

# Public Interest Disclosure (Whistle blower) Policy



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| <b>Policy type</b>                 | Council   |
| <b>Adopted by</b>                  | Council   |
| <b>Responsible General Manager</b> | General Manager Corporate   |
| <b>Responsible officer</b>         | Senior Governance Officer   |
| <b>Date adopted</b>                | 18 December 2019  |
| <b>Scheduled for review</b>        | This policy will be reviewed four years from the date of adoption, or sooner if required. |

## 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
- to 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 councillors, employees, contractors, volunteers and agents.

Council can receive public interest disclosures that relate to Moira Shire Council, but disclosures relating to particular councillors must be made to 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

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| Public interest disclosure (PID) | 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 IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee (IOC) to be a public interest complaint  |
| Improper conduct:                | 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"> <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> <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> </ul> |

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|  | <ul style="list-style-type: none"> <li>a substantial risk to the environment.</li> </ul>   |
| Corrupt Conduct                        | As defined by <a href="#">Independent Broad-Based Anti-Corruption Commission Act 2011 - sect 4</a>   |
| Misdirected disclosure                 | 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 IBAC for assessment as a PIC and will receive the protections of the public interest disclosure regime.  |
| Detrimental Action                     | includes: <ul style="list-style-type: none"> <li>(a) action causing injury, loss or damage;</li> <li>(a) intimidation or harassment;</li> <li>(b) 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 who makes a disclosure  |
| 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> <ul 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> <li>(c) an Australian legal practitioner (if any) representing the person making the disclosure</li> </ul>  |
| Public Interest Disclosure Coordinator | <p>Provide a local point of contact for individuals seeking general information about protected disclosures.</p> <ul style="list-style-type: none"> <li>encourage direct reporting of concerns to IBAC but can receive and notify IBAC of potential protected disclosures regarding Moira Shire Council employees, contractors, volunteers and agents.</li> <li>assist IBAC investigators</li> <li>ensure the welfare of disclosers by appointing welfare officers as required</li> <li>work to make staff aware of the protected disclosure legislation.</li> </ul> |
| Welfare officer                        | Means a person appointed by the Public Interest Disclosure Coordinator to manage the welfare of people who have made a disclosure, those who are the subject of a disclosure and potential witnesses.  |

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## POLICY

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 employees, councillors, volunteers and contractors' 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 IBAC or Ombudsman in the first instance to minimise the risks to confidentiality and independence.
- provide appropriate support and assistance to investigating agencies by identifying a person to act as the Public Interest Disclosure Coordinator (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 witnesses 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 council, its employees, staff, contractors or officers.

## Disclosure handling

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| <b>Who can make a disclosure?</b>          | Disclosures can only be made by natural person(s), not companies, businesses   |
| <b>How to make a disclosure?</b>           | Must be made verbally, in writing, or in some cases, online. It may be made anonymously. It must be made in private. |
| <b>Who disclosures can be made about?</b>  | Must be made only about the conduct of public bodies or public officers performing public functions                  |
| <b>What disclosures can be made about?</b> | 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>   |
|----------------------------------|---|
| <b>Councillor(s)</b>             | Must be made to IBAC or the Ombudsman.<br>Council cannot receive these disclosures. |

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| <b>Moirá Shire employees, contractors, volunteers and agents</b>          | Disclosers should report their concerns directly to IBAC or the Victorian Ombudsman in the first instance.<br>Council's PIDC can receive disclosures but to however the discloser will be encouraged to report to the relevant agency first. |
| <b>Non- Moira Shire council employees, staff, contractors or officers</b> | Disclosers should report their concerns directly to IBAC or the Ombudsman in the first instance.   |

## Misdirected disclosures

If council receives a misdirected disclosure, the PIDC will consider if the disclosure and notify those disclosures to the appropriate entity within 28 days.

If council receives a disclosure regarding the conduct of councillor(s), the discloser will be immediately advised to disclose their concerns to the IBAC or 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, Moira Shire Council recommends individuals make their disclosure to the IBAC or Ombudsman in the first instance.

## Managing disclosures made to Council

In receiving and handling disclosures council and the PIDC will

- remind staff 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.
- The PIDC will assist the investigating agency

## Managing welfare

In receiving a public interest disclosure Moira Shire Council will enact appropriate

- welfare strategies that consider the welfare of disclosers, witnesses/co-operators and people who are the subject of disclosures
- risk management to manage the welfare of those involved
- processes to protect disclosers from reprisal

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## RELATED LEGISLATION

*Local Government Act 1989*

*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

*Public Interest Procedures*

*Councillor Code of Conduct 2017*

*Employee Code of Conduct 2017*

*Fraud Prevention and Control Policy 2019*