following categories of conduct? <input type="checkbox"/> Breach of the GIPA Act <input type="checkbox"/> Serious maladministration <input type="checkbox"/> LG pecuniary interest contravention <input type="checkbox"/> Corrupt conduct <input type="checkbox"/> Serious and substantial waste of public money <input type="checkbox"/> Privacy contravention	<input type="checkbox"/> Yes <input type="checkbox"/> No	If the report is not about one of the categories of conduct in the PID Act it is not a PID.  For more information about these categories of conduct see NSW Ombudsman PID Guideline B2.  If you have answered no because you believe the maladministration or waste of public money was not <i>serious</i> or <i>substantial</i> enough, clearly record your reasons over the page.
4	Does the reporter have <b>reasonable grounds</b> to believe that the information they have reported <b>shows or tends to show the alleged serious wrongdoing</b> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<b>Assume the reporter has an <i>honest belief</i> unless there is evidence to the contrary.</b>  If another person, given the same conditions, would take the same viewpoint, this is <i>reasonable grounds</i> . The reporter must be able to <i>show or tend to show</i> evidence of the alleged wrongdoing, i.e. they witnessed it or they have documentary or other evidence. It cannot be hearsay. If you have answered no, clearly record your reasons over the page.
5	Was the report made to the principal officer, or a public official nominated to receive disclosures in the public authority's PID Policy?	<input type="checkbox"/> Yes <input type="checkbox"/> No	If the report was not made to the <i>principal officer</i> or a <i>nominated disclosures officer</i> the report is not a PID. If the reporter has not made the report to an authorised person they should be redirected to one.
6	Does the report primarily question the merits of government policy?	<input type="checkbox"/> Yes <input type="checkbox"/> No	If the report <i>primarily questions the merits of government policy</i> the report is not a PID.
7	Is there substantial evidence indicating that the report was made solely or substantially with the motive of avoiding dismissal or other disciplinary action?	<input type="checkbox"/> Yes <input type="checkbox"/> No	If the report has been made <i>solely or substantially with the motive of avoiding dismissal or other disciplinary action</i> the report is not a PID. A high evidential threshold is required to conclude the reporter's motives were improper. If you have answered yes, you should have sound reasons and clearly record those reasons over the page.

**Further comments**

- The PID assessment should be based on the content of the disclosure, not the outcome of any investigation.
- A reporter does not have to explicitly indicate that they are making a PID or ask to be protected.
- If in doubt, err on the side of caution and interpret the PID Act broadly – i.e. assume that the PID Act applies and proceed accordingly.
- For further advice, please refer to the NSW Ombudsman's PID Guidelines at [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au) or contact the NSW Ombudsman PID Unit on [pid@ombo.nsw.gov.au](mailto:pid@ombo.nsw.gov.au) or 02 9286 1000.



## Assessment

Based on this assessment, should the report be treated as a Public Interest Disclosure?

Yes    No

If **yes**, was the PID made:

- incidental to the performance of reporter's day-to-day functions,
- under a statutory or other legal obligation on the reporter,
- otherwise.

---

Signature of disclosures coordinator

Date:

If **yes**, the following steps will be taken:

If **no**, the following steps will be taken:

## Reasons for decision

### 31. ANNEXURE - Nominated Disclosure Officers & Work Sites

<u>Position</u>	<u>Work Site</u>
General Manager Email: <a href="mailto:bede.spannagle@nambucca.nsw.gov.au">bede.spannagle@nambucca.nsw.gov.au</a> Phone No: 6568 0200 Mobile Phone No: 0427 993 342	Administration Centre Works Depot
Disclosure Co-ordinator (Director Corporate Services) Email: <a href="mailto:matthew.sykes@nambucca.nsw.gov.au">matthew.sykes@nambucca.nsw.gov.au</a> Phone No: 6868 0205 Mobile Phone No: 0447 887 790	Administration Centre
Manager Human Resources Email: <a href="mailto:joanne.hudson@nambucca.nsw.gov.au">joanne.hudson@nambucca.nsw.gov.au</a> Phone No: 6568 0216 Mobile Phone No: 0418 208 212	Administration Centre
Mayor Email: <a href="mailto:mayor@nambucca.nsw.gov.au">mayor@nambucca.nsw.gov.au</a> Phone No: 6569 5556 Mobile Phone No: 0408 661 412	Administration Centre
<b><i>Each of the below officers can be contacted by staff by all internal communication methods. Other persons may contact the below listed officers by calling 6568 2555 and asking to speak to the relevant officer stating that the matter is confidential.</i></b>	
Director Engineering Services	Administration Centre/Works Depot
CFO	Administration Centre
Manager Development Environment	Administration Centre
Manager Water & Sewerage	Administration Centre
Manager Infrastructure Services	Administration Centre/Works Depot
Manager Disaster Recovery	Administration Centre
Manager Assets	Administration Centre
Manager Economic Development	Administration Centre
Manager Information Communications Technology	Administration Centre
Senior Librarian	Nambucca Heads Library Macksville Library
Library Officer Technical Services	Nambucca Heads Library Macksville Library
Ranger	Pound
Site Leader Waste Services	Waste Management Facility