



Policy register
incorporating
policies, procedures and protocols

Internal Reporting Policy – Public Interest Disclosures

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1. Purpose and context of the policy

The purpose of this Policy is to set out:

- a) those circumstances in which staff and other persons in the service of Council who make Public Interest Disclosures are entitled to the protection of the provisions of the Public Interests Disclosures Act, 1994 (the PID Act'),
- (b) the procedure for making such disclosures, and
- (c) to reiterate Council's commitment to eliminating corrupt conduct, maladministration, serious and substantial waste of public money and to properly fulfilling its functions under the Government Information (Public Access) Act
- (d) Council's commitment to complying with this Policy and the PID Act and to ensuring that staff are aware of this Policy and the protections of the Act.

Development of this has been based on the NSW Ombudsman's Model Internal Reporting Policy and associated guidelines.

2. Background/legislative requirements

Under section 6D of the PID Act (previously named the *Protected Disclosures Act*), Council is required to have a policy and procedures for receiving, assessing and dealing with public interest disclosures.

This Policy is based on the Model Internal Reporting Policy prepared by the NSW Ombudsman

3. Definitions

'**The Act**' means the Public Interest Disclosures Act

'**Corrupt conduct**' means 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 more information about corrupt conduct, see the NSW Ombudsman's guideline on [what can be reported](#).

'**Government information contravention**' means a failure to properly fulfil functions under the *Government Information (Public Access) Act 2009 (GIPA Act)*. For example, this could include:-

- Intentionally overlooking documents that are clearly covered by an access application,
- 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](#).

'Maladministration' means 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,
- awarding contracts and tenders to private parties that are related by family, partnership or association,
- Issuing an order against a person without giving them procedural fairness.

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

'Serious and substantial waste' means the uneconomical, inefficient or ineffective use of resources that could result in the loss or wastage of Council money or resources. This includes all revenue, loans and other money collected, received or held by, for or on account of the Council. Serious and substantial waste can be:-

Absolute – where the waste is regarded as significant.

Systematic – where the waste indicates a pattern that results from a weakness within Council's systems.

Material – where the waste is about Council's expenditure or a particular item of expenditure, or is to such an extent that it affects Council's capacity to perform its primary functions.

Some examples could include:-

- Misappropriation or misuse of Council property,
- The purchase of unnecessary or inadequate goods and services,
- Overstaffing in particular areas,
- 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.

Waste can result from such things as:-

- Insufficient safeguards to prevent the theft or misuse of Council property,
- Purchasing practices that do not ensure goods and services are necessary or adequate for their intended purpose,
- Poor recruiting practices,

‘Local government pecuniary interest contravention’ means the breach of an obligation imposed by the Local Government Act 1993 in connection with pecuniary interest

4. Policy statement

Clarence Valley Council does not tolerate corrupt conduct, maladministration, the serious and substantial waste of public money, or government information contravention.

Clarence Valley Council is committed to the aims and objectives of the *Public Interest Disclosures Act*. It recognises the value and importance of contributions of staff to enhance administrative and management practices and both encourages and strongly supports disclosures being made by staff or councillors which disclose corrupt conduct, maladministration, the serious and substantial waste of public money or government information contravention.

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

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 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. This can include volunteers and those contracted to work for Council.

5. Organisational commitment

Council will deal effectively with staff reports of wrong doing, and will create a culture in which staff feel comfortable and secure in voluntarily bringing reports forward. Council has a strong commitment to:

- creating a climate of trust, where staff are comfortable and confident about reporting wrongdoing,
- encouraging staff to come forward if they have witnessed what they consider to be wrongdoing within Council,
- keeping the identity of the staff member disclosing wrongdoing confidential, wherever possible and appropriate,
- protecting staff who make disclosures from any adverse action motivated by their report,
- dealing with reports thoroughly and impartially and if some form of wrongdoing has been found, taking appropriate action to rectify it,
- keeping staff who make reports informed of their progress and the outcome,

- encouraging staff to report wrongdoing within Council, but, respecting any decision to disclose wrongdoing outside Council – provided that disclosure outside Council is made in accordance with the provisions of the Act,
- ensuring managers and supervisors at all levels in Council understand the benefits of reporting wrongdoing, are familiar with this policy, and aware of the needs of those who report wrongdoing,
- providing adequate resources, both financial and human, to:-
 - encourage reports of wrongdoing
 - protect and support those who make them and also those who deal with them
 - provide training for key personnel
 - investigate allegations
 - properly manage any workplace issues that the allegations identify or create
 - correct any problem that is identified
- reviewing the policy each year to ensure it is still relevant and effective.

