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| Title: | Public Interest Disclosures (Whistleblowers) Policy |
| Type: | Council |
| Adopted: | 22 February 2023 (TBC) |
| File No: | 23/5333 |

Acknowledgement of Country

Murrindindi Shire Council is proud to acknowledge the Taungurung and Wurundjeri Woi Wurrung people as the traditional owners of the land we now call Murrindindi Shire.

We pay our respects to First Nations leaders and elders, past, present and emerging, who are the keepers of history, traditions, knowledge and culture of this land.

We commit to working in collaboration with traditional owners of this land in a spirit of reconciliation and partnership.

1. Purpose

The purpose of the Public Interest Disclosures Policy (the Policy) is to support Council's culture of integrity and the ethical behaviours expected from Council representatives in line with the Councillor and Employee Codes of Conduct.

The Policy is intended to encourage and support people to make disclosures about improper conduct or detrimental action taken against a discloser. The policy and associated procedures provide guidance on how to report on improper conduct and outlines protections for people making a disclosure or those who may be witness to an investigation.

Implementation of a robust policy, which encourages people to report their concerns under protection, enables Council to reduce the likelihood of corruption, maladministration, or any other improper conduct, and supports the performance of the functions of Council with integrity.

2. Rationale

The *Public Interest Disclosures Act 2012* (Act) requires Council to maintain internal processes that facilitate disclosures, effectively manage the receipt of information (a disclosure) and provide protection for all parties who may be involved.

The objectives of the Public Interest Disclosures Policy are to-

- a) ensure Council delivers a fair, reasonable and adequate service, by encouraging and facilitating the disclosure of improper conduct or detrimental action of Council representatives;
- b) establish a process for the disclosure of improper conduct or detrimental action by Council representatives and to provide a system of investigation of such disclosures;
- c) mitigate the risks associated with improper conduct or detrimental action taken by Council representatives;
- d) provide for protection and confidentiality of anyone who makes a Public Interest Disclosure;

- e) provide for natural justice to all parties including any person who is the subject of the disclosure.

3. Scope

Anyone (internally or externally) can make a disclosure to Council about the improper conduct of Council representatives. However, any disclosures related to Councillors will be re-directed for investigation to the Independent Broad-based Anti-Corruption Commission (IBAC) or the Victorian Ombudsman depending on the nature of the disclosure.

This policy applies to Council representatives, who must comply with all relevant legislative and requirements of this Policy.

4. Definitions

| Reference term | Definition |
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| Act | Means <i>Public Interest Disclosure Act 2012</i> . |
| Corrupt conduct | Means dishonest conduct in which a Council representative acts against the interests of Council and abuse their position to achieve personal gain or advantage for themselves or others. Examples of corruption covered by this policy include: <ul style="list-style-type: none"> • Payment or receipt of bribes; • A serious conflict of interest that is not managed and may influence a decision; • Nepotism – where a person is appointed to a role because of their existing relationships rather than merit; • Manipulation of procurement processes to favour one tenderer over others; • Gifts or entertainment intended to achieve a specific outcome in breach of Council’s policies. |
| Council | "Council" is a public body and has the same meaning as it has in section 3(1) of the <i>Local Government Act 2020</i> . |
| Council representatives | Means councillors, employees, students on work experience, volunteers, contractors and members of special committees regardless of their employment status, role or position. |
| Councillor | Means a person who holds the office of member of a Council. |
| Detrimental action | Means any action against a person in reprisal for making a Public Interest Disclosure. Under the Act, a reprisal no longer has to be substantial to be deemed detrimental action. Examples include: <ul style="list-style-type: none"> • action causing injury, loss or damage; • intimidation, bullying or harassment; • discrimination, disadvantage or adverse treatment in relation to a person’s employment, career, profession, trade or business, including the taking of disciplinary action. <p>⚠ Taking detrimental action is a criminal offence under the Act.</p> |

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| False or misleading disclosure | Means when someone reports information intending it be acted on as a PID, or provides further information that relates to a PID, while knowing it to be false or misleading. This is an offence under the Act. |
| IBAC | Means the Independent Broad-based Anti-corruption Commission established under section 12 of the <i>Independent Broad-based Anti-corruption Commission Act 2011</i> (IBAC Act). |
| Improper conduct | <p>The meaning of Improper Conduct is the same as in the Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019. This includes:</p> <ul style="list-style-type: none"> • Corrupt conduct and/or • any of the following conduct by a public officer or public body in their capacity as a public officer or public body: <ul style="list-style-type: none"> ○ a criminal offence; ○ serious professional misconduct; ○ dishonest performance of public functions; ○ an intentional breach or reckless breach of public trust; ○ an intentional or reckless misuse of information or material acquired in the course of the performance of public functions; ○ a substantial mismanagement of public resources; ○ a substantial risk to the health or safety of one or more persons; ○ a substantial risk to the environment. • conduct by a third party that adversely affects the honest performance of a public officer or public body or is intended to adversely affect effective performance of a public officer or public body while obtaining an advantage for the third party, and/or • conduct by a third party that could constitute a conspiracy or attempt to engage in any of the above. <p>💡 An example of conduct that adversely affects the honest performance by a public officer of their functions would be attempting to bribe a public officer.</p> <p>💡 Less serious or trivial complaints are excluded from the definition of improper conduct.</p> |
| Misdirected disclosure | Means a disclosure made to an entity that is not an entity to which the disclosure may or must be made to. |
| Public Interest Complaint (PIC) | <p>Means a public interest disclosure that has been determined by IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee to be a Public Interest Complaint (formerly protected disclosure complaint).</p> <p>Once a public interest disclosure is determined to be a “PIC”, additional rules apply, for example restricting when and to whom the matter can be referred and other altered confidentiality and notification requirements.</p> |
| Public Interest Disclosure (PID) | Means a disclosure by a natural person of information that shows / tends to show or information that the person reasonably believes shows / tends to show improper conduct or detrimental action (previously a protected disclosure) |

