



Mildura Rural City Council

## Public Interest Disclosures Policy

### Policy – CP014

Prepared	Reviewed	Approved	Date	Council Minute No.
Manager Corporate Administration	Strategic Management Team	Council	22 January 2020	2020/0014
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#### 1. The purpose of this policy is

To ensure Council's compliance against the *Public Interest Disclosures Act 2012* (the Act) including its associated Regulations and establish a framework for reporting public interest disclosures of corrupt or improper conduct as defined in the Act.

#### 2. Policy Statement

Council recognises the value of transparency and accountability in its administrative and management practices. Council supports the making of public interest disclosures that reveal corrupt or improper conduct. Council is committed to the aims and objectives of the Act.

This policy outlines the way in which any individual, including members of the public, staff and Councillors can disclose information which enables the prevention of fraud and corruption.

Council will take all reasonable steps to protect people who make such disclosures from any detrimental action in reprisal for making a disclosure. It will also afford natural justice to the person or body who is the subject of the disclosure.

An essential element of this protection, is to ensure that information connected to a public interest disclosure, including the identity of a discloser, and the contents of that disclosure, are kept strictly confidential.

#### **Council's commitment to the Public Interest Disclosures Act**

Mildura Rural City Council supports a workplace culture where the making of disclosures is valued by the organisation and the right of any individual to make a disclosure is taken seriously. Council will:

- ensure these procedures are accessible to the public and to its employees, staff, officers and Councillors;
- ensure that appropriate training is provided at all levels of the organisation to raise awareness in relation to public interest disclosure obligations;

- ensure its reporting system for public interest disclosures is centralised, secure and accessible only by appropriately authorised officers;
- ensure the confidentiality of information received or obtained in connection to a public interest disclosure;
- not tolerate the taking of detrimental action in reprisal against any person for making a public interest disclosure and will take all reasonable steps to protect such persons from such action being taken;
- afford natural justice and treat those who are the subject of any allegations contained in a disclosure fairly;
- take the appropriate disciplinary action and any other action against any employees, staff, officers or Councillors engaged in the taking of detrimental action;
- ensure Council officers involved with handling public interest disclosures are trained to receive and manage such disclosures appropriately;
- ensure that Council handles public interest disclosures consistently and appropriately in accordance with its obligations under the Act and IBACs guidelines; and
- continue to be visible, approachable and communicative in establishing a workplace that supports the making of public interest disclosures.

### **3. Principles**

The principles of this policy are:

- to ensure that all disclosures made under the Act are managed in accordance with Council's Public Interest Disclosure Procedure;
- to promote a culture in which people feel safe to make disclosures about corrupt or improper conduct;
- Ensure welfare management is provided to those included in the Public Interest Disclosure process in accordance with Councils Public Interest Disclosure Procedure
- to ensure that detrimental action is not taken against a person because of a disclosure made by them; and
- to ensure that all reasonable steps are taken to protect the identity of a person making a disclosure.

#### **Making Disclosure**

As required under the Act, Council has established procedures to facilitate and encourage the making of disclosures and describes how Council handles any such disclosure received by it.

Councils Public Interest Disclosure Procedures are available on our website at [www.mildura.vic.gov.au](http://www.mildura.vic.gov.au), by inspection during normal office hours at Councils Customer Service Centres or by calling 5018 8100. This document contains detailed information about who can receive disclosures and how to make a disclosure.

A disclosure may be made in a number of ways including anonymously, in writing or verbally. An individual does not need to identify the person or body about whom the disclosure is made.

A disclosure can be made to Councils Chief Executive Officer, a permitted person, a direct or indirect manager or supervisor of either the person making the disclosure, or the person the subject of the disclosure.

The conduct or action being disclosed may be one which has taken place, is still occurring, or is believed is intended to be taken or engaged in. Disclosures may also be made about conduct that occurred prior to the commencement of the Act on 10 February 2013.

### **Investigating Disclosures**

Council can only receive a disclosure that relates to the conduct of itself or its own employees, staff and officers. These disclosures can also be made to the Independent Broad-based Anti-corruption Commission (IBAC) or the Victorian Ombudsman (if it is within the Ombudsman's jurisdiction to investigate) directly.