6. Roles and responsibilities of staff

This Policy places responsibilities upon people at all levels within Council.

6.1 Employees

Employees are encouraged to report known or suspected incidences of corrupt conduct, maladministration, serious and substantial waste or government information contravention in accordance with this Policy.

All employees of Council have an important role to play in supporting those who have made legitimate disclosures. They must abstain from any activity that is or could be perceived to be victimisation or harassment of persons who make public interest disclosures. Further, they should protect/maintain the confidentiality of persons they know or suspect to have made disclosures.

6.2 Disclosure Contact Officers

The Disclosure Contact Officers are responsible for receiving and forwarding on any disclosures they may receive.

Council's Public Interest Disclosures Contact Officers are:-

- The Deputy General Manager Civil and Corporate
- The Deputy General Manager Environmental and Economic
- All Section Managers
- The Governance Coordinator

They will:-

- (a) clearly explain to persons making disclosures what will happen in relation to the information received,

- (b) when requested, make arrangements to ensure that disclosures can be made privately and discreetly (if necessary away from the workplace),
- (c) reduce to writing and date any disclosures received orally,
- (d) deal with disclosures impartially,
- (e) forward disclosures to the Disclosures Coordinator for assessment and investigation, and
- (f) keep all details of the disclosure confidential.

6.3 Disclosures Coordinator/General Manager

The Disclosures Coordinator/General Manager is responsible for receiving and acting upon disclosures in accordance with the Policy.

Council's Disclosures Coordinator is the General Manager. The Disclosures Coordinator/General Manager will:-

- (a) contact the persons making the disclosure and advise them on what will happen in relation to the information received,
- (b) when requested, make arrangements to ensure that any discussions with the persons making the disclosure can be made privately and discreetly (if necessary away from the workplace),
- (c) where appropriate, investigate the disclosure or arrange for it to be investigated, in accordance with the legislation and Council's policies and procedures,
- (d) impartially assess each disclosure to determine:
 - (i) whether the disclosure appears to be a public interest disclosure within the meaning of the Act,
 - (ii) the appropriate action to be taken in relation to the disclosure, for example -
 - * no action/decline
 - * the appropriate person to take responsibility for dealing with the disclosure,
 - * preliminary or informal investigation,
 - * formal investigation,
 - * prosecution or disciplinary action,
 - * referral to an investigating authority for investigation or other appropriate action, or
 - * referral to the police (if a criminal matter) or ICAC (if the matter concerns corrupt conduct).
- (e) once a decision on the disclosure has been made, advise the person making the disclosure of the outcome,
- (f) take all necessary and reasonable steps to ensure that the identity of persons who make disclosures, and the persons the subject of disclosures, are kept confidential, and
- (g) support persons who make public interest disclosures and protect them from victimisation, harassment or any other form of reprisal.

6.4 The Mayor

The Mayor may receive reports from any member of staff or any councillor concerning the conduct of the General Manager or a councillor. The Mayor will:

- (a) impartially assess each report made to him/her about the General Manager or a councillor to determine:
- (i) whether the report appears to be a public interest disclosure within the meaning of the Act,

Note: In making this assessment the Mayor may seek guidance from: the General Manager (if appropriate), Council's Public Officer, an investigating authority (eg, Department of Local Government, ICAC or the Ombudsman).

- (ii) the appropriate action to be taken in relation to the disclosure in consultation with the General Manager (if appropriate), for example -
- * no action/decline
 - * the appropriate person to take responsibility for dealing with the disclosure,
 - * preliminary or informal investigation,
 - * formal investigation,
 - * prosecution or disciplinary action,
 - * referral to an investigating authority for investigation or other appropriate action, or
 - * referral to the police (if a criminal matter) or ICAC (if the matter concerns corrupt conduct).
- (b) refer disclosures, where appropriate, to the General Manager for action if they concern Council's administration, within the day to day responsibilities of the General Manager,
- (c) protect/maintain the confidentiality of:-
- (i) the identity of persons who make disclosures (unless any of the criteria of s.22 of the Act apply), and
- i) the identity of persons the subject of the disclosures (unless the disclosure is required to enable the allegations to be investigated or otherwise appropriately dealt with).

