

| <b>POLICY:-</b>                               |   |
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| <b>PROCEDURES/GUIDELINES:-</b>          |  |
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## **1. Purpose and context of the Policy**

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

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

The internal reporting system established under this policy is not intended to be used for staff grievances, which should be raised in accordance with Council Grievance Policy. If a staff member makes a report under this policy which is substantially a grievance, the matter will be referred to Manager Human Resources and dealt with in accordance with the Grievance Policy.

## **2. Organisational Commitment**

Upper Lachlan Shire Council strives to deliver on its Customer Service Charter, community goals and strategic priorities as reflected in the Community Strategic Plan (CSP) and supporting documents.

Under Section 6D, of the *PID Act*, public authorities are required to have a policy and procedures for receiving, assessing and dealing with public interest disclosures.

Council is committed to the aims and objectives of the *PID Act*. Council is committed to creating a climate of trust, where people are comfortable and confident about reporting wrongdoing and encourage staff to come forward if they are aware of wrongdoing within the Council.

Council will not tolerate and is committed to eliminating corrupt conduct, maladministration or serious and substantial waste of public money. Council will take all reasonable steps to provide protection to staff that makes such disclosures from any detrimental action in reprisal for the making of the disclosure.

Council will deal with reports thoroughly and impartially and if some form of wrongdoing has been found, taking appropriate action to address it and provide adequate resources to address issues.

Council shall ensure Directors, Managers and supervisors at all levels in the Council understand the benefits of reporting wrongdoing, receive appropriate training, are familiar with this policy and aware of the needs of those who report wrongdoing.

Council will properly assess, investigate or otherwise deal with allegations and properly manage any workplace issues that the allegations identify or that result from a report.

### **3. 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;
- Contractors, Consultants and their employees working for Council and/or providing services to Council;
- Other people who perform Council functions whose conduct and activities could be investigated by an investigating authority, including volunteers and Section 355 committee members.

The policy also applies to public officials of another Council or public authority who report wrongdoing relating to Upper Lachlan Shire Council.

### **4. Roles and Responsibilities**

#### **a. The role of Council Staff and Councillors**

Council 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.

Council staff and Councillors must not:-

- Make false or misleading reports of wrongdoing;
- Victimise or harass anyone who has made a report.

Additionally, the behaviour of all Council staff and Councillors involved in the internal reporting process must adhere to the Council's Code of Conduct. A breach of the Code of Conduct may result in disciplinary action.

#### **b. The role of Upper Lachlan Shire Council**

Council has a responsibility to establish and maintain a working environment that encourages staff and councillors to report wrongdoing and supports them when they do. 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 staff and Councillors and deal with them appropriately. Once wrongdoing has been reported, the 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 our obligations under the *PID Act* and statistical information about public interest disclosures in our 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.

### **c. Roles of Key Positions**

#### **General Manager**

Council's General Manager has ultimate responsibility for maintaining the internal reporting system, workplace reporting culture, implementing this policy and ensuring Council complies with the *PID Act*.

The General Manager can receive reports from staff and Councillors and has a responsibility to:-

- Assess reports received by or referred to them, to determine whether or not the report should be treated as a public interest disclosure, and to decide how the report will be dealt with;
- Deal with reports made under the Council's Code of Conduct in accordance with the Council's adopted Code of Conduct Procedures;
- Ensure there are strategies in place to support reporters, protect reporters from reprisal and manage workplace conflict that may arise in relation to a report;
- Make decisions following any investigation or appoint an appropriate decision-maker;
- Take appropriate remedial action where wrongdoing is substantiated or systemic problems are identified;
- Refer actual or suspected corrupt conduct to the Independent Commission Against Corruption (ICAC);
- Refer any evidence of a reprisal offence under Section 20, of the *PID Act*, to the Commissioner of Police or the ICAC.

#### **Disclosures Coordinator**

The Disclosures Coordinator has a central role in the Council's internal reporting system. The Disclosures Coordinator can receive and assess reports, and is the primary point of contact in the Council for the reporter.

The Council Disclosures Coordinator is the Director of Finance and Administration. Clause 3.15, of the Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW, requires the Complaints Coordinator to be a Disclosures Coordinator.

