



# **WEDDIN SHIRE COUNCIL**

## **PUBLIC INTEREST DISCLOSURE POLICY**

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## 1. INTRODUCTION

Weddin Shire Council is committed to supporting and protecting staff if they report wrongdoing. This policy outlines the process for handling reports that are classified as public interest disclosures under the Public Interest Disclosures Act 1994 (the PID Act).

## 2. PURPOSE

This policy establishes a reporting system for the reporting of disclosures of corrupt conduct, maladministration or the serious and substantial waste of public money or contravention of the GIPA Act by Council, its staff and Councillors.

This policy will apply to:

- both Council staff and Councillors
- permanent employees, whether full time or part time
- temporary or casual employees
- consultants
- individual contractors working for Council

The policy may also apply to other people who perform public official functions and their conduct and activities could be investigated by an investigating authority. This can include volunteers and those contracted to work for Council.

Staff are encouraged to report known and suspected wrongdoing within Council. Staff should also be encouraged to support those who have made disclosures, as well as protect and maintain their confidentiality. They must not victimise or harass anyone who had made a disclosure.

## 3. RESPONSIBILITY

General Manager

## 4. WHAT SHOULD BE REPORTED?

You should report any wrongdoing you see within the Weddin Shire Council. Reports about the four categories of serious wrongdoing corrupt conduct, maladministration, serious and substantial waste of public money, and government information contravention - will be dealt with under the PID Act as public interest disclosures and according to this policy.

### **a. 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 or the advantage of others
- acting dishonestly or unfairly, or breaching public trust
- a member of the public influencing or trying to influence a public official to use their position
- in a way that is dishonest, biased or breaches public trust

For further information about corrupt conduct, see the NSW Ombudsman's guideline on what should be reported.

## **b. Maladministration**

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

For example, this could include:

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

For further information about maladministration, refer to the NSW Ombudsman's guideline on what should be reported.

## **c. Serious and substantial waste in local government**

Serious and substantial waste is the uneconomical, inefficient or ineffective use of resources that could result in the loss or wastage of local government money. This includes all revenue, loans and other money collected, received or held by, for or on account of the Council.

For example, this could include:

- poor project management practices leading to projects running over time
- having poor or no processes in place for a system involving large amount of public funds.

For further information about serious and substantial waste, refer to the NSW Ombudsman's guideline on what can be reported

## **d. Government information contravention**

A government information contravention is a failure to properly fulfil functions under the Government Information (Public Access) Act 2009 (GIPA Act).

For example, this could include:

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

For further information about government information contravention, refer to the NSW Ombudsman's guideline on what can be reported.

## **e. Other wrongdoing**

Although reports about the previous four categories of conduct can attract the specific protections of the PID Act, you should report all activities or incidents that you believe are wrong.

For example, these could include:

- harassment or unlawful discrimination
- reprisal action against a person who has reported wrongdoing
- practices that endanger the health or safety of staff or the public.

These types of issues should be reported to a supervisor, in line with Weddin Shire Council's policies.

Even if these reports are not dealt with as public interest disclosures, Weddin Shire Council will consider each matter and make every attempt to protect the staff member making the report from any form of reprisal.

## 5. WHEN WILL A REPORT BE PROTECTED

Weddin Shire Council will support any staff who report wrongdoing. For a report to be considered a public interest disclosure, it has to meet all of the requirements under the PID Act. These requirements are:

The person making the disclosure must honestly believe on reasonable grounds that the information shows or tends to show wrongdoing.

### a. Honest belief

- A belief is more than a suspicion. This means that you are more likely to accept the idea that wrongdoing occurred than reject it.
- An honest belief is a belief that is genuinely held.
- The PID Act provides that a belief is presumed to be honest unless there is evidence it is not.

### b. Reasonable grounds

- A test applied here is whether, from an objective viewpoint, the basis for the person's belief is reasonable. That is, would be a reasonable person in the circumstances believe that wrongdoing had occurred?
- The belief cannot be based on personal animosity or prejudice.

### c. Shows or tends to show

This means there must be sufficient information to indicate that the wrongdoing has happened or is happening. This may include:

- Direct observation of the wrongdoing
- Corroborative observation by others
- Evidence such as unbalanced accounts, missing items of value or contradictory records

There should be no alternative explanations for the conduct or activities observed that can be easily thought of.

Taken together, an 'honest belief on reasonable grounds that information shows or tends to show' means that a public interest disclosure cannot be based on a mere allegation or suspicion that is unsupported by any facts, circumstances or evidence.

