

TENTERFIELD SHIRE COUNCIL

POLICY STATEMENT

HEADING:

Internal Reporting Policy
Replaces Protected Disclosures Policy

**MEETING ADOPTED
AND RESOLUTION NO.:**

23 August 2017
168/17

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PREVIOUSLY ADOPTED:**

23 November 2011	594/11
27 November 2013	432/13

Introduction:

Under Section 6D of the Public Interest Disclosures Act 1994 (the PID Act), public authorities are required to have a policy and procedures for receiving, assessing and dealing with public interest disclosures.

Policy:

In order to meet legislation requirements Council has adopted the attached Model Internal Reporting Policy provided by the NSW Ombudsman and dated July 2013.

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1. PURPOSE AND CONTEXT OF THE POLICY

To be protected by the Act, a disclosure must be made by a member of staff or a Councillor to:

- An investigating authority;
- The General Manager; or
- To another nominated officer of Tenterfield Shire Council in accordance with the Internal Reporting System established under this Policy for the purposes of the Protected Disclosure Act, 1994.

This Policy establishes an Internal Reporting System for the reporting of disclosures of corrupt conduct, maladministration or serious and substantial waste of public money by Tenterfield Shire Council, its staff and Councillors. The system enables such internal disclosures to be made to the Disclosure Coordinator, a Nominated Disclosure Officer, or the Mayor, as an alternative to the General Manager.

Staff who come forward and report wrongdoing are helping to promote integrity, accountability and good management within the council.

This policy is designed to complement normal communication channels between supervisors, but as an alternative, have the option of making a Protected Disclosure in accordance with this policy.

The Public Interest Disclosures Act 1994 as amended came into operation on 1 November 2011. The purpose of the Act is to ensure that public officials who wish to make disclosures under the legislation receive protection from reprisals, and that the matters raised in the disclosures are properly investigated.

The Act aims to encourage and facilitate the disclosure, in the public interest, of corrupt conduct, maladministration and serious and substantial waste in the public sector. This is achieved by:

- enhancing and augmenting established procedures for making disclosures concerning such matters;
- protecting persons from reprisals that might otherwise be inflicted on them because of these disclosures; and
- providing for those disclosures to be properly investigated and dealt with.

2. ORGANISATIONAL COMMITTEMENT

Tenterfield Shire Council does not tolerate corrupt conduct, maladministration or serious and substantial waste of public money. Council is committed to the aims and objectives of the Public Interest Disclosures amendment Act 2011. It recognises the value and importance of contributions of staff to enhance administrative and management practices and strongly supports disclosures being made by staff or Councillors which disclose corrupt conduct, maladministration, or substantial waste of public money.

Tenterfield Shire Council will take all reasonable steps to provide protection to all staff who make such disclosures from any detrimental action in reprisal for the making of the disclosure.

Adequate resources will be provided, both financial and human, to:

- encourage reports of wrongdoing
- protect and support those who make them
- provide training for key personnel
- investigate allegations
- properly manage any workplace issues that the allegations identify or create
- correct any problem.

Note: Under the PID Act, the General Manager as the head of a public authority is responsible for ensuring that:

- the public authority has an internal reporting policy
- the staff of the public authority are aware of the contents of the policy and the protection under the PID Act for people who make public interest disclosures
- the public authority complies with the policy and the authorities obligations under the PID Act, and
- the policy delegates at least one staff member as being responsible for receiving public interest disclosures.

3. ROLES AND RESPONSIBILITIES OF STAFF

This policy applies to:

- both council staff and councillors
- permanent employees, whether full-time or part-time
- temporary or casual employees
- consultants
- individual contractors working for the 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.

Staff are encouraged to report known and suspected wrongdoing within the council. This policy is just one of several relating to grievances and complaints, including Council's Code of Conduct Policy and Grievance and Dispute Procedure.

All staff are encouraged to support those who have made disclosures, and protect and maintain their confidentiality. They must not victimise or harass anyone who has made a disclosure.

4. WHAT SHOULD BE REPORTED?

You should report any wrongdoing you see within the Tenterfield Shire Council. Reports about the categories of serious wrongdoing – corrupt conduct, maladministration, serious and substantial waste of public money, government information contravention, and local government pecuniary interest 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 a public official to use their position in a way that is dishonest, biased or breaches public trust.

For more information about corrupt conduct, see the NSW Ombudsman's Guideline on [what can 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; or
- refusing to grant someone a licence for reasons that are not related to the merits of their application.

For more information about maladministration, see the NSW Ombudsman's Guideline on [what can be reported](#).

c. Serious & 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 amounts of public funds.

For more information about serious and substantial waste, see 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 more information about government information contravention, see the NSW Ombudsman's Guideline on [what can be reported](#).

e. Local Government Pecuniary Interest Contravention

A local government pecuniary interest contravention is a failure to fulfil certain functions under the *Local Government Act 1993* relating to the management of pecuniary interests.