The Disclosures Coordinator has a responsibility to:-

- Assess reports to determine whether or not a report should be treated as a public interest disclosure, and to decide how each report will be dealt with (either under delegation or in consultation with the General Manager);
- Deal with reports made under the Council's Code of Conduct in accordance with the Council's adopted Code of Conduct Procedures;
- Coordinate the Council's response to a report;

- Acknowledge reports and provide updates and feedback to the reporter;
- Assess whether it is possible and appropriate to keep the reporter's identity confidential;
- Assess the risk of reprisal and workplace conflict related to or likely to arise out of a report, and develop strategies to manage any risk identified;
- Where required, provide or coordinate support to staff involved in the reporting or investigation process, including protecting the interests of any officer the subject of a report;
- Ensure Council complies with the *PID Act*;
- Provide six-monthly reports to the NSW Ombudsman in accordance with Section 6CA of the *PID Act*.

## **Disclosures Officers**

Disclosures Officers are additional points of contact within the internal reporting system. They can provide advice about the system and this policy, receive reports of wrongdoing and assist staff and Councillors to make reports.

Council Disclosures Officers includes; the Manager of Governance, Chief Financial Officer and Manager Human Resources.

Disclosures Officers have a responsibility to:-

- Document in writing any reports received verbally, and have the document signed and dated by the reporter;
- Make arrangements to ensure reporters can make reports privately and discreetly when requested, if necessary away from the workplace;
- Discuss with the reporter any concerns they may have about reprisal or workplace conflict;
- Carry out preliminary assessment and forward reports to the Disclosures Coordinator or General Manager for full assessment.

## **Mayor**

The Mayor can receive reports from staff and Councillors about the General Manager. Where the Mayor receives such reports, the Mayor has a responsibility to:-

- Assess the reports to determine whether or not they should be treated as a public interest disclosure, and to decide how they will be dealt with;
- Deal with reports made under the Council's Code of Conduct in accordance with the Council's adopted Code of Conduct Procedures;
- Refer reports to an investigating authority, where appropriate;
- Liaise with the Disclosures Coordinator to ensure there are strategies in place to support reporters, protect reporters from reprisal and manage workplace conflict that may arise in relation to a report;
- Refer actual or suspected corrupt conduct to the ICAC;
- Refer any evidence of a reprisal offence under Section 20, of the *PID Act*, to the Commissioner of Police or the ICAC.

## **Managers, Supervisors and Coordinators**

Managers, Supervisors and Coordinators play an important role in managing the immediate workplace of those involved in or affected by the internal reporting process. These roles should be aware of this internal reporting policy and are responsible for creating a local work environment where staff are comfortable and confident about reporting wrongdoing.

Managers, Supervisors and Coordinators have a responsibility to:-

- Encourage staff to report known or suspected wrongdoing within the organisation and support staff when they do;
- Identify reports made to them in the course of their work which could be public interest disclosures, and assist the staff member to make the report to an officer authorised to receive public interest disclosures under this policy;
- Implement local management strategies, in consultation with the Disclosures Coordinator, to minimise the risk of reprisal or workplace conflict in relation to a report;
- Notify the Disclosures Coordinator or General Manager immediately if they believe a staff member is being subjected to reprisal as a result of reporting wrongdoing, or in the case of suspected reprisal by the General Manager, notify the Mayor.

## **5. What should be reported?**

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

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

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

- Harassment or unlawful discrimination;
- Practices that endanger the health or safety of staff or the public.

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

### **a. Corrupt Conduct**

Corrupt conduct is the dishonest or partial exercise of official functions by a public official. For example, this may 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 Council official being influenced by a member of public to use their position in a way that is dishonest, biased or breaches public trust. Some

examples include; taking or offering bribes, public officials dishonestly using influence, blackmail and fraud.