The person assessing the report may need to seek further information or conduct preliminary inquiries before deciding whether a report meets this criteria. They might examine any source documentation and perhaps talk with the internal reporter.

However, it is not necessary for the internal reporter to provide sufficient information to conclusively establish or prove that the wrongdoing occurred to any investigative standard of proof.

The report has to be made to one or more of the following:

- a position nominated in this policy (See Section 9)
- the general manager
- one of the investigating authorities nominated in the PID Act (See Section 16)

Reports by staff and Councillors will not be considered to be public interest disclosures if they:

- mostly question the merits of government policy, including the policy of the governing body of Council.
- are made with the sole or substantial motive of avoiding dismissal or other disciplinary action.

## 6. HOW TO MAKE A REPORT

- You can report wrongdoing in writing or verbally.
- You are encouraged to make a report in writing as this can help to avoid any confusion or misinterpretation.
- If a report is made verbally, the person receiving the report must make a comprehensive record of the disclosure and ask the person making the disclosure to sign this record. The person making the disclosure should keep a copy of this record.
- If you are concerned about being seen making a report, ask to meet in a discreet location away from the workplace.

## 7. 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 Weddin Shire 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 the outcome of any investigation into the allegations.

It is important to realise that an anonymous disclosure may not prevent you from being identified. If we do not know who made the report, it is very difficult for us to prevent any reprisal action.

## 8. MAINTAINING CONFIDENTIALITY

Weddin Shire Council realises many staff will want their report to remain confidential. This can help to prevent any action being taken against you for reporting wrongdoing.

We are committed to keeping your identity, and the fact you have reported wrongdoing, confidential. However, there may be situations where this may not be possible or appropriate. We will discuss with you whether it is possible to keep your report confidential.

If confidentiality cannot be maintained, we will develop a plan to support and protect you from risks of reprisal. You will be involved in developing this plan. You will also be told if your report will be dealt with under the Council's Code of Conduct, as this may mean certain information will have to be tabled at a Council meeting.

If you report wrongdoing, you should only discuss your report with those dealing with it. This will include the Disclosures Officer and the General Manager. If you discuss your report more broadly, you may affect the outcome of any investigation.

## 9. WHO CAN RECEIVE A REPORT WITHIN THE WEDDIN SHIRE COUNCIL?

You are encouraged to report general wrongdoing to your supervisor. However the PID Act requires that, for a report to be a public interest disclosure, it must be made to a public official in accordance with Council's disclosure procedures. For the Weddin Shire Council, this means this policy and any supporting procedures.

Any supervisor who receives a report that they believe may be a public interest disclosure must refer the staff member making the report to one of the positions listed below.

If you are Council staff and your report involves a Councillor, you should make it to the General Manager or the Mayor. If you are a Councillor and your report is about another Councillor, you should make it to the General Manager or the Mayor.

The following positions are the only positions within the Weddin Shire Council who can receive a public interest disclosure.

**a. General Manager**

You can report wrongdoing directly to the General Manager. The General Manager is responsible for:

- deciding if a report is a public interest disclosure
- determining what needs to be done next, including referring it to other authorities
- deciding what needs to be done to correct the problem that has been identified.

The General Manager must make sure there are systems in place within Weddin Shire Council to support and protect staff who report wrongdoing.

They are also responsible for referring actual or suspected corrupt conduct to the Independent Commission Against Corruption.

**b. Mayor**

If you are making a report about the General Manager, you should make your report to the Mayor.

They are responsible for:

- deciding if a report is a public interest disclosure
- determining what needs to be done next, including referring it to other authorities
- deciding what needs to be done to correct the problem that has been identified.

The Mayor must make sure there are systems in place within Weddin Shire Council to support and protect staff who report wrongdoing.

If the report is about the General Manager, the Mayor is also responsible for referring actual or suspected corrupt conduct to the Independent Commission Against Corruption.

**c. Disclosures Officers**

The Disclosures Officers work with the General Manager, and are responsible for receiving, forwarding and/or dealing with reports made in accordance with this Policy. (Reports can be received direct to General Manager).

Nominated Disclosure Officers are: General Manager, Director Engineering, Director Corporate Services, Director Environmental Services.

Staff are not required to make a report to the Director associated with the department they work in. Disclosure Officers can take a report from anyone including staff outside their own department.

## 10. WHO CAN RECEIVE A REPORT OUTSIDE OF THE WEDDIN SHIRE COUNCIL?

Staff are encouraged to report wrongdoing within the Weddin Shire Council, but internal reporting is not your only option. If you follow the guidance below, your report can still be a public interest disclosure.