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| | <p>A “Public Interest Disclosure” does not include a disclosure of information by a person that-</p> <ul style="list-style-type: none"> • the person knows is false or misleading; or • relates entirely or in substance to a disagreement in relation to a policy about amounts, purposes or priorities of public expenditure. <p>If a disclosure is not a “Public Interest Disclosure”, the person disclosing the information is not protected under the Act and there is no obligation under the Act for Council to investigate the matter.</p> |
| Public Interest Disclosures Coordinator | <p>Means the person appointed by Council to receive a disclosure of the nature described in this policy.</p> <p>💡 The Director Corporate and Shared Services is Council’s Public Interest Disclosure Coordinator and first point of call.</p> |
| Public Interest Disclosures Officer | <p>Means the person appointed by Council to receive a disclosure of the nature described in this policy when-</p> <ol style="list-style-type: none"> a) the Public Interest Disclosures Coordinator is not available; or b) the disclosure involves the investigation of the Public Interest Disclosures Coordinator. <p>💡 The Manager Governance & Risk is Council’s Public Interest Disclosure Officer.</p> |
| Serious professional misconduct | <p>Following changes to the Act from 1 January 2020 which expand the types of disclosures that receive protection, the definition of “serious professional misconduct” may include:</p> <ul style="list-style-type: none"> • a serious failure to exhibit the skills and experience required to perform the functions of the office; or • non-compliance with professional codes of conduct or the policies, procedures and laws that govern behaviour in the public sector and the workplace. |
| Ombudsman | <p>Means the person appointed as the Victorian Ombudsman under section 3 of the <i>Ombudsman Act 1973</i>.</p> |

5. Policy

5.1 Policy Statement

Murrindindi Shire Council is committed to the aims and objectives of the *Public Interest Disclosures Act 2012*.

Council is committed to encouraging, facilitating and investigating disclosures of improper conduct, and will protect from detrimental action those who report such conduct, or who are witnesses in any investigation.

5.2 Policy Principles and Application

- a) Council is committed to building a culture of integrity by implementing the aims and objectives of the *Public Interest Disclosure Act 2012* and to assist Council representatives

and members of the public in identifying and reporting acts of improper conduct or detrimental action by Council representatives.

- b) Council will not tolerate any act improper conduct by Council representatives, nor the taking of detrimental action against those who report such conduct through the Public Interest Disclosures procedure;
- c) Council representatives and members of the public are encouraged to report to the PID Coordinator (or external integrity agency) any behaviour that violates the laws, rules and regulations related to an act of improper conduct or detrimental action by Council representatives or Council as an organisation;
- d) Council is committed to meet its obligations under the Act and manage Public Interest Disclosures with utmost confidentiality to protect the identity and privacy of anyone who provides information related to an act of improper conduct or detrimental action by Council representatives.
- e) Council will take all reasonable steps to protect the discloser from an act of detrimental action such as intimidation, harassment or discrimination against them by a Council representative in reprisal for a Public Interest Disclosure. Council will do so in line with the *Guidelines for Public Interest Disclosure welfare management 2020*.
- f) Council will formally acknowledge the receipt of a Public Interest Disclosure and review the matter to make a determination as to whether the disclosure is covered by the PID provisions of the Act. Where the disclosure meets the criteria, the disclosure will be referred to the relevant Integrity Agency (IBAC, Ombudsman) for consideration and investigation;
- g) Council recognises the value of integrity and accountability in its administrative and management practices, and will facilitate and support the process of receiving Public Interest Disclosures;
- h) Council will afford natural justice to all parties including the person who is the subject of the disclosure;
- i) Council will readdress misdirected disclosures to IBAC or the Ombudsman when the disclosure of improper conduct is related to a Councillor;
- j) Council will maintain, publish and follow the procedures in relation to the management and handling of Public Interest Disclosures in accordance with this policy; and
- k) Council will advise the person if the allegation made is not deemed to be a Public Interest Disclosure under the Act and will provide alternatives as far as it is practicable.