## **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 may 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.

The conduct covered by these terms includes:-

- Contrary to law, including:-
  - A decision or action contrary to law;
  - A decision or action ultra vires (i.e. the decision-maker had no power to make the decision or to do the act);
  - A decision or action contrary to lawful and reasonable orders from people or agencies with authority to make or give such orders;
  - A breach of natural justice or procedural fairness;
  - Improperly exercising a delegated power (e.g. a decision or action not authorised by a delegation or acting under the direction of another);
  - Unauthorised disclosure of confidential information;
  - A decision or action induced or affected by fraud.
- Unreasonable, including:-
  - A decision or action inconsistent with adopted guidelines or policies or with a decision or action which involves similar facts or circumstances not justified by any evidence, or so unreasonable that no reasonable person could so decide or act (e.g. irrational);
  - An arbitrary, partial, unfair or inequitable decision or action;
  - A policy that is applied inflexibly and without regard to the merits of an individual case;
  - A decision or action that does not take into account all relevant considerations or that takes into account irrelevant considerations;
  - Serious delays in making a decision or taking action;
  - Failing to give notice of rights;
  - Giving wrong, inaccurate or misleading advice leading to detriment;
  - Failing to apply the law;
  - Failing to rectify identified mistakes, errors, oversights or improprieties;
  - A decision or action based on incorrect or misinterpreted information;
  - Failing to properly investigate.
- Unjust, including:-
  - A decision or action not justified by any evidence or that is unreasonable;
  - A partial, unfair, inequitable or unconscionable decision or action.
- Oppressive, including:-
  - An unconscionable decision or action;
  - Where the means used are not reasonably proportional to the ends to be achieved;
  - An abuse of power, intimidation or harassment.



- Improperly discriminatory, including:-
  - The inconsistent application of a law, policy or practices when there is no reasonable, justifiable or appropriate reason to do so;
  - Applying a distinction not authorised by law, or failing to make a distinction which is authorised or required by law.
- Based wholly or partly on improper motives, including:-
  - A decision or action for a purpose other than that for which a power was conferred (i.e. in order to achieve a particular outcome);
  - A conflict of interest;
  - Bad faith or dishonesty;
  - Seeking or accepting gifts or benefits in connection with performance of official duties;
  - Misusing public property, official services or facilities.

### **c. 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 may include:-

- Not following a competitive tendering process for a large scale contract;
- Having bad or no processes in place for a system involving large amounts of public funds.

In addressing any complaint of serious and substantial waste regard will be had, to the nature and materiality of the waste. The following delineation of the definition of serious and substantial waste may be of assistance to public officials or public authorities:-

#### **Absolute**

Serious and substantial waste might be regarded in absolute terms where the waste is regarded as significant.

#### **Systemic**

The waste indicates a pattern which results from a system weakness within public authorities.

#### **Material**

The serious and substantial waste is/was material in terms of the public authority's expenditure or a particular item of expenditure or is/was material to such an extent so as to affect a public authority's capacity to perform its primary functions.

#### **Material by Nature Not Amount**

The serious and substantial waste may not be material in financial terms but may be significant by nature. That is it may be improper or inappropriate. (Alternatively; this type of waste may constitute 'maladministration' as defined in the *PID Act*.)

Waste may take many forms, for example:-

- Misappropriation or misuse of public property;
- The purchase of unnecessary or inadequate goods and services;

- Too many personnel being employed in a particular area, incurring costs which might otherwise have been avoided;
- Personnel being remunerated for skills that they do not have, but are required to have under the terms or conditions of their employment; and
- Programs not achieving their objectives and therefore the costs being clearly ineffective and inefficient.

Waste may result from such things as:-

- The absence of appropriate safeguards to prevent the theft or misuse of public property;
- Procurement procedures and practices which fail to ensure that goods and services are necessary and adequate for their intended purpose; and
- Procurement practices where the lowest price is not obtained for comparable goods or services without adequate and appropriate justification.

#### **d. 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 may 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.

#### **e. 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 may 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. 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.

## **7. When will a Report be treated as a Public Interest Disclosure?**

Council will treat a report as a public interest disclosure if it meets the criteria of a public interest disclosure under the *PID Act*. These requirements are:-

- The report must be about one of the following five categories of serious wrongdoing; – corrupt conduct, maladministration, serious and substantial waste of public money, breach of the *GIPA Act*, or Local Government pecuniary interest contravention;
- The person making the disclosure must honestly believe on reasonable grounds that the information shows or tends to show wrongdoing;
- The report has to be made to either the General Manager or, for reports about the General Manager the Mayor, a position nominated in this policy (see Section 8), an investigating authority or in limited circumstances to an MP or journalist (see Section 9).

Reports by Council staff are not public interest disclosures if they:-

- Mostly question the merits of government policy (see Section 17);
- Are made with the sole or substantial motive of avoiding dismissal or other disciplinary action (see Section 18).

## **8. Who can receive a Report within the Council?**

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 only people within the Council who are authorised to receive a public interest disclosure. Any Supervisor who receives a report that they believe may be a public interest disclosure is obliged to assist the staff member to make the report to one of the positions listed below. The broader responsibilities of these positions are outlined under Roles and Responsibilities (Section 4).

