



## HOPEVALE ABORIGINAL SHIRE COUNCIL

### Public Interest Disclosure Policy

#### Document Control

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#### Version History

Version Number	Date	Signature	Reason / Comments
1	9 December 2015		Council Resolution
2	21 February 2018		Council Resolution
3	20 March 2019		Council Resolution
4	17 March 2021		Council Resolution

### Authority

*Public Interest Disclosure Act 2010*

*Local Government Act 2009*

*Public Sector Ethics Act 1994*

*Public Records Act 2002*

*Ombudsman Act 2001*

*Crime and Corruption Act 2001*

*Disability Act 2006*

### Policy Objective

By virtue of their office or position, Council recognises the important role Councillors, Council employees and members of the public can play in the identification of cases of maladministration, official misconduct and the misuse of public resources or contraventions giving rise to dangers to public health and safety, the environment or to persons with disabilities.

In accordance with the objectives of the Public Interest Disclosure Act 2010 (the Act), it is Council policy to:

- Promote the public interest by facilitating Public Interest Disclosures of wrongdoing in the public sector; and
- Ensure that Public Interest Disclosures are properly made, assessed, and when appropriate, properly investigated and dealt with; and
- Ensure that appropriate consideration is given to the interests of persons who are the subjects of a Public Interest Disclosure; and
- Afford protection from reprisal to persons making Public Interest Disclosures.

These outcomes (including information regarding how a Public Interest Disclosure may be made) are achieved via Council's Public Interest Disclosure Management Directive which is developed and implemented by the Chief Executive Officer in accordance with Section 28(1) of the Act and this Policy.

### Policy Statement

In relation to Public Interest Disclosures, Council will:

- i) Ensure there are Public Interest Disclosure procedures in place to encourage disclosures and manage any disclosures received by Council;
- ii) Provide protection and maintain confidentiality in relation to disclosures made by public officers or appropriate persons;
- iii) Ensure employees and Councillors understand how they can make a Public Interest Disclosure;
- iv) Ensure the risk of reprisals are assessed and managed;
- v) Ensure records of Public Interest Disclosures are managed appropriately.

### Scope

A public interest disclosure can be made if a person (who is not a public officer) has information about:

- i) A substantial and specific danger to the health or safety of a person with a disability; or
- ii) The commission of an offence against a provision mentioned in schedule 2 of the Act, if the commission of the offence is or would be a substantial and specific danger to the environment;

or

- iii) A contravention of a condition imposed under a provision mentioned in schedule 2 of the Act if the contravention is or would be a substantial and specific danger to the environment; or
- iv) The conduct of another person that could, if proved, be a reprisal.

Alternatively, by a public officer (pursuant to Section 13) about:

- i) The conduct of another person that could, if proved, be:
  - Official misconduct; or
  - Maladministration that adversely affects a person's interests in a substantial and specific way; or
- ii) A substantial misuse of public resources (other than an alleged misuse based on mere disagreement over policy that may properly be adopted about amounts, purposes or priorities of expenditure); or
- iii) A substantial and specific danger to public health or safety; or
- iv) A substantial and specific danger to the environment.

Public Interest Disclosures under Sections 12 and 13 of the Act must:

- a) Be made to a proper authority (as defined in Section 5 of the Act); and
- b) Be information about the conduct of another person or another matter if:
  - The person honestly believes on reasonable grounds that the information tends to show the conduct or other matter; or
  - The information tends to show the conduct or other matter, regardless of whether the person honestly believes the information tends to show the conduct or other matter.

To that end Council will:

- ✓ Ensure that Public Interest Disclosures are managed appropriately in accordance with the requirements of the Act;
- ✓ Maintain confidentiality of Public Interest Disclosures received (as per Section 65 of the Act);
- ✓ Prosecute any person who provides a false or misleading statement or information to Council with the intention of it being processed as a Public Interest Disclosure (as per Section 66 of the Act);
- ✓ Prosecute and/or take disciplinary action against any Councillor or Council employee who takes or attempts to take a reprisal action (refer Sections 40 and 41 of the Act);
- ✓ Ensure that the proper records of Public Interest Disclosures received (as per Section 29 of the Act) are maintained, and that the confidentiality of all records created during the investigation and reporting of Public Interest Disclosures is preserved (as per Section 65 of the Act)

## Definitions

**CEO** - Council's Chief Executive Officer.

**Confidential information** includes information about the identity, occupation, residential or work address or whereabouts of a person –

- i) Who makes a Public Interest Disclosure; or
- ii) Against whom a Public Interest Disclosure has been made; and
  - information disclosed by a Public Interest Disclosure; and
  - information about an individual's personal affairs; and
  - information that, if disclosed, may cause detriment to a person.

**Discloser** - means a person reporting a Public Interest Disclosure.

**Maladministration** – As defined by schedule 4 of the Public Interest Disclosure Act 2010, Maladministration is administrative action that was:

- i) Taken contrary to law;
- ii) Unreasonable, unjust, oppressive, or improperly discriminatory;
- iii) In accordance with a rule of law or a provision of an Act or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory in the particular circumstances;
- iv) Taken for an improper purpose;
- v) Taken on irrelevant grounds;
- vi) Taken having regard to irrelevant considerations;
- vii) An act for which reasons should be given, but were not given;
- viii) Based wholly or partly on a mistake of law or fact; or
- ix) Was wrong.