Council cannot receive or investigate a disclosure made in relation to a Councillor, including the Mayor. These disclosures must be made to the IBAC or the Victorian Ombudsman directly.

If Council believes a disclosure may be a public interest disclosure, it will notify the IBAC of the disclosure. The IBAC will then assess the disclosure and nominate whether it is a public interest complaint as defined by the Act.

If a disclosure is deemed to be a public interest complaint, the IBAC will investigate the disclosure. If a disclosure is deemed not to be a public interest disclosure, the IBAC may refer the disclosure back to Council for investigation.

### **Confidentiality**

Council takes its obligations under the Act seriously and will protect the identity of any discloser and the matter disclosed. Maintaining confidentiality in relation to public interest disclosure matters is crucial for ensuring that reprisals are not made against the discloser. It is a criminal offence under the Act to disclose information connected with a disclosure made in accordance with the Act, including information about the identity of a discloser. The penalties for breaching confidentiality obligations in this instance include financial penalties and imprisonment.

### **Misdirected Disclosures**

Mildura Rural City Council commits to the 'no wrong door' provision within the Act and will ensure any Public Interest Disclosures made to the wrong receiving entity will be redirected to another appropriate receiving entity. In doing so, the discloser will not lose any of the protections available to them under the Act.

## **4. Who is responsible for implementing this policy?**

- General Manager Corporate
- Manager Corporate Administration

## 5. Definitions

Act	<i>Public Interest Disclosures Act 2012</i>
Corrupt Conduct	As included in Attachment 1 to this policy
Detrimental action	Includes: <ul 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></ul>
Discloser	Person making disclosure under the Act
Improper Conduct	As included in Attachment 2 to this policy
IBAC	Independent Broad-based Anti-corruption Commission
Investigating entity	<ul style="list-style-type: none"><li>(a) the Independent Broad-based Anti-corruption Commission;</li><li>(b) the Victoria Police;</li><li>(c) the Ombudsman;</li><li>(d) the Victorian Government Investigations and Compliance Inspectorate;</li><li>(e) the Chief Municipal Inspector;</li><li>(f) the Information Commissioner</li></ul>
Misdirected disclosure	A public interest disclosure made to an entity that is not an entity to which the disclosure may or must be made under the Act
Public Interest Complaint	a disclosure that has been determined under sections 26 or 31 to be a public interest disclosure complaint
Permitted Person	The Chief Executive Officer of Mildura Rural City Council; or

A person identified as a person who may receive disclosures in the procedures established by Council under section 58 of the Act; or

In the case of a disclosure made by a person who is a member, officer or employee of Council – a direct or indirect manager or supervisor of that person

Public Interest Disclosure

A disclosure by a natural person of information that shows or tends to show, or information that the person reasonably believes shows or tends to show, improper conduct or detrimental action (where the particular disclosure relates to an earlier Public Interest Disclosure.

Public Interest Disclosure were previously known as Protected Disclosures.

## 6. Legislation and other references

### 6.1 Legislation

For further information related to this policy see:

- *Public Interest Disclosures Act 2012*
- *Public Interest Disclosure Regulations 2013*
- *Independent Broad-based Anti-corruption Commission Act 2011*
- *Ombudsman Act 1973*
- *Victorian Inspectorate Act 2011*
- *Freedom of Information Act 1982*
- *Privacy and Data Protection Act 2014*

## 6.2 Documents

This Policy is implemented in conjunction with the following documents:

- Public Interest Disclosure Procedures
- Public Interest Disclosure Fact Sheet
- Public Interest Disclosure Complaint Form
- Public Interest Disclosure Checklist
- Guidelines for making and handling public interest disclosure (produced by IBAC)
- Guidelines for public interest disclosure welfare management (produced by IBAC)