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 (address to PO Box 42, GUNNING NSW 2581 and mark confidential)
- Mayor (address to PO Box 42, GUNNING NSW 2581 and mark confidential)
- Disclosures Coordinator - is the Director of Finance and Administration.
- Disclosures Officers - includes; the Manager of Governance, Chief Financial Officer and Manager Human Resources

## **9. Who can receive a Report outside of the Council?**

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

- An investigating authorities;

- A Member of Parliament (MP) or a journalist, but only in the limited circumstances outlined below.

#### **a. Investigating Authorities**

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

The relevant investigating authorities for the Council are:-

- The Independent Commission Against Corruption (ICAC) - for disclosures about corrupt conduct.
- The NSW Ombudsman - for disclosures about maladministration.
- The Auditor-General - for disclosures about serious and substantial waste.
- The Information and Privacy Commissioner (IPC) - for disclosures about a breach of the GIPA Act.
- The Office of Local Government (OLG) - for disclosures about local councils.

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 the end of this policy.

You should be aware that the investigating authority may well discuss any such reports with the 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 Council staff or Councillors who report wrongdoing to an investigating authority, if we are made aware that this has occurred.

#### **b. Members of Parliament or Journalists**

To have the protections of the *PID Act*, Council 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, including the Mayor for reports about the General Manager.
- An investigating authority.

Also, the Council or the investigating authority that received your initial report must have either:-

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

Most importantly - to be protected under the *PID Act* - if you report wrongdoing to an MP or a journalist you will need to be able to prove that you have reasonable grounds for believing that the disclosure is substantially true and that it is in fact substantially true (see Section 19).

### **c. Other external reporting**

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

For more information about reporting wrongdoing outside the 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.

## **10. 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. Upper Lachlan Shire Council's Internal Reporting Form is also available for Council staff or Councillors to use to make a report.

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.

## **11. 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 the 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.

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 reprisal should others identify you.

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

Council staff and Councillors who report wrongdoing will be told what is happening in response to their Report.

### **a. Acknowledgement**

When you make a Report, the Council will contact you, in accordance with timeframes outlined in Council's Customer Service Charter, 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, the 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 fifteen 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*.

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.

Note: *PID Act* requires, as part of acknowledgement, a copy of this policy to be provided to a person reporting wrongdoing within 45 days of the report being made.

### **b. Progress Updates**

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

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

### **c. Feedback**

Once the matter has been finalised you will be given:-

- Enough information to show that adequate and appropriate action was taken and/or is proposed to be taken in response to your disclosure and any problem that was identified;
- Advice about whether you are likely to be called as a witness in any further matters, such as disciplinary or criminal proceedings.

### **13. Maintaining Confidentiality**

The 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 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 Council staff or Councillors 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.

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

When a Council staff member or Councillor reports wrongdoing, the 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, the 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.

### **15. Protection against reprisals**

The Council will not tolerate any reprisal against Council staff or Councillors who report wrongdoing or are believed to have reported wrongdoing.

The *PID Act* provides protection for staff and councillors who have made a public interest disclosure by imposing penalties on anyone who takes detrimental action against another person substantially in reprisal for that person making a public interest disclosure. These penalties also apply to cases where a person takes detrimental action against another because they believe



or suspect the other person has made or may have made a public interest disclosure, even if they did not.

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

- Injury, damage or loss;
- Intimidation or harassment;
- Discrimination, disadvantage or adverse treatment in relation to employment;
- Dismissal from, or prejudice in, employment;
- Disciplinary proceedings.

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

Taking detrimental action in reprisal is also a breach of the Council's Code of Conduct which may result in disciplinary action. In the case of Councillors, such disciplinary action may be taken under the misconduct provisions of the *Local Government Act 1993* and may include suspension or disqualification from civic office.

It is important for Council staff and Councillors to understand the nature and limitations of the protection provided by the *PID Act*. The *PID Act* protects reporters from detrimental action being taken against them because they have made, or are believed to have made, a public interest disclosure. It does not protect reporters from disciplinary or other management action where the Council has reasonable grounds to take such action.