7. What should be reported

Corrupt conduct, maladministration, serious and substantial waste, government information contraventions and local government pecuniary interest contraventions should all be reported and will be dealt with under the Act as public interest disclosures and according to this policy.

In addition, although reports about the previous four categories of conduct can attract the specific protections of the PID Act, staff and Councillors are encouraged to report the following types of activities or incidents.

- 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 Council's policies and protocols, (including the Code of Conduct, Occupational Health & Safety Policy and procedures, Equal Employment Opportunity Management Plan, Complaint Management Policy, Fraud Control Policy and Grievance Handling Protocol).

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

8. When will a report be protected

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 Act. These requirements are:-

- The report must be about the conduct of a public official or the activities of a public authority,
- The report must concern corrupt conduct, maladministration, serious and substantial waste of public money, or government information contravention,
- The person making the disclosure must honestly believe on reasonable grounds that the information shows or tends to show wrongdoing.

Note:

a) *An honest belief is:*

(a) *a belief that is more than a suspicion,*

(b) *a belief that is genuinely held*

The Act provides that a belief is presumed to be honest unless there is evidence that it is not.

b) *Reasonable grounds:-*

The test applied here is whether, from an objective viewpoint, the basis for the person's belief is reasonable. That is, would a reasonable person in the circumstances believe that wrongdoing occurred?

c) *Shows or tends to show:-*

This means that 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 is 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 easily be 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 report has to be made to one or more of the following:

- (a) a position nominated in this policy – see Section 12 below
- (b) the General Manager (who is Council’s Disclosures Coordinator)
- (c) one of the investigating authorities nominated in the Act – see Section 12 below

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

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

9. How to make a report

Reports of wrongdoing may be made in writing or verbally.

If a report is made verbally, the person receiving it 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.

10. Anonymous reports

Anonymous reports will be accepted and investigated as best as possible. It should be noted that it may be very difficult for Council to protect staff who make anonymous reports from reprisal action.

11. Maintaining confidentiality

Council is committed to keeping identity of informants confidential. However there may be situations where this may not be possible or appropriate. If confidentiality cannot be maintained, a plan to protect and support the informant will be developed in consultation with the informant. Informants will be advised if it is not possible to maintain confidentiality. Informants will also be advised to only discuss their report with those dealing with it.

12. Who can receive a report within Council

Staff are encouraged to report general wrongdoing to their supervisor. However, if they wish to have the protections under the Act, the Act requires that – for a report to be a public interest disclosure – it must be made to a public official in accordance with 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 in clauses 12.1, 12.2 and 12.3. The broader responsibilities of these positions are outlined in Paragraph 6 above ~~will be outlined in the procedures and/or guidance material supporting this policy.~~

Reports about a councillor should be made to the General Manager or the Mayor.

Staff who are responsible for dealing with reports of wrongdoing will be properly resourced and fully supported by Council.

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

12.1 General Manager/Disclosures Coordinator

Council's Disclosures Coordinator, the General Manager, has a central role in dealing with reports made by staff in accordance with this Policy. Reports regarding wrongdoing can be made directly to the General Manager who, as Council's Disclosures Coordinator 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 Council to support and protect staff who report wrongdoing.

The General Manager is also responsible for referring actual or suspected corrupt conduct to the Independent Commission Against Corruption.

12.2 Mayor

Reports concerning the General Manager should be made to the Mayor. The Mayor is responsible for:

- deciding if the 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 be satisfied that there are systems in place in the 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.

12.3 Disclosures Contact Officers

Disclosures Contact Officers, being the two Deputy General Managers, ~~Manager Governance~~ all Section Managers and the Governance Coordinator, work with the Disclosures Coordinator, and are responsible for receiving, forwarding and/or dealing with reports made in accordance with this policy.

13. Who can receive a report outside of Council

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

Reports can be made to an investigating authority. This can do this first, or at any stage after the initial report to Council. If the report is about the General Manager or the Mayor, then it may be preferable to make it to an investigating authority.

