

## **PUBLIC INTEREST DISCLOSURE PROCEDURE**

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### **COUNCIL'S POLICY COMMITMENT**

In accordance with the objectives of the PD Act, and Councils Public Interest Disclosure Policy, Cook Shire Council commits to:

- (a) Promoting the public interest by facilitating Public Interest Disclosures of wrongdoing within Council; and
- (b) Ensuring 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

### **EXECUTIVE RESPONSIBILITIES**

Cook 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.

Cook 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.

When a staff member comes forward with information about wrongdoing, Council will:

- (a) Protect the dignity, wellbeing, career interests and good name of all persons involved;
- (b) Protect the discloser from any adverse action taken as a result of making the Disclosure;
- (c) Treat any bullying, harassment, unfair treatment, victimisation or discrimination that results from a Disclosure
- (d) Respond to the disclosure thoroughly and impartially;
- (e) Where some form of wrongdoing has been found, taking appropriate action to deal with it; and
- (f) Keep the discloser informed of the progress and outcome.

### **IDENTIFYING A PUBLIC DISCLOSURE**

1. Public Interest Disclosures involve the supply of information to Council that reasonably indicates a wrongdoing.
2. Public Interest Disclosures align with the formal definition as supplied under the PID Act and will be assessed accordingly.

### **MAKING A PUBLIC INTEREST DISCLOSURE**

1. Public Interest Disclosures may be made to a person of a 'proper authority' e.g:
  - (a) the Chief Executive Officer or in the case of Council the Mayor; or
  - (b) if the entity has a governing body, a member of that body, including in the case of Council a Councillor; or
  - (c) an officer of the entity who is charged with the function of receiving or taking action on the type of information being disclosed; or
  - (d) 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.
2. 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.
3. 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.

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

## **PRELIMINARY ASSESSMENTS AND REGISTRATION**

All Public Interest Disclosures and suspected Public Interest Disclosures will be referred to Council's Complaints Function and the Chief Executive Officer for processing.

Prior to commencing any referral or investigation processes, the Complaints Function, in consultation with the Chief Executive Officer will undertake the following steps:

**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.

**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 Chief Executive Officer considers there is an unacceptable risk that a reprisal would happen because of the referral and where practical, the officer will consult with the person who made the disclosure to determine whether there would be an unacceptable risk.

**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.

**Step 4:** Conduct a risk assessment of possible reprisal for 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 and where feasible, this will be developed in consultation with the discloser and other relevant stakeholders.

**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 Chief Executive Officer and Council’s Complaints Function.

**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).

## **INVESTIGATING PROCESSES**

The Chief Executive Officer 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.

### **TAKING CORRECTIVE ACTION**

On conclusion of the investigation, the investigator will provide the Chief Executive Officer with a written report detailing the process followed and their findings. The Manager Corporate Governance will forward copies of the report to the Chief Executive officer and the person who made the disclosure.

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.

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.

### **PROTECTION AND SUPPORT OF DISCLOSERS**

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.

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 in any Act, oath, rule of law or practice does not contravene an Act, oath, rule of law or practice by making a disclosure.

However, a person's liability for their own conduct is not affected by the person making a disclosure under the Act.

Disclosures made under the PID Act are protected from being disclosed in response to applications made under *the Right to Information Act 2009*, However agencies such as the Crime and Corruption Commission may require full disclosure of information held by Council.

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.

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.

Vexatious allegations with no reasonable basis will also not be afforded the protections of the PID Act.

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.

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.

### **FURTHER ACTIONS BY DISCLOSERS**

Within 28 days of a person receiving notification that the Chief Executive Officer 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.

A person dissatisfied with Council's handling of their Public Interest Disclosure has an internal right of review and are entitled to raise the matter with other appropriate entities charged with overseeing the activity of Council.

### **TRAINING STRATEGY**

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.

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.

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

## **PUBLIC INTEREST DISCLOSURE OVERSIGHT**

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.

## **MONITORING AND IMPROVEMENTS**

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.

The Corporate Services Manager will provide an annual report to the Executive Team on issues arising from Public Interest Disclosures received during the period; and