

# ***MCKINLAY SHIRE COUNCIL***



## ***Public Interest Disclosure Management Plan***

*VERSION: 1.0*

*ENDORSED BY CEO: October 2013*

*REVISED: Annually*

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*CORPORATE PLAN REFERENCE: 1.0*

## **1. COUNCIL'S POLICY COMMITMENT**

- 1.1 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 and which may not be identified and addressed through established internal controls.
- 1.2 In accordance with the objectives of the PD Act, and Councils PID policy, it is Council commitment to:
  - (a) promote the public interest by facilitating Public Interest Disclosures of wrongdoing in the public sector; and
  - (b) ensure that Public Interest Disclosures are properly assessed and, when appropriate, properly investigated and dealt with; and
  - (c) ensure that appropriate consideration is given to the interests of persons who are the subject of a Public Interest Disclosure; and
  - (d) afford protection from reprisals to persons making Public Interest Disclosures

## **2. EXECUTIVE TEAM COMMITMENTS**

- 2.1 McKinlay Shire Council has an obligation to deal with wrongdoings within or associated with its operational jurisdiction, and to take corrective action to appropriately deal with such wrongdoing.
- 2.2 McKinlay Shire Council encourages any staff member who reasonably considers that he or she has witnessed or is aware of a wrongdoing to come forward and make a disclosure in accordance with Councils Public Interest Disclosure Policy.
- 2.3 McKinlay Shire Council aspires to an organisational climate where all staff members feel confident and comfortable about making a disclosure of wrongdoing and feel safe in the knowledge that they will not be subject to, or are provided strong protections against reprisal.
- 2.4 McKinlay Shire Council believes that disclosing wrongdoing is embedded in this Council's Values, in particular, ensuring that all staff and Council itself can be seen by the public as acting with integrity in accordance with our Code of Conduct. Further, Council believes that staff who come forward with disclosures of wrongdoing are acting as exemplary organisational citizens by assisting Council in promoting openness, accountability and good management.

- 2.5 When a staff member comes forward with information about wrongdoing, Council commits to:
- (a) protecting the dignity, wellbeing, career interests and good name of all persons involved.
  - (b) protecting the discloser from any adverse action taken as a result of making the disclosure.
  - (c) treating any bullying, harassment, unfair treatment, victimisation or discrimination that results from a disclosure being made as a breach of Code of Conduct and Councils Public Interest Disclosure Policy.
  - (d) responding to the disclosure thoroughly and impartially.
  - (e) where some form of wrongdoing has been found, taking appropriate action to deal with it.
  - (f) keeping the discloser informed of the progress and outcome.

### **3. COMMUNICATION STRATEGY**

- 3.1 This PID Management Plan and associated procedures will be posted to Council's website.
- 3.2 Articles promoting Council's Public Interest Disclosure Policy and procedures will be provided to staff on an ad hoc basis via Council's Team Talk Newsletter.

### **4. TRAINING STRATEGY**

#### **4.1 8.1 Staff Public Interest Disclosure Awareness**

- (a) Public Interest Disclosure Awareness Training will be provided to all staff as part of the employee induction process and at staff meetings (at least once annually). This training shall include:
  - (i) the identification of what is a 'wrongdoing';
  - (ii) the correct way to make a Public Interest Disclosure;
  - (iii) an outline of the support and protections afforded to disclosers of wrongdoings; and
  - (iv) how Public Interest Disclosures will be managed.

#### **4.2 Staff PID Management**

- (a) Senior managers and other staff who may receive or manage Public Interest Disclosures, persons making disclosures or other workplace issues relating to Public Interest Disclosure management will be provided annual training regarding these processes. Corporate Governance staff required to undertake detailed investigations of Public Interest Disclosures will receive investigation skills training.

#### 4.3 Councillor Training

- (a) Councillors will be briefed regarding both Public Interest Disclosure Awareness and Public Interest Disclosure Management following each quadrennial election.

### 5. PUBLIC INTEREST DISCLOSURE OVERSIGHT

#### 5.1 Council's Corporate Governance Department will be responsible for:

- (a) providing staff training regarding Public Interest Disclosure awareness and Public Interest Disclosure Management;
- (b) applying consistent and appropriate assessment procedures to determine which complaints meet the requirements of the PID Act for treatment as a Public Interest Disclosure;
- (c) monitoring the investigation and resolution of Public Interest Disclosures;
- (d) managing or coordinating the support and protection offered to disclosers;
- (e) collecting, reporting and reviewing data via a secure and confidential reporting system about Public Interest Disclosures received; and
- (f) reporting Public Interest Disclosure information to Council's Executive Team (as required) and to the Public Service Commission, via the Public Interest Disclosure database, on a quarterly basis.