Reports can also be made to a Member of Parliament or a journalist, but only in limited circumstances as stated below.

In any event, for a report to an external body or person to be a public interest disclosure, it must be made in accordance with the provisions set out below.

13.1 Investigating authorities

The investigating authorities in NSW to whom staff can report wrongdoing to and the categories of wrongdoing each authority can deal with are:

- the Independent Commission Against Corruption (ICAC) — for corrupt conduct
- the Ombudsman — for maladministration
- the Division of Local Government, Department of Premier and Cabinet — for serious and substantial waste in local government
- the Information Commissioner — for disclosures about a government information contravention.
- The Commissioner for Police – for referral by the Disclosure Coordinator of any evidence of an offence of reprisal action against a person who has made a disclosure

If staff are contemplating making a report to any of these agencies, then they are encouraged to first contact them for advice about how to make a disclosure to them. Contact details for each investigating authority are provided in the footnote below¹.

It is very likely the investigating authority will discuss the case with Council. In this event, Council 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. Council will also provide appropriate support and assistance to staff who report wrongdoing to an investigating authority.

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 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 in 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 reporting reprisal action offences:

The Commissioner for Police
Police assistance line: 131 444
Phone: 02 9281 0000
Email: www.police.nsw.gov.au/contact_us
Web: www.police.nsw.gov.au
Address: Police Headquarters
1 Charles Street, Parramatta NSW 2150

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

13.2 Members of Parliament or journalists

To have the protections of the 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 Act.

Also, Council or an 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.

In addition, if wrongdoing is reported to an MP or a journalist, the informer will need to be able to prove that they have reasonable grounds for believing that the disclosure is substantially true and that it is in fact substantially true.

A report of wrongdoing to a person or an organisation that is not listed above, will not attract the protection of the Act. This may result in a breach of legal obligations or Council's Code of Conduct by the informant – by, for example, disclosing confidential information.

14. Feedback to staff who report wrongdoing

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

Staff who make a report will be given:-

- ~~within 45 days of their report~~, an acknowledgement that the disclosure has been received and a copy of Council's Internal Reporting Policy;
- the timeframe for when updates will be received; and
- the name and contact details of the people who can advise on what is happening;

This information will be supplied within five (5) 2 working days from the date the report is received (*Note: The Act allows 45 days for the response*).

After a decision is made about how the report will be dealt with, the informant will be given:-

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

This information will be given to the informant within fifteen (15) ~~40~~ working days from the date the report is received.

During any investigation, the informant 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 the informant's 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, the informant will be given:-

- enough information to show that adequate and appropriate action was taken and/or is proposed to be taken in response to the disclosure and any problem that was identified,
- advice about whether the informant will be involved as a witness in any further matters, such as disciplinary or criminal proceedings.

15. Protection against reprisals

The 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.

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

When a report is received, Council will identify any risks to the member of staff who reported the wrongdoing, as well as strategies to deal with those risks.

If an informant believes that detrimental action has been or is being taken against them or someone else who has reported wrongdoing in reprisal for making a report, they should report those concerns to the Disclosures Coordinator/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/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 and report back to the Disclosures Coordinator,
- 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, and
- refer any evidence of an offence to the Commissioner of Police or the Commission,

Staff or Councillors who report reprisal action 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 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 staff have reported wrongdoing and feel that any reprisal action is not being dealt with effectively, they may contact the Ombudsman or the ICAC – depending on the type of wrongdoing reported.

15.2 Protection against legal action

Persons who make a public interest disclosure in accordance with the Act will not be subject to any liability and no action, claim or demand can be taken against them for making the disclosure. They will not have breached any confidentiality or secrecy obligations and they will have the defence of absolute privilege in defamation.

16. Support for those reporting wrongdoing

Council will ensure 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.

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

17. Sanctions for making false or misleading disclosures

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

18. Support for the subject of a report

Council is committed to ensuring staff who are the subject of a report of wrongdoing are treated fairly and reasonably. Staff or Councillors who are the subject of a report will be:-

- treated fairly and impartially,
- have a copy of this policy and any relevant procedures ,made available to them
- kept informed during any investigation,
- given the opportunity to respond to any allegation made against them,
- told the result of any investigation.

19. More Information

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