Public Interest Disclosures - (refer Section 11, the Act) - A Public Interest Disclosure can be made by a person who honestly believes, on reasonable grounds, that wrongdoing has occurred or who has information that tends to show that wrongdoing has occurred. In order to be considered a Public Interest Disclosure, the matter must meet one of the following:

#### **Disclosure Description**

- A substantial and specific danger to the health or safety of a person with a disability
- A substantial and specific danger to the environment caused by Council operations

#### **Proper person to make the disclosure**

- Member of the public or
- Council employee or Councillor

#### **Disclosure Description**

- Corrupt conduct occurring in the cause of Council operations
- Maladministration that adversely affects a person's interests in a substantial and specific way
- A substantial misuse of public resources occurring in the cause of Council operations

#### **Proper person to make the disclosure**

- Council employee or Councillor

A general request for service is not a Public Interest Disclosure. An administrative action complaint (Section 268.2 of the Local Government Act 2009) is not classed as a Public Interest Disclosure unless assessment of the complaint indicates that it has the attributes of a Public Interest Disclosure.

Members of the public may make disclosures about other matters (Corrupt Conduct, maladministration, etc) and while it may still be a matter of public importance, is not considered a Public Interest Disclosure. eg:

Corrupt Conduct – commit an offence under the Local Government Act or undertake fraud (stealing and misappropriation of finances);

Maladministration – inefficient, dishonest administration or mismanagement of Council that leads to wastage, financial loss or an inability to service the community;

Misuse of public resources – using Council resources for personal gain or incurring unfair wear and tear on machinery due to careless operations.

**Public Officer** - an employee, member or officer of the entity.

**Reprisal** - where a person causes or attempts to cause detriment because they believe (whether or not this is actually the case) a person:

- i) Has or intends to make a Public Interest Disclosure; or
- ii) Has or intends to participate in proceedings under the Act.

The detriment may be an action (or threats of action) that results in:

- i) Personal injury or prejudice to safety; or
- ii) Property damage or loss; or
- iii) Intimidation or harassment; or
- iv) Adverse discrimination, disadvantage or adverse treatment about career, profession, employment, trade or business; or
- v) Financial loss; or
- vi) Damage to reputation, including, for example, personal, professional or business reputation.

**Subject Officer** - the person about who a Public Interest Disclosure is made.

**Substantial** - of a significant or considerable degree. It must be more than trivial or minimal and have some weight or importance

### **1. Who receives the Public Interest Disclosure?**

The Chief Executive Officer receives all Public Interest Disclosures. In the case of a Public Interest Disclosure in relation to the Chief Executive Officer, the Mayor would receive the complaint.

The Chief Executive Officer may delegate the management and processing of Public Interest Disclosures to others.

### **2. How can a Public Interest Disclosure be made?**

The disclosure can be made verbally, electronically or in writing. Where possible, the disclosure should be addressed 'Confidential for the attention of the Chief Executive Officer'. Council will accept disclosures addressed to other employees, Councillors and the Mayor.

### **3. What should be contained in the Disclosure?**

The member of the public, employee or Councillor should include the following in the disclosure:

- Their name and contact details (unless they are making an anonymous disclosure);
- The nature of the disclosure;
- The person who is undertaking the disclosure activity (employee/s or Councillor/s);
- Correspondence or other supporting documentation; and
- Details of the disclosure activity including times, dates, amounts, resources, action and locations that might assist any investigation.

A person may make a Public Interest Disclosure whether or not the person is able to identify a particular person to whom the information disclosed relates. The disclosure may relate to events that:

- Have happened or may have happened;
- Are or may be happening; or
- Will or may happen.

#### **4. Confidentiality, Anonymity and Protection**

Council encourages the reporting of Public Interest Disclosures and is committed to protecting and supporting those making disclosures. Any person making a disclosure should feel confident and comfortable about the report and shall be protected from being victimised as a result of making the report.

The discloser must be protected in a number of ways including, but not limited to the following:

- Ensuring confidentiality in the investigation;
- Protecting, as far as legally possible, the discloser's identity;
- Treating any bullying, harassment, unfair treatment, victimisation or discrimination that results from a disclosure being made as a breach of our disciplinary procedures;
- Offering a staff member leave of absence while a matter is investigated;
- Relocation of staff or changes to reporting lines if necessary;
- Responding to the disclosure thoroughly and impartially;
- Where some form of wrongdoing has been found, taking appropriate action to deal with it;  
and
- Keeping the disclosure informed of the progress and outcome.

Upon receipt of an allegation of fraud and/or corruption, appropriate support for the discloser must be considered to safeguard against potential acts of reprisal. Others associated with the discloser (including those who may be suspected of being a discloser) should also be considered at this time. Protective measures implemented (including those above) must be proportionate to the risk of reprisal and the potential consequences of a reprisal.

To the extent practicable, the identity of a discloser MUST NOT be revealed. In the case that the identity of the discloser may be apparent or necessary in investigating the allegations, this should be discussed firstly with the discloser. With this in mind, the officer responsible for the investigation will advise all involved parties of the legal provisions for protection and legal consequences attached, as well as Council disciplinary action applicable.

To ensure the confidentiality of disclosers, Council will accept reports in any manner, including anonymously. Reports from anonymous sources will be considered for investigation providing sufficient information has been received.

In addition to protecting the discloser, the identity of the Subject Officer(s) must also be protected.

#### **Review**

This policy will be reviewed when any of the following occur:

- 2 years from approval
- Related legislation is amended or replaced
- Other circumstances as determined from time to time by the CEO

**Adopted by Council on 17 March 2021**

Shannon Gibbs  
Director of Finance