

# Moira Shire Council

## Draft Public Interest Disclosure Policy

<b>Policy type</b>	Council
<b>Version Number</b>	2
<b>Responsible Director</b>	Corporate Performance
<b>Responsible Officer</b>	Manager Governance, Risk and Performance
<b>Date adopted by Council</b>	25 September 2024
<b>Scheduled for review</b>	This policy will be reviewed four years from the date of adoption, or sooner if required.

It is recognised that, from time to time, circumstances may change leading to the need for minor administrative changes to this document. Administrative changes do not materially alter the document (such as spelling/typographical errors, change to the name of a Council department, a change to the name of a Federal or State Government department). Administrative updates can be made in accordance with the Policy Framework Guidelines.

## PURPOSE

The purpose of this policy is to:

- ensure there is an effective process for facilitating the receipt of public interest disclosures, their assessment and notification; and
- provide protection for those who make a disclosure and those who might be cooperating in a public interest disclosure, consistent with Council's obligations under the [Public Interest Disclosures Act 2012 \(Act\)](#) and the [Independent Broad-based Anti-corruption Commission Act 2011 \(IBAC Act\)](#).

## SCOPE

This policy applies to Moira Shire Council's Public Officers (which includes Councillors/Administrators, employees, contractors, volunteers and committee members).

Council can receive public interest disclosures that relate to Moira Shire Council, but disclosures relating to Councillors must be made directly to the Independent Broad-based Anti-Corruption Commission (IBAC) or the Victorian Ombudsman.

Council may receive public interest disclosures that do not relate to Moira Shire Council. This policy includes handling of misdirected disclosures.

## DEFINITIONS

Term	Definition
Public Interest Disclosure (PID)	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.
Public Interest Complaint (PIC)	A Public Interest Disclosure that has been determined by the IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee (IOC) to be a Public Interest Complaint.
Council	Moira Shire Council.
Councillor	A person who holds the office of member of Council as defined by the <i>Local Government Act 2020</i> . Including Administrators in accordance with the <i>Local Government (Moira Shire Council) Act 2023</i> .
Public Officer	Moira Shire Council's Councillors, employees, contractors, volunteers, committee members.
Entity	could mean; the IBAC; the Victorian Ombudsman; the Local Government Inspectorate; Victoria Police.
Improper conduct	As defined by section 4 of the <i>Public Interest Disclosure Act 2012</i> . 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 that would constitute: <ul style="list-style-type: none"><li>• a criminal offence.</li><li>• serious professional misconduct.</li><li>• dishonest performance of public functions.</li><li>• an intentional breach or reckless breach of public trust.</li></ul>

	<ul style="list-style-type: none"> <li>• an intentional or reckless misuse of information or material acquired in the course of the performance of public functions.</li> <li>• a substantial mismanagement of public resources.</li> <li>• a substantial risk to the health or safety of one or more persons.</li> <li>• a substantial risk to the environment.</li> </ul>
Corrupt Conduct	<p>As defined by section 4 of the <a href="#">Independent Broad-Based Anti-Corruption Commission Act 2011</a> and includes conduct:</p> <ul style="list-style-type: none"> <li>• of any person that adversely affects the honest performance by a public officer of a public body of their functions; or</li> <li>• of a public officer or public body that constitutes or involves the dishonest performance of their functions; or</li> <li>• of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust; or</li> <li>• of a public officer or public body that involves the misuse of information or material acquired in the course of the performance of their functions, or</li> <li>• that could constitute a conspiracy of an attempt to engage in any conduct referred to above.</li> <li>• being conduct that would, if the facts were found proved beyond a reasonable doubt, constitute a relevant offence.</li> </ul>
Misdirected disclosure	<p>A disclosure made to an entity which ordinarily can receive PIDs and which the discloser believed to be the correct place for the disclosure but is not the correct place for that particular disclosure. The disclosure can be notified to the IBAC for assessment as a PIC and will receive the protections of the public interest disclosure regime.</p>
Detrimental Action	<p>Includes:</p> <ol style="list-style-type: none"> <li>a) action causing injury, loss or damage;</li> <li>b) intimidation or harassment;</li> <li>c) discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action.</li> </ol>
Discloser	<p>Person who makes a disclosure.</p>
Co-operator	<p>Someone who cooperates or intends to cooperate with an investigation of a disclosure.</p>
In Private	<p>Circumstances in which a person making a disclosure reasonably believes that the only persons who are present or able to listen to the disclosure at the time it is made are:</p> <ol style="list-style-type: none"> <li>a) the person making the disclosure;</li> <li>b) one or more person to whom the disclosure can be made in accordance with the Act and the Regulations; and/or</li> </ol>

	c) an Australian legal practitioner (if any) representing the person making the disclosure.
Public Interest Disclosure Coordinator (PIDC)	Provides a local point of contact for individuals seeking general information about protected disclosures and is responsible for: <ul style="list-style-type: none"> <li>• encouraging direct reporting of concerns to the IBAC but can receive and notify the IBAC of potential public interest disclosures regarding Council's Public Officers.</li> <li>• assisting IBAC investigators.</li> <li>• ensuring the welfare of disclosers by appointing welfare officers as required.</li> <li>• working to make Public Officers aware of the public interest disclosure legislation.</li> </ul>
Welfare Officer	Means a person appointed by the PIDC to manage the welfare of people who have made a disclosure, those who are the subject of a disclosure and potential co-operator/s.

## POLICY STATEMENT

Council values transparency and accountability in its administrative and management practices and does not tolerate improper conduct by its people, or the taking of reprisals against those who come forward to disclose such conduct.