5.3 Roles and responsibilities

- a) The CEO is accountable for ensuring the efficient and effective implementation of this Policy as well as fulfilling the CEO's mandatory reporting obligations to IBAC.
- b) The Director Corporate and Shared Services is the PID Coordinator and first point of contact for the disclosure of suspected improper conduct or detrimental action.
- c) It is also the responsibility of the PID Coordinator to ensure the effective handling of information and people involved in the process. These actions will include taking all

reasonable steps to ensure that the identity of the person making a Public Interest Disclosure and the person who is subject to the allegations are kept confidential.

- d) The Manager Governance and Risk is responsible for fulfilling the responsibilities as PID Officer (if required) and ensuring adequate resourcing is available to support the periodic review and implementation of this Policy.
- e) The Integrity and Governance Coordinator is responsible for ensuring the contents of this Policy meet current statutory requirements and standards required for its effective implementation.
- f) Managers and supervisors must exercise due diligence and control to prevent, detect and report acts of improper conduct or detrimental action, and shall set an example of integrity and ethical conduct.
- g) All Council representatives covered by this policy have a role in the prevention, detection and reporting improper conduct or detrimental action (actual or suspected).
- h) The Audit and Risk Advisory Committee has a role in providing advice to support the organisation in effectively implementing Council's Public Interest Disclosure Policy.
- i) Council's Internal Auditors are responsible for assisting management in identifying strategic prevention and detection measures to mitigate the risks associated with improper conduct and where required, assess Council's controls and provide recommendations for improvement.

5.4 Mandatory reporting to IBAC by the CEO

Under the *Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019*, the CEO has a mandatory obligation to notify IBAC if the CEO suspects corruption is occurring within Council.

Where the CEO has reasonable grounds to suspect corrupt conduct within Council, the CEO must notify their suspicion to IBAC in accordance with the Public Interest Regulations 2013 Reg. 6. This disclosure will be treated by IBAC as a Public Interest Disclosure.

5.5 Who can make a Public Interest Disclosure?

A Public Interest Disclosure can be made by any person who has reasonable grounds for believing that improper conduct or detrimental action has occurred at Council or by a Council representative even if the discloser does not know the identity of the person suspected of improper conduct or detrimental action. A disclosure can also be made anonymously.

5.6 How to make a Public Interest Disclosure

In accordance with Regulation 10 of the Public Interest Disclosures Regulations 2013, a disclosure can be made either:

- a) In writing marked 'Private and Confidential' to:
Public Interest Disclosure Coordinator
PO BOX 138
Alexandra VIC 3714
- b) In person requesting to speak in private to:
Public Interest Disclosure Coordinator

28 Perkins Street
Alexandra VIC 3714

- c) By telephone requesting to speak in private to:
Public Interest Disclosure Coordinator
03 5772 0333
- d) By email marked 'Private and Confidential' to:
Disclosures@murrindindi.vic.gov.au

5.7 Misdirected disclosures

Council is committed to fulfilling its obligations under the 'no wrong door' provision in the Act. The PID Coordinator will ensure misdirected disclosures are redirected to the appropriate agency by contacting the agency and facilitating the process of transferring relevant information and evidence collected.

5.8 False disclosures

Council understands some allegations reported or investigated may not confirm that improper conduct or detrimental action had occurred. However, the malicious and intentional disclosure of false information is an offence under the Act and substantial penalties may apply.

5.9 Breach of Policy

Breaches of confidentiality, misuse of information or failure to comply with the principles outlined in this Policy will be treated in line with the relevant legislation, industrial instrument and/or relevant code of conduct.

6. Related Policies, Strategies and Legislation

- *Local Government Act 2020 (Vic)*
- *Public Interest Disclosures Act 2012 (formerly Protected Disclosures Act 2012)*
- *Independent Broad-based Anti-corruption Commission Act 2011*
- *Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019*
- Protected Disclosure Regulations 2013
- Guidelines IBAC 2019 – Public Interest Disclosures
- Council Plan 2021-2025 '*Transparency, Inclusion and Accountability*'
- Councillor Code of Conduct
- Employee Code of Conduct
- Enterprise Risk Management Policy
- Financial Delegations Policy
- Fraud and Corruption Control Policy
- Volunteers Policy

7. Council Plan

This policy relates to the Council Plan 2021-2025 strategic objective to ensure our services, people and systems deliver the best possible outcomes for our communities now and into the future.

8. Management and Review

Review of this Policy is to be conducted every 3 years from the date of endorsement.

The Director Corporate and Shared Services and the Manager Governance & Risk are responsible for ensuring this Policy is reviewed and presented to Council for endorsement.

Council Representatives, including Councillors will receive regular training to ensure the Policy is fully understood and implemented.

9. Consultation

No community consultation was required in the development of this policy.

10. Human Rights Charter

This policy has been developed with consideration of the requirements under the [Charter of Human Rights and Responsibilities](#).

11. Gender Impact Assessment

This policy has been reviewed with consideration of the criteria which inspires equality under the *Gender Equality Act 2020*.