### 6. MONITORING AND IMPROVEMENTS

#### 6.1 It is expected that the Public Interest Disclosure process will assist to:

- (a) promote good governance of Council's operations through the investigation of, and attention to matters, which might otherwise not come to the attention of the Chief Executive Officer; and
- (b) result in the identification of public health and safety and environmental protection issues and their referral to appropriate authorities.

#### 6.2 The PID Coordinator will provide an annual report to the Executive Team on:

- (a) issues arising from Public Interest Disclosures received during the period; and
- (b) effectiveness of Council's Public Interest Disclosure Policy and Procedures.

## **PART 2 - PROCEDURE FOR DEALING WITH PUBLIC INTEREST DISCLOSURES**

### **7. OVERVIEW**

- 7.1 Public Interest Disclosures involves the supply of information to relevant public sector agencies, and which may include McKinlay Shire Council , that reasonably indicates a wrongdoing. To receive the unique protections of the PID Act a disclosure must fall within the definition by s12 and 13 of the *Public Sector Disclosure Act 2010* as reflected in Councils Public Interest Disclosure Policy. Please refer to Schedule B for examples of matters giving rise to a valid Public Interest Disclosure.
- 7.2 Council and its Executive Team encourage the making of Public Interest Disclosures and are committed to the protection of persons who make such disclosures. However, persons making disclosures should also be aware that Council considers it is a serious offence for employees, Councillors or members of the public to make false or misleading claims with the intent that it be acted on by Council as a Public Interest Disclosure, or to defame a person/s or an organisation. Persons should only make a Public Interest Disclosure when they honestly believe on reasonable grounds the information they are disclosing to be correct. Where Council discovers that a false disclosure has been made with vexation intent, such discloser may be subject to Disciplinary action in accordance with Councils Performance and Misconduct Policy or if appropriate other legal action.

### **8. HOW PUBLIC INTEREST DISCLOSURES MAY BE MADE**

- 8.1 In accordance with section 17(3) of the PID Act, Public Interest Disclosures may be made to a person of a 'proper authority'. A person of a proper authority includes any of the following persons of a 'public sector entity' (see s6 of the PID Act) where such 'public sector entity' or its officers' would conduct business or undertake a function that relates to the nature of information being disclosed, the entity was the appropriate entity for a matter previously disclosed and such disclosure relates to a reprisals by another person associated with that previous disclosure, or that based on the information being disclosed, the entity has jurisdiction to investigate or remedy the matter the subject of the disclosure:
- (a) the Chief Executive Officer or in the case of Council the Mayor; or
  - (b) for a government department, the minister; or
  - (c) if the entity has a governing body, a member of that body, including in the case of Council a Councillor; or

- (d) an officer of the entity who is charged with the function of receiving or taking action on the type of information being disclosed; or
  - (e) if the entity is Council and the discloser is a Council staff, a person who directly or indirectly supervises or manages the person who is the subject of the disclosure; or
- 8.2 A person may also make a Public Interest Disclosure to a member of the Legislative Assembly of the Queensland Parliament.
- 8.3 In certain circumstances, in accordance with section 20 of the Act, a Public Interest Disclosure may be made to a journalist. A Public Interest Disclosure may only be made to a journalist if a person including an employee, has already made a Public Interest Disclosure and the entity to which it was referred and the entity:
- (i) decided not to investigate or deal with the Public Interest Disclosure, or;
  - (ii) investigated the Public Interest Disclosure but did not recommend any action be taken, or:
  - (iii) did not notify the discloser within 6 months whether or not the Public Interest Disclosure would be dealt with or investigated.
- 8.4 If a matter is disclosed to a Member of the Legislative Assembly, such member may refer the matter to another public sector entity if the MP considered that the referral entity has the power to investigate or remedy the matter that is the subject of the disclosure. The PID Act itself does not provide a role for MPs in investigating Public Interest Disclosures.
- 8.5 A Public Interest Disclosure may be made either verbally or in writing. However where a Public Interest Disclosure is of a complex nature or involves serious allegations against a Councillor or a Council officer, it is recommended that the disclosure be submitted in writing and marked 'Confidential for the attention of the Chief Executive Officer' or other Officer, Councillor or Mayor as appropriate.
- 8.6 The Public Interest Disclosure should detail the incident or issue of concern in sufficient detail to enable an appropriate investigation to be conducted. Council will accept and process anonymous Public Interest Disclosures but without discloser details Council will be unable to contact the discloser to obtain further information or to provide feedback. Depending on circumstances, disclosers should supply:
- (a) their name and contact details (desirable);
  - (b) the nature of the wrongdoing;
  - (c) who they think did the wrongdoing (if possible);
  - (d) when and where the wrongdoing occurred;

- (e) events surrounding the issue;
- (f) whether they did anything in response to the wrongdoing;
- (g) others who know about the wrongdoing and have allowed it to continue.