## 6.3 Risk Assessment Reference

*Please tick the corporate risk(s) that this policy is addressing.*

<b>Risk Category</b>	✓	<b>Risk Category</b>	✓
Asset Management		Financial Sustainability	
Committees		Human Resource Management	✓
Compliance – Legal & Regulatory	✓	Leadership & Organisational Culture	✓
Contract Management		Occupational Health & Safety	✓
Contract Tendering & Procurement		Organisational Risk Management	✓
Corporate Governance	✓	Project Management	
Environmental Sustainability		Public Image and Reputation	✓

## ATTACHMENT 1 – DEFINITION OF CORRUPT CONDUCT

### 4 *Corrupt conduct*

- (1) For the purposes of this Act, **corrupt conduct** means conduct—
- (a) of any person that adversely affects the honest performance by a public officer or public body of his or her or its functions as a public officer or public body; or
  - (b) of a public officer or public body that constitutes or involves the dishonest performance of his or her or its functions as a public officer or public body; or
  - (c) of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust; or
  - (d) of a public officer or a public body that involves the misuse of information or material acquired in the course of the performance of his or her or its functions as a public officer or public body, whether or not for the benefit of the public officer or public body or any other person; or
  - (da) of a person (the **first person**) intended to adversely affect the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body and result in the first person or an associate of the first person obtaining—
    - (i) a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument; or
    - (ii) an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument; or
    - (iii) a financial benefit or real or personal property; or
    - (iv) any other direct or indirect monetary or proprietary gain— that they would not have otherwise obtained; or
  - (e) that could constitute a conspiracy or an attempt to engage in any conduct referred to in paragraph (a), (b), (c), (d) or (da)—

being conduct that would constitute a relevant offence.

- (1A) For the purposes of this Act, in determining whether conduct would constitute a relevant offence, the IBAC may assume that the required state of mind to commit the relevant offence can be proven.
- (2) Conduct may be **corrupt conduct** for the purposes of this Act if—
- (a) all or any part of the conduct occurs outside Victoria, including outside Australia; and
  - (b) the conduct would be corrupt conduct if it occurred in Victoria.
- (2A) For the purposes of section 4(1)(da), the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body may be adversely affected

S. 4(1)(da)  
inserted by  
No. 30/2016  
s. 4(2).

S. 4(1)(e)  
amended by  
No. 30/2016  
s. 4(3).

S. 4(1A)  
inserted by  
No. 30/2016  
s. 4(4).

S. 4(2A)  
inserted by  
No. 30/2016  
s. 4(5).

notwithstanding that the public officer or public body does not engage in any corrupt conduct or other misconduct in performing or exercising those functions or powers.

S. 4(2B)  
inserted by  
No. 30/2016  
s. 4(5).

- (2B) For the purposes of section 4(1)(da), an *associate* of a first person is—
- (a) a person or entity who has an agreement, arrangement or understanding with the first person or holds any relevant financial interest in any business of the first person;
  - (b) if the first person is a natural person, a person who is a relative of the first person;
  - (c) if the first person is a body corporate—
    - (i) an entity of whom the first person is an associate within the meaning of section 11 of the Corporations Act; or
    - (ii) an employee or officer of a related body corporate within the meaning of the Corporations Act to the first person.

S. 4(2C)  
inserted by  
No. 30/2016  
s. 4(5).

- (2C) For the purposes of subsection (2B)—

*relative* means—

- (a) the spouse or domestic partner of the first person;
- (b) a parent, son, daughter, brother, sister, aunt, uncle, grandparent, cousin, nephew or niece of the first person;
- (c) a step-father, step-mother, legal guardian, step-son, step-daughter, step-brother, step-sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law of the first person;
- (d) a parent, son, daughter, brother, sister, aunt, uncle, grandparent, cousin, nephew or niece of the spouse or domestic partner of the first person;
- (e) a step-father, step-mother, legal guardian, step-son, step-daughter, step-brother, step-sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law of the spouse or domestic partner of the first person;

*relevant financial interest* includes any share in the capital of a business of the first person or any entitlement to receive any income or payment from a business of the first person.

- (3) This Act does not apply to any conduct of any person that can be considered by the Court of Disputed Returns in proceedings in relation to a petition under Part 8 of the **Electoral Act 2002**.