You can choose to make your report to an investigating authority. You can do this first, or at any stage after your initial report to Weddin Shire Council. If your report is about the General Manager or the Mayor, you should consider making it to an investigating authority

You can also choose to make a report to a Member of Parliament or a journalist, but only in limited circumstances.

### **a. Investigating authorities**

The PID Act lists a number of investigating authorities in NSW that staff can report wrongdoing to and the categories of wrongdoing each authority can deal with

In relation to Council, these authorities are:

- the Independent Commission Against Corruption (ICAC) — for corrupt conduct
- the Ombudsman — for maladministration
- the Police Integrity Commission (PIC) — for police misconduct
- the PIC Inspector — for disclosures about the PIC or its staff
- the Office of Local Government, Department of Premier and Cabinet - for serious and substantial waste in Local Government (reports about serious and substantial waste in State Government Agencies should be made to the Auditor General)
- the ICAC Inspector — for disclosures about the ICAC or its staff
- the Information Commissioner — for disclosures about a government information contravention.

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

You should be aware that it is very likely the investigating authority will discuss the case with Weddin Shire 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 who report wrongdoing to an investigating authority.

### **b. 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 report to one of the following:

- the General Manager
- a person nominated in this policy
- an investigating authority in accordance with the PID Act.



Also, Weddin Shire Council or the investigating authority that received the report must have either:

- decided not to investigate the matter
- decided to investigate the matter, but not completed the investigation within six months of the original report
- investigated the matter but not recommended any action as a result not told the person who made the report, within six months of the report being made, whether the matter will be investigated.

Most importantly, to be public interest under the PID Act, if you report wrongdoing to an MP or a journalist you will need to be able to prove that you have reasonable grounds for believing that the disclosure is substantially true and that it is in fact substantially true.

If you report wrongdoing to a person or an organisation that is not listed above, you will not be protected under the PID Act. This may mean you will be in breach of legal obligations or Weddin Shire Council's Code of Conduct by, for example, disclosing confidential information.

For more information about reporting wrongdoing outside Weddin Shire Council, contact the Disclosures Officer or the NSW Ombudsman's Public Interest Disclosures Unit. Their contact details are provided at the end of this policy.

## 11. FEEDBACK TO STAFF WHO REPORT WRONGDOING

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

When you make a report, you will be given:

- an acknowledgement that your disclosure has been received
- the timeframe for when you will receive further updates
- the name and contact details of the people who can tell you what is happening

This information will be given to you within 5 working days from the date you make your report.

After a decision is made about how your report will be dealt with, you will be given:

- information about the action that will be taken in response to your report
- likely timeframes for any investigation
- information about the resources available within Weddin Shire Council to handle any concerns you may have
- information about external agencies and services you can access for support.

This information will be given to you within 10 working days from the date you make your report.

During any investigation, you will be given:

- information on the ongoing nature of the investigation
- information about the progress of the investigation and reasons for any delay
- advice if your identity needs to be disclosed for the purposes of investigating the matter, and an opportunity to talk about this.

At the end of any investigation, 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 will be involved as a witness in any further matters, such as disciplinary or criminal proceedings.

## 12. PROTECTION AGAINST REPRISALS

The PID Act provides protection for people reporting wrongdoing by imposing penalties on anyone who takes detrimental action substantially in reprisal for them making the public interest disclosure.

Weddin Shire Council will not tolerate any reprisal action against staff who report wrongdoing. The criminal penalties that can be imposed include imprisonment or fines. Detrimental action is also misconduct that justifies disciplinary action. People who take detrimental action against someone who has made a disclosure can also be required to pay damages for any loss suffered by that person.

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

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

### **a. Responding to reprisals**

Weddin Shire Council will act to protect staff who report wrongdoing from reprisals.

When a report is received, we will ensure that a thorough risk assessment is conducted. This will identify any risks to the member of staff who reported the wrongdoing, as well as strategies to deal with those risks.

If you believe that detrimental action has been or is being taken against you or someone else who has reported wrongdoing in reprisal for making a report, you should tell your supervisor, the Disclosures Officer or the General Manager immediately.

All supervisors must report any suspicions they have that reprisal action against a staff member is occurring, or any reports that are made to them, to the Disclosures Officer or the General Manager.

If the Disclosures Officer becomes aware of reprisal action against a person who has made a disclosure, they will:

- ensure a senior and experienced member of staff, who has not been involved in dealing with the initial disclosure, will investigate the suspected reprisal
- give the results of that investigation to the General Manager for a decision
- give the results of that investigation to the Mayor for a decision if the allegation of reprisal action is about the General Manager
- if it has been established that reprisal action is occurring against someone who has made a disclosure, take all steps possible to stop that activity and protect the member of staff who made the disclosure
- take appropriate disciplinary or criminal action against anyone proven to have taken or threatened any action in reprisal for making a disclosure.