8.7 Council will endeavour to detect any communication received which could constitute a PID. However due to the volumes of complaints and service requests which we process, persons wishing to have their communication regarded as a Public Interest Disclosure are strongly advised to express that wish when making the disclosure.

## 9. PRELIMINARY ASSESSMENTS AND REGISTRATION

9.1 All Public Interest Disclosures and suspected Public Interest Disclosures will be referred to the Director Corporate Services for processing. Prior to commencing any referral or investigation processes, the PID Coordinator will undertake the following steps:

- (a) Step1 Assess whether the subject matter qualifies as a Public Interest Disclosure within the meaning of the PID Act. In assessing a disclosure, the officer must determine if:
  - (i) the person making the disclosure is able to receive the protection of the Act;
  - (ii) *the disclosure concerns a matter about which a Public Interest Disclosure can be made;*
  - (iii) *the disclosure meets either the subjective or objective test set out in the Act;*
  - (iv) *the disclosure has been made to an individual or entity who may receive a Public Interest Disclosure; and*
  - (v) the disclosure has been made in accordance with Council's procedure or to a person listed in the Act.
- (b) Step2 Determine whether the subject matter should be referred to another public sector agency. This would apply if the disclosure is about—
  - (i) the conduct of the referral entity or a public officer of the referral entity; or
  - (ii) the conduct of an entity (including itself), or

- (iii) another matter, that the referral entity has the power to investigate or remedy.

Referral to another public sector agency will not be made where the PID Coordinator considers there is an unacceptable risk that a reprisal would happen because of the referral. Where practical, the officer will consult with the person who made the disclosure to determine whether there would be an unacceptable risk.

- (c) Step 3 Determine whether Council should investigate the disclosure. In accordance with Section 30 of the PID Act, Council may decide not to investigate or deal with a Public Interest Disclosure if—
  - (i) the substance of the disclosure has already been investigated or dealt with by another appropriate process; or
  - (ii) the entity reasonably considers that the disclosure should be dealt with by another appropriate process; or
  - (iii) the age of the information the subject of the disclosure makes it impracticable to investigate; or
  - (iv) the entity reasonably considers that the disclosure is too trivial to warrant investigation and that dealing with the disclosure would substantially and unreasonably divert the resources of the entity from their use by the entity in the performance of its functions; or
  - (v) another entity that has jurisdiction to investigate the disclosure has notified the entity that investigation of the disclosure is not warranted.
- (d) Step 4 Conduct a risk assessment of a reprisal to the discloser and others associated with the discloser (including those who may wrongly be suspected of being a discloser) as a consequence of Council's investigation of the disclosure and subsequent actions.

If the risk is assessed as sufficiently high, a protection plan will be prepared to protect the discloser. Where feasible, this will be developed in consultation with the discloser and other relevant stakeholders.

- (e) Step 5 Register the disclosure in Council's Requests System. The matter will be registered as a confidential item to be accessed and tracked only by the PID Coordinator.
  
- (f) Step 6 Provide the discloser or the entity that referred the disclosure, reasonable information including:
  - (i) confirmation that the disclosure was received by Council;
  - (ii) a description of the action proposed to be taken, or taken, by Council in relation to the disclosure;
  - (iii) if action has been taken by Council in relation to the disclosure—a description of the results of the action;
  - (iv) the likely timeframes (if possible);
  - (v) their involvement in the investigation process;
  - (vi) the importance of maintaining confidentiality;
  - (vii) the protections under the Act that will apply;
  - (viii) that Council will keep the information disclosed, including the discloser's identity confidential, except as allowed under the Act;
  - (ix) how they will be advised of progress and outcomes; and
  - (x) who to contact if they want further information or are concerned about reprisals

If Council decides not to investigate or deal with a Public Interest Disclosure, it will give written reasons for its decision to the person making the disclosure (provided that their identity and contact details are known).

