

Public Interest Disclosure Policy

Council Policy



RURAL CITY OF WANGARATTA

Responsible Officer: Manager People and Governance Authorising Officer: Director Corporate Services	Policy Type:	Major Council Policy
	Adoption Date:	August 2019
	Approved By:	Council
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STATEMENT AND PURPOSE

This Policy seeks to:

- encourage and facilitate the making of disclosures about improper conduct of the Council, its Councillors, staff and Associates of Council and the disclosure of detrimental action taken in reprisal for a person making a disclosure; and
- to provide for the confidentiality of the content of those disclosures and the confidentiality of the identity of persons who make those disclosures.

Associates of Council extend to include contractors working in-house, staff on exchange, members of Special Committees, members of Advisory Committees, volunteers, work experience students, or graduate placements who perform work for Council, as well as external suppliers and other contractors and subcontractors.

This policy is framed in accordance with the *Public Interest Disclosure Act 2012 (Vic)* (the Act) and Regulations and the Independent Broad-Based Anti-Corruption Commission (IBAC) guidelines. The Rural City of Wangaratta is a public body subject to the Act.

SCOPE

This Policy applies to the Council, its Councillors, staff and Associates of Council who are involved in improper conduct or detrimental action, or who wish to make disclosures relating to the Council, its Councillors, staff or Associates of Council who are alleged to be involved in improper conduct or detrimental action.

A person (i.e. not organisation or company) may make a disclosure under the Act. The person may come from within the organisation, or be an ordinary member of the public.

Public interest disclosures relating to a Councillor may only be made to the Ombudsman or IBAC.

POLICY

Council does not tolerate improper conduct in the conduct of its affairs by Councillors, staff or Associates of Council, nor the taking of detrimental action in reprisal against those who come forward to disclose such conduct.

Council will take all reasonable steps to protect the identity of any person making a public interest disclosure, where the disclosure is made in accordance with the Act.

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Council is committed to the aims and objectives of the Act. It recognises the value of integrity, transparency and accountability in its administrative and management practices, and supports the making of disclosures that reveal improper conduct.

Disclosures may be made about improper conduct on the part of the Council, its Councillors, staff or Associates of Council. Disclosures may also be made about detrimental action taken in reprisal, or in connection with, a disclosure made about improper conduct.

The conduct or action being disclosed may have taken place, still be occurring, or is believed will occur or be engaged in.

DEFINITIONS Improper conduct is:

- (a) corrupt conduct; or
- (b) conduct of a public officer or public body that constitutes:
 - a criminal offence;
 - serious professional misconduct;
 - dishonest performance of public functions;
 - intentional or reckless breach of public trust;
 - intentional or reckless misuse of information or material gained in the performance of functions as a public officer or public body;
 - 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; or
- (c) conduct of a person that:
 - adversely affects the honest performance by a public officer or public body of their functions as a public officer or public body;
 - 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) obtaining:
 - a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument;
 - an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument;
 - a financial benefit or real or personal property;
 - any other direct or indirect monetary or proprietary gain,that the person or associate would not have otherwise obtained; or
 - conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referenced in (a), (b), or (c) above,but does not include conduct that is trivial.

Corrupt conduct is conduct described in (c) above that involves an indictable offence (an offence punishable by imprisonment for five years or more) or the common law offences of attempting to pervert the course of justice, bribery of a public official, perverting the course of justice, or misconduct in public office.

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Detrimental action includes action causing loss, injury or damage; intimidation or harassment; or discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action, taken or threatened against the discloser in reprisal for having made the disclosure.

Examples of "detrimental action" include, but are not limited to:

- A public body demotes, transfers, isolates, or changes the duties of a person for making a disclosure;
- A person threatens, abuses or carries out other forms of harassment, directly or indirectly, against the person who makes a disclosure and his or her family or friends;
- A public body discriminates against the person who makes a disclosure or his or her family and associates in subsequent applications for jobs or tenders.

ROLES & RESPONSIBILITIES

Any person can report improper conduct or detrimental action.

Councillors, Staff and Associates of Council

Councillors, staff and Associates of Council are encouraged to report improper conduct and detrimental action. Disclosures about staff or Associates of Council may only be made to the staff member's Manager, or Director; the Chief Executive Officer (CEO), or the Public Interest Disclosure Co-ordinator. Disclosures must be made in private.