#### **a. Responding to allegations of reprisal**

If you believe that detrimental action has been or is being taken against you or someone else in reprisal for reporting wrongdoing, you should tell your supervisor, the Disclosures Coordinator or the General Manager immediately. In the case of an allegation of reprisal by the General Manager, you can alternatively report this to the 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 the Council becomes aware of or suspects that reprisal is being or has been taken against a person who has made a disclosure, the 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;
- If it is established that reprisal is occurring against someone who has made a report, take all steps possible to stop that activity and protect the reporter;
- Take appropriate disciplinary action against anyone proven to have taken or threatened any action in reprisal for making a disclosure;



- Refer any breach of Part 8, of the Council's Code of Conduct (reprisal action) by a Councillor or the General Manager to the Office of Local Government;
- Refer any evidence of an offence under Section 20, of the *PID Act*, to the ICAC or NSW Police Force.

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

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

## **b. Protection against 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.

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

The Council will make sure that staff who have reported wrongdoing, regardless of whether their report is treated as a public interest disclosure, are provided with access to any professional support they may need as a result of the reporting process, such as stress management or counselling services. Council has an Employee Assistance Program (EAP) that may be utilised.

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.

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

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

## **18. The rights of persons the subject of a Report**

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

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

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

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.

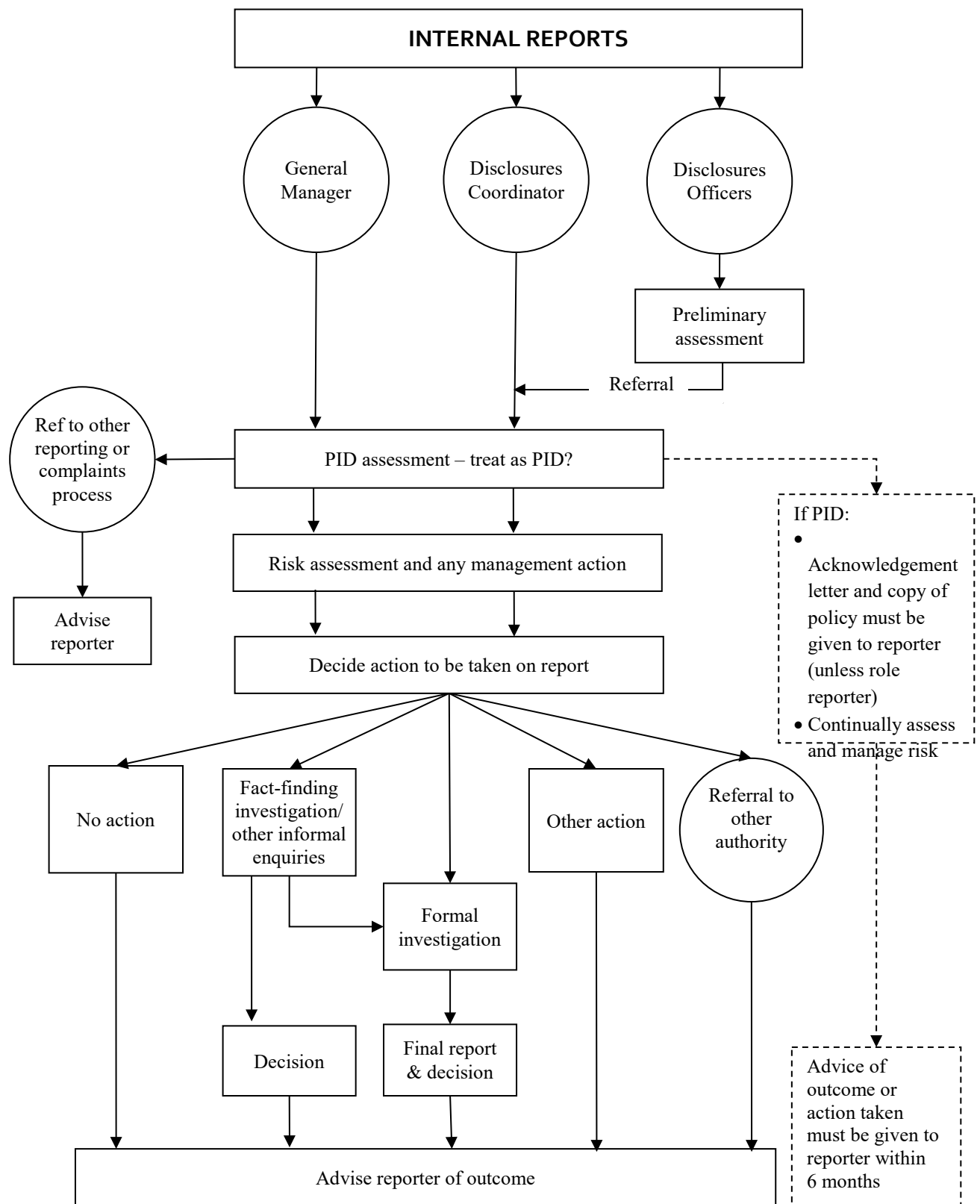
## **19. Related Legislation and Council Policies**