## **10. INVESTIGATING PROCESSES**

10.1 The PID Coordinator will commission an investigation of all Public Interest Disclosures excepting where a contrary decision has been made under Step 3 above. Where appropriate, an external investigator will be engaged for this purpose. In all cases the investigator must:

- (a) have the necessary skills or training to perform that task in a professional manner;
- (b) not be under the direction of a person being investigated;

- (c) be sufficiently removed from the issue as to not have a conflict of interest or perceived conflict of interest when undertaking the investigation;
- (d) when assessing (and where necessary, investigating and taking action on) a Public Interest Disclosure involving allegations against Council officers, take account of Council's; and obligations to the subject officers. The fact that Council is relying on information obtained through a Public Interest Disclosure for any subsequent disciplinary process does not exempt Council from its obligations to the subject officers.

## **11. TAKING CORRECTIVE ACTION**

- 11.1 On conclusion of the investigation, the investigator will provide the PID Coordinator with a written report detailing the process followed and their findings. The Director Corporate Services will forward copies of the report to the Chief Executive officer and the person who made the disclosure.
- 11.2 The Chief Executive Officer will utilise that report as appropriate to:
  - (a) inform improvements to service delivery, business processes and internal controls;
  - (b) recommend any amendments to Council policies;
  - (c) recommend amendments of this Management Plan to improve its effectiveness; or
  - (d) instigate disciplinary action.
- 11.3 Where disciplinary action is commenced arising from a Public Interest Disclosure, the subject officers will be afforded rights as provided for in Council's Staff Formal Disciplinary Policy.

## **12. PROTECTION AND SUPPORT OF DISCLOSERS**

- 12.1 Council will provide protection and support for persons making Public Interest Disclosures against reprisals by:
  - (a) Treating all Public Interest Disclosures as confidential information to be recorded on protected files; and

- (b) Taking firm disciplinary action against any officer found to have disclosed a Public Interest Disclosures contrary to this policy or to have taken reprisal action against the discloser.
- 12.2 A person making a public interest disclosure is not subject to any civil or criminal liability, or any liability arising by way of administrative process, including disciplinary process for making the disclosure. In particular:
  - (a) in a proceeding for defamation has a defence of absolute privilege for making a Public Interest Disclosure; and
  - (b) a person, who would otherwise be required to maintain confidentiality about the disclosed information an any Act, oath, rule of law or practice does not contravene an Act, oath, rule of law or practice by making a disclosure.
- 12.3 However, a person’s liability for their own conduct is not affected by the person making a disclosure under the Act.
- 12.4 Disclosures made under the PID Act are protected from being disclosed in response to applications made under *the Right to Information Act 2009*. It should be noted however that agencies such as the Crime and Misconduct Commission may require full disclosure of information held by Council. Also persons making Public Interest Disclosures should understand that in particular circumstances their identity may become evident to other persons as a consequence of investigation processes.
- 12.5 Both during and following the investigation process support for disclosers will be provided proportionate to the risk of reprisal, and the potential consequences of a reprisal. Protections under the Act are only available to a person who makes a Public Interest Disclosure to a proper authority. For example a person making a Public Interest Disclosure to a journalist prior to making a Public Interest Disclosure to a proper authority would not be afforded the protections of the PID Act.
- 12.6 Similarly, vexatious allegations with no reasonable basis will also not be afforded the protections of the PID Act.
- 12.7 In the event of a reprisal being alleged or suspected, Council will act in the interest of the discloser by:
  - (a) attending to the safety of the discloser(s) or affected third parties as a matter of priority;

- (b) reviewing the risk assessment of reprisal and any protective measures needed; and
  - (c) managing any allegation of a reprisal as a Public Interest Disclosure in its own right.
- 12.8 Council will assist employees who make Public Interest Disclosures by:
- (a) regularly checking on the discloser's well-being;
  - (b) advising the discloser of the availability of the Employee Assistance Scheme; and
  - (c) where the health of the discloser becomes a concern, liaising with officers responsible for occupational workplace health and safety.

### **13. FURTHER ACTIONS BY DISCLOSERS**

- 13.1 Within 28 days of a person receiving notification that the PID Coordinator has decided under Step 3 (above) not investigate or deal with their disclosure, the person who made the disclosure may appeal to the Chief Executive Officer for a review of that decision.
- 13.2 A person dissatisfied with Council's handling of their Public Interest Disclosure has an internal right of review to the Chief Executive Officer. Disclosers are also entitled to raise the matter with other entities, such as the Queensland Ombudsman in cases of maladministration.