These include obligations to lodge disclosure of interests returns, lodge written declarations and disclose pecuniary interests at council and council committee meetings. 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 General Manager holding an undisclosed shareholding in a company competing for a council contract

For more information about local government pecuniary interest contravention, see the NSW Ombudsman's Guideline on [what can be reported](#).

f. Other Wrongdoing

Although reports about the previous five 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 the Tenterfield Shire Council's policies.

Other documents and policies relevant are:

- *Code of Conduct*
- *Grievance and Dispute Procedure*

Even if these reports are not dealt with as public interest disclosures, the Tenterfield 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?

The Tenterfield 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.
- The report has to be made to one or more of the following:
 - a position nominated in this policy – see section 9 (b), (c) & (d) below
 - the General Manager
 - one of the investigating authorities nominated in the PID Act – see section 10 below

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 the 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 staff member 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 the Tenterfield 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

The Tenterfield 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 Coordinator 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 TENTERFIELD 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 the council's disclosure procedures. For the Tenterfield 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. The broader responsibilities of these positions will be outlined in the procedures and/or guidance material supporting this policy.

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 staff within the Tenterfield 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 in the Tenterfield 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.

*General Manager, Tenterfield Shire Council, 247 Rouse Street, Tenterfield 2372
Phone: (02) 6736 6000*

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 in the Tenterfield 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 Co-ordinator

The Disclosures Coordinator has a central role in dealing with reports made by staff. They receive them, assess them, and refer them to the people within the Tenterfield Shire Council who can deal with them appropriately.

*General Manager, Tenterfield Shire Council, 247 Rouse Street, Tenterfield 2372
Phone: (02) 6736 6000*

d. Disclosures Officers

Disclosures Officers work with the Disclosures Co-ordinator, and are responsible for receiving, forwarding and/or dealing with reports made in accordance with this Policy.

- *Director Strategic Planning and Environmental Services, Tenterfield Shire Council, 247 Rouse Street, Tenterfield 2372 - Phone: (02) 6736 6000*
- *Director Engineering Services, Tenterfield Shire Council, 247 Rouse Street, Tenterfield 2372 - Phone (02) 6736 6000*
- *Director of Corporate Services, Tenterfield Shire Council, 247 Rouse Street, Tenterfield 2372 - Phone (02) 6736 6000.*

10. WHO CAN RECEIVE A REPORT OUTSIDE OF THE TENTERFIELD SHIRE COUNCIL

Staff are encouraged to report wrongdoing within the Tenterfield 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 the Tenterfield 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 Auditor-General – for serious and substantial waste
- The Police Integrity Commission (PIC) — for police misconduct
- The PIC Inspector — for disclosures about the PIC or its staff
- The Division of Local Government, Department of Premier and Cabinet — for disclosures about local government agencies
- 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 the Tenterfield 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 listed in this policy and in accordance with the PID Act.

Also, the Tenterfield Shire Council or 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 (6) 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.

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 Tenterfield Shire Council Code of Conduct – by, for example, disclosing confidential information.

For more information about reporting wrongdoing outside the Tenterfield Shire 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.

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.

The PID Act requires that you are provided with an acknowledgement letter and a copy of this policy within 45 days after you have made your report. We will attempt to get this information to you within two 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 Tenterfield 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.

Behaviour of all staff involved in the PID process needs to adhere to the Tenterfield Shire Council Code of Conduct. A breach of the Code could result in disciplinary action.

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.

The Tenterfield 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

The Tenterfield 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 coordinator 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 coordinator or the General Manager.

If the disclosures coordinator 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. 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 coordinator 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, 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 REPORT WRONGDOING

The Tenterfield 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.

Human Resources Manager, Tenterfield Shire Council, 247 Rouse Street, Tenterfield, 2372 – Phone (02) 6736 6000

All supervisors must notify the disclosures coordinator 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

The Tenterfield 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. REVIEW

This policy will be reviewed by council every twelve/eighteen months. For any advice or guidance about this review, contact the NSW Ombudsman's Public Interest Disclosures Unit.

17. MORE INFORMATION

Information around public interest disclosures is available on Council's website. Staff can also access advice and guidance from the Tenterfield Shire Council disclosures coordinator and the NSW Ombudsman's website at www.ombo.nsw.gov.au.

18. 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
Web: www.icac.nsw.gov.au
Address: Level 21, 133 Castlereagh Street, Sydney NSW 2000

For disclosures about maladministration:

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

For disclosures about local government agencies:

Division of Local Government in the Department of Premier and Cabinet
Phone: 02 4428 4100
Tel. typewriter (TTY): 02 4428 4209
Facsimile: 02 4428 4199
Email: dlg@dlg.nsw.gov.au
Web: www.dlg.nsw.gov.au
Address: 5 O'Keefe Avenue, Nowra, NSW 2541

For disclosures about breaches of the GIPA Act:

Information Commissioner
Toll free: 1800 463 626
Facsimile: 02 8114 3756
Email: oiinfo@oic.nsw.gov.au
Web: www.oic.nsw.gov.au
Address: Level 11, 1 Castlereagh 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
Web: www.audit.nsw.gov.au
Address: Level 15, 1 Margaret Street, Sydney NSW 2000

INTERNAL REPORTING SYSTEM