Council will:

- maintain and promote awareness of its procedures for people to make public interest disclosures.
- take all reasonable steps to protect people who make such disclosures from any detrimental action in reprisal for making the disclosure.
- afford natural justice to the person or body who is the subject of the disclosure.

To support this commitment Council will:

- raise Public Officers' awareness of their responsibilities to disclose, their rights if they do disclose, how to make disclosures and the welfare supports available.
- encourage internal and external disclosers to report their concerns to the IBAC or the Victorian Ombudsman in the first instance to minimise the risks to confidentiality and independence.
- provide appropriate support and assistance to investigating entities by identifying a person to act as the PIDC.
- provide a process to manage the welfare of people who have made a disclosure, those who are the subject of a disclosure and potential co-operator/s by identifying a person to act as the Welfare Officer.
- provide information to guide reporting of disclosures to the appropriate authority if the disclosure does not concern Public Officers.

## Disclosure handling

Who can make a disclosure	Disclosures can only be made by natural person(s), not companies or businesses.
How to make a disclosure	Must be made verbally, in writing, or in some cases, online. It may be made anonymously. It must be made in private.
Who can disclosures be made about	Must be made only about the conduct of public bodies or public officers performing public functions.
What can disclosures be made about	Must be about improper conduct or detrimental action taken against a person in reprisal for making a disclosure.

## To whom can disclosures be made

<b>Subject of the disclosure</b>	<b>Disclose to</b>
Councillors	Must be made to the IBAC or the Victorian Ombudsman. Council cannot receive these disclosures.
Council Public Officers	Disclosers should report their concerns directly to the IBAC or the Victorian Ombudsman in the first instance. Council's PIDC can receive disclosures, however the discloser will be encouraged to report to the relevant agency first.
Non-Council Public Officers	Disclosers should report their concerns directly to the IBAC or the Victorian Ombudsman in the first instance.

This policy should be read in conjunction with the [Moira Shire Public Interest Disclosure Procedures](#) as it provides a greater level of detail in relation to the process, roles, responsibilities and contact details for other agencies.

### Misdirected disclosures

If Council receives a misdirected disclosure and the discloser believes Council is the right entity for the disclosure, the PIDC will consider if the disclosure is a potential public interest disclosure and notify those disclosures to the appropriate entity within 28 days.

If Council receives a misdirected disclosure and that person knows Council is not the entity for the disclosure, the PIDC will advise the discloser what entity can receive the disclosure.

If Council receives a disclosure regarding the conduct of the Councillor(s), the discloser will be immediately advised to disclose their concerns to the IBAC or the Victorian Ombudsman.

### Maintaining confidentiality

The PID Act requires information about the identity of a discloser and the content of a public interest disclosure to be kept confidential.

To minimise the risk of the identity of a discloser being revealed inadvertently, Council recommends individuals make their disclosure to the IBAC or the Victorian Ombudsman in the first instance.

## **Managing disclosures made to Council**

In receiving and handling disclosures, Council and the PIDC will:

- remind Public Officers that if they make a disclosure, they should keep it confidential.
- limit the number of people who can be made aware of the discloser's identity, or information that could identify the discloser.
- ensure secure electronic or paper filing system for the receipt, storage, assessment and notification of public disclosures.
- develop a risk management plan for every disclosure to manage the risk of confidentiality breaches.
- assist the investigating entity.

## **Managing welfare**

In receiving a public interest disclosure Council will enact appropriate:

- welfare strategies that consider the welfare of disclosers and co-operator/s and people who are the subject of disclosures.
- processes to protect disclosers from reprisal.
- actions to ensure that disclosers, co-operator/s and people who are the subject of disclosures are kept informed of the process, the actions being taken and the ongoing progress of the disclosure. There will be circumstances in which this will not be appropriate and the PIDC will clearly document this as part of the disclosure.

## **Detrimental Action (Reprisals)**

Council will not tolerate any reprisal action against Public Officers or members of the community who report wrongdoing. Council will act to protect Public Officers who report wrongdoing from detrimental action.

If it is found that a Public Officer that has made a disclosure has experienced reprisals arising from their disclosures, it will constitute detrimental action and be reportable under the Public Interest Disclosure Scheme. It is also a criminal offence. Detrimental action is considered misconduct and may result in disciplinary action.

## **MONITORING AND EVALUATION**

The procedures and systems that underpin this policy will be subject to a mid-cycle review by the Manager Governance, Risk and Performance and updated when either of the following occur:

- Opportunities to improve the effectiveness of the procedures and systems are identified.
- The related information is amended or replaced.

## **RELATED LEGISLATION**

*Local Government Act 2020*

*Local Government (Moira Shire Council) Act 2023*

*Charter of Human Rights & Responsibilities Act 2006*

*Protected Disclosure Act 2012 (Public Interest Disclosures)*

*Protected Disclosure Regulations 2013*

*Independent Broad-based Anti-corruption Commission Act 2011*

*Public Administration Act 2004 (for definitions)*

## **RELATED POLICIES AND PROCEDURES**

*Public Interest Disclosure Procedure*

*Administrator Code of Conduct 2023*

*Employee Code of Conduct*

*Fraud Prevention and Control Policy*

## RELATED DOCUMENTS

*Independent Broad-based Anti-corruption – Guidelines for making and handling public interest disclosures 2020*

*Independent Broad-based Anti-corruption – Guidelines for public interest disclosure welfare management 2020*

## DOCUMENT REVISIONS

<b>Version</b>	<b>Summary of Changes</b>	<b>Approved by</b>	<b>Date</b>
1	Original Policy adopted	Council	18/12/19
2	Changes made to original policy included: 1. Addition of monitoring and evaluation processes. 2. Providing ongoing communication and feedback as part of the welfare of disclosures	Council	25/09/24