- Public Interest Disclosures Act 1994;
- Public Interest Disclosures Regulation 2011;
- Ombudsman Act 1974;
- NSW Ombudsman Public Interest Disclosures Guidelines;
- NSW Ombudsman's Guideline B2: What should be reported?
- Independent Commission Against Corruption Act 1988;
- Government Information (Public Access) Act 2009;
- Local Government Act 1993;
- Local Government (General) Regulation 2021;
- Environmental Planning and Assessment Act 1979;
- Work Health and Safety Act 2011 and Regulations;
- Anti Discrimination Act 1977;
- Fair Work Act 2009;
- Privacy and Personal Information Protection Act 1998;
- State Records Act 1998;
- Equal Employment Opportunity Act 1987;
- Code of Conduct;
- Code of Meeting Practice;
- Disciplinary Policy;
- Complaints Management Policy;
- Fraud and Corruption Prevention Policy;
- Grievance Policy;
- Harassment Policy; and
- Code of Business Practice.

## **20. Variation**

Council reserves the right to vary or revoke this policy.

## 21. Flow Chart of Internal Reporting Process



## 22. Resources

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

For disclosures about corrupt conduct:

Independent Commission Against Corruption (ICAC)  
Phone: 02 8281 5999  
Toll free: 1800 463 909  
Tel. typewriter (TTY): 02 8281 5773  
Facsimile: 02 9264 5364  
Email: [icac@icac.nsw.gov.au](mailto:icac@icac.nsw.gov.au)  
Web: [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au)  
Address: Level 7, 255 Elizabeth Street,  
Sydney NSW 2000

For disclosures about serious and substantial waste:  
Auditor-General of the NSW Audit Office  
Phone: 02 9275 7100  
Facsimile: 02 9275 7200  
Email: [mail@audit.nsw.gov.au](mailto:mail@audit.nsw.gov.au)  
Web: [www.audit.nsw.gov.au](http://www.audit.nsw.gov.au)  
Address: Level 19, Darling Park Tower,  
201 Sussex Street, Sydney NSW 2000

For disclosures about maladministration:

NSW Ombudsman  
Phone: 02 9286 1000  
Toll free: 1800 451 524  
Tel. typewriter (TTY): 02 9264 8050  
Facsimile: 02 9283 2911  
Email: [nswombo@ombo.nsw.gov.au](mailto:nswombo@ombo.nsw.gov.au)  
Web: [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)  
Address: Level 24, 580 George Street,  
Sydney NSW 2000

For disclosures about local councils:  
Office of Local Government (OLG)  
Phone: 02 4428 4100  
Tel. typewriter (TTY): 02 4428 4209  
Facsimile: 02 4428 4199  
Email: [olg@olg.nsw.gov.au](mailto:olg@olg.nsw.gov.au)  
Web: [www.olg.nsw.gov.au](http://www.olg.nsw.gov.au)  
Address: 5 O'Keefe Avenue, Nowra NSW 2541

For disclosures about breaches of the GIPA Act:  
Information & Privacy Commissioner (IPC)  
Toll free: 1800 472 679  
Facsimile: 02 8114 3756  
Email: [ipcinfo@ipc.nsw.gov.au](mailto:ipcinfo@ipc.nsw.gov.au)  
Web: [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au)  
Address: Level 17, 201 Elizabeth Street,  
Sydney NSW 2000

**Upper Lachlan Shire Council**

**INTERNAL REPORTING FORM**

Date Received: \_\_\_\_\_

Name of Employee/Councillor: \_\_\_\_\_

Confidentiality Requested:            Yes/No

Details of Disclosure: \_\_\_\_\_

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Signature of Applicant: \_\_\_\_\_

Signature of Receiver: \_\_\_\_\_

Position Title of Receiver: \_\_\_\_\_

Assessment/Action Taken:  
(including discussions/referral of matter) \_\_\_\_\_

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Result of Action:  
(including advice of action to Applicant) \_\_\_\_\_

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Notice/Knowledge of any Remedial Action: \_\_\_\_\_

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Signature of General Manager/ Disclosures Coordinator:

\_\_\_\_\_ **Date** \_\_\_\_\_