Disclosures about Councillors must be made to IBAC.

CEO

The CEO may only receive disclosures that relate to the Council, its staff and Associates of Council. The CEO cannot receive disclosures that relate to Councillors. If the CEO incorrectly receives a disclosure about a Councillor and considers it may be a public interest disclosure, he/she should refer it to the IBAC within 28 days of receipt under the 'no wrong door' principle, which ensures the protections in the Act apply to the discloser if they mistakenly notify the wrong person of their disclosure.

The CEO must refer all disclosures to the Public Interest Disclosure Co-ordinator for assessment, unless the disclosure relates to the Public Interest Disclosure Co-ordinator, in which case the disclosure must be forwarded to the Public Interest Disclosure Co-ordinator's manager.

The CEO must ensure the confidentiality of all disclosures and the person making the disclosure.

Managers

Managers may only receive a disclosure that is made by, or relates to, a staff member, or an Associate of Council that the manager directly or indirectly manages.

Managers must refer all disclosures to the Public Interest Disclosure Coordinator for assessment, unless the disclosure relates to the Public Interest Disclosure Co-ordinator, in which case the disclosure must be forwarded to the Public Interest Disclosure Co-ordinator's manager.

Managers must ensure the confidentiality of all disclosures and the person making the disclosure.

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Public Interest Disclosure Co-ordinator (PDC)

The PDC may only receive disclosures that relate to the Council, its staff and Associates of Council. The PDC cannot receive disclosures that relate to Councillors. If the PDC incorrectly receives a disclosure about a Councillor and considers it may be a public interest disclosure, he/she should refer it to the IBAC within 28 days of receipt under the 'no wrong door' principle, which ensures the protections in the Act apply to the discloser if they mistakenly notify the wrong person of their disclosure. The PDC must assess the disclosure to determine if it meets the requirements to attract the protections of the Act. If the disclosure is assessed as a public interest disclosure, the PDC must assist the CEO to notify IBAC.

The PDC must ensure the confidentiality of all disclosures and the person making the disclosure. The PDC is also responsible for the provision of welfare services for any person making a public interest disclosure and for the welfare needs of Councillors, staff, Associates of Council, or other people involved in an investigation.

The PDC is responsible for establishing and maintaining this policy and associated procedure and providing training and advice to Councillors, staff and Associates of Council.

PRIVACY

Information related to any public interest disclosure must be held within the records management system (WIM), with appropriate levels of security and access set and maintained.

BREACHES

Council will ensure that all disclosures under this procedure, and public interest complaints referred to it by IBAC for investigation, are investigated confidentially, promptly and thoroughly. Investigations will be undertaken in accordance with Council's Public Interest Disclosure Procedure.

It is a criminal offence under the Act to disclose information connected with a disclosure made in accordance with the Act, including the identity of the discloser. The penalties for breaching confidentiality obligations include financial penalties and imprisonment.

Councillors, staff and Associates of Council must be aware of Council's intention to:

- take appropriate disciplinary action against any person involved in improper conduct or detrimental action;
- report improper conduct and detrimental action to IBAC; and
- refer to Victoria Police for potential prosecution any party to the matter, if the improper conduct or detrimental action is of a criminal nature.

Council may also pursue recovery of any financial loss through civil proceedings.

MONITORING AND EVALUATION

The Public Interest Disclosure Policy will be monitored by the Corporate Management Team regularly and by the Audit Advisory Committee every three years.

Changes to this Policy require Council approval.

REFERENCES

COUNCIL POLICIES

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Councillor Code of Conduct
Disciplinary Policy and Procedure
Employee Code of Conduct
Respectful Behaviour and Treatment Policy

LEGISLATION

Independent Broad-based Anti-corruption Commission Act 2011 (Vic)
Ombudsman Act 1973 (Vic)
Public Interest Disclosure Act 2012 (Vic)

GUIDELINES

IBAC Guidelines for making and handling public interest disclosures; and for welfare management

REVIEW & APPROVAL

This Policy will be reviewed in three years from the date of endorsement, or as required by legislation, or if Council determines a need has arisen.