If you report reprisal action, you will be kept informed of the progress of any investigation and the outcome.

The General Manager may issue specific directions to help protect against reprisals. If the allegation of reprisal action is about the General Manager, the Mayor may issue similar directions. These may include:

- issuing warnings to those alleged to have taken reprisal action against the member of staff who made the disclosure
- relocating the member of staff who made the disclosure or the subject officer within the current workplace
- transferring the member of staff who made the disclosure or the staff member who is the subject of the allegation to another position for which they are qualified
- granting the member of staff who made the disclosure or the subject officer leave of absence during the investigation of the disclosure.

These directions will only be taken if the member of staff who made the disclosure agrees to it. The Disclosures Officer will make it clear to other staff that this action was taken in consultation with the staff member and with management support – and it is not a punishment.

If you have reported wrongdoing and feel that any reprisal action is not being dealt with effectively, you can contact the Ombudsman or the ICAC, depending on the type of wrongdoing you reported. Contact details for all these investigating authorities are included at the end of this policy.

#### **b. Protection against legal action**

If you make a 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 making the disclosure. You will not have breached any confidentiality or secrecy obligations and you will have the defence of absolute privilege in defamation.

## 13. SUPPORT FOR THOSE REPORTING WRONGDOING

Weddin Shire Council will make sure that staff who have reported wrongdoing, regardless of whether they have made 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, counselling services, legal or career advice.

We also have staff who will support those who report wrongdoing. They are responsible for initiating and coordinating support, particularly to those who are suffering any form of reprisal. All supervisors must notify the Disclosures Officer if they believe a staff member is suffering any detrimental action as a result of disclosing wrongdoing.

## 14. SANCTIONS FOR MAKING FALSE OR MISLEADING DISCLOSURES

It is important that all staff are aware that it is a criminal offence under the PID Act to wilfully make a false or misleading statement when reporting wrongdoing.

## 15. SUPPORT FOR THE SUBJECT OF A REPORT

Weddin Shire Council is committed to ensuring staff who are the subject of a report of wrongdoing are treated fairly and reasonably. If you are the subject of a report, you will be:

- treated fairly and impartially
- told your rights and obligations under our policies and procedures
- kept informed during any investigation
- given the opportunity to respond to any allegation made against you
- told the result of any investigation.

## 16. MORE INFORMATION

Staff can also access advice and guidance from the Weddin Shire Council Disclosures Officers and the NSW Ombudsman's website at [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au) or the Information and Privacy Commission NSW website [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au)

## 17. RESOURCES

If you don't want to report something internally, you can report it to:

- **If it's about corrupt conduct**

Independent Commission Against Corruption  
Tel: 02 8281 5999 or 1800 463 909 (toll free)  
Fax: 02 9264 5364  
GPO Box 500, Sydney NSW 2001  
Email: [icac@icac.nsw.gov.au](mailto:icac@icac.nsw.gov.au)  
Web: [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au)

- **If it's about maladministration**

NSW Ombudsman  
Tel: 02 9286 1000 or 1800 451 524 (toll free)  
Fax: 02 9283 2911  
Level 24, 580 George Street, Sydney NSW 2000  
Email: [nswombo@ombo.nsw.gov.au](mailto:nswombo@ombo.nsw.gov.au)  
Web: [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)

- **If it's about a failure to comply with the GIPA Act**

Information Commissioner (NSW)  
Tel: 1800 463 626 (free call)  
GPO Box 7011, Sydney NSW 2001  
Email: [ipcinfo@ipc.nsw.gov.au](mailto:ipcinfo@ipc.nsw.gov.au)  
Web: [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au)

- **If it's about local government**

Chief Executive  
Office of Local Government  
Tel: 02 4428 4100  
Fax: 02 4428 4199  
Locked Bag 3015, Nowra NSW 2541  
Email: [dlg@dlg.nsw.gov.au](mailto:dlg@dlg.nsw.gov.au)  
Web: [www.dlg.nsw.gov.au](http://www.dlg.nsw.gov.au)

## 18. TRAINING

This policy will be discussed and communicated during Staff induction Sessions and Code of Conduct training/sessions for all staff and Councillors.

## 19. REFERENCES

Numerous guidelines and resources are available from the NSW Ombudsman website:  
[www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)

## 20. HISTORY

Version	Details
1.29.1	Adopted 19 November 2020