## **ATTACHMENT 2 – DEFINITION OF IMPROPER CONDUCT**

### **4 Meaning of *improper conduct***

- (1) For the purposes of this Act, *improper conduct* means—
- (a) corrupt conduct; or
  - (b) conduct of a public officer or public body engaged in by the public officer or public body in their capacity as a public officer or a public body that constitutes—
    - (i) a criminal offence; or
    - (ii) serious professional misconduct; or
    - (iii) dishonest performance of public functions; or
    - (iv) an intentional or reckless breach of public trust; or
    - (v) an intentional or reckless misuse of information or material acquired in the course of the performance of the functions of the public officer or public body; or
    - (vi) a substantial mismanagement of public resources; or
    - (vii) a substantial risk to the health or safety of one or more persons; or
    - (viii) a substantial risk to the environment; or
  - (c) conduct of any person that—
    - (i) adversely affects the honest performance by a public officer or public body of their functions as a public officer or public body; or
    - (ii) is intended to adversely affect the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body and results in the person, or an associate of the person, obtaining—
      - (A) a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument; or
      - (B) an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument; or
      - (C) a financial benefit or real or personal property; or
      - (D) any other direct or indirect monetary or proprietary gain—  
that the person or associate would not have otherwise obtained; or
  - (d) conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referred to in paragraph (a), (b) or (c).

S. 4(1)  
substituted by  
No. 2/2019  
s. 7(1).

S. 4(2)  
amended by  
No. 30/2016  
s. 84(1)(2),  
substituted by  
No. 2/2019  
S. 4(1A)  
inserted by  
No. 30/2016  
s. 84(3),  
amended by  
No. 2/2019  
s. 7(2).

- (2) Despite subsection (1), conduct that is trivial does not constitute improper conduct for the purposes of this Act.
- (2A) For the purposes of section 4(1)(c)(ii), the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body may be adversely affected notwithstanding that the public officer or public body does not engage in any corrupt conduct or other misconduct in performing or exercising those functions or powers.

S. 4(2B)  
inserted by  
No. 30/2016  
s. 84(3),  
amended by  
No. 2/2019  
s. 7(2).

- (2B) For the purposes of section 4(1)(c)(ii), an *associate* of a first person is—
- (a) a person or entity who has an agreement, arrangement or understanding with the first person or holds any relevant financial interest in any business of the first person;
  - (b) if the first person is a natural person, a person who is a relative of the first person;
  - (c) if the first person is a body corporate—
    - (i) an entity of whom the first person is an associate within the meaning of section 11 of the Corporations Act; or
    - (ii) an employee or officer of a related body corporate within the meaning of the Corporations Act to the first person.

S. 4(2C)  
inserted by  
No. 30/2016  
s. 84(3).

- (2C) For the purposes of subsection (2B)—

*relative* means—

- (a) the spouse or domestic partner of the first person;
- (b) a parent, son, daughter, brother, sister, aunt, uncle, grandparent, cousin, nephew or niece of the first person;
- (c) a step-father, step-mother, legal guardian, step-son, step-daughter, step-brother, step-sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law of the first person;
- (d) a parent, son, daughter, brother, sister, aunt, uncle, grandparent, cousin, nephew or niece of the spouse or domestic partner of the first person;
- (e) a step-father, step-mother, legal guardian, step-son, step-daughter, step-brother, step-sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law of the spouse or domestic partner of the first person;

*relevant financial interest* includes any share in the capital of a business of the first person or any entitlement to receive any income or payment from a business of the first person.

- (3) This Act does not apply to any conduct of any person that can be considered by the Court of Disputed Returns in proceedings in relation to a petition under Part 8 of the **Electoral Act 2002**.
- (4) This Act does not apply to a disclosure relating to any conduct that may constitute a criminal offence in relation to an alleged contravention under section 30 of the **Members of Parliament (Standards) Act 1978** that must be referred by the Presiding Officer to the appropriate law enforcement agency under section 30(3) of that Act.

S. 4(4)  
inserted by  
No. 5/2019  
s. 83.