

## 1.9 C-1PID09 – Public Interest Disclosure (Whistle-blower)

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### **PART A - Policy**

#### **Objective**

The objective of this Policy is to provide a framework and guidance for Shire of Dandaragan (Shire) to encourage employees, elected members, contractors and consultants to report unlawful unethical, or undesirable conduct (“Misconduct”) that they genuinely believe has been committed by a person or persons in breach of the Shire’s Codes of Conduct for Council and Employees, policies or the law.

To demonstrate the Shire’s commitment to a fair workplace and outline the process for managing matters of Misconduct.

To protect individuals who in good faith report conduct which they reasonably believe to be Misconduct, on a confidential basis, without fear of reprisal, dismissal or discriminatory treatment.

To assist in ensuring that matters of Misconduct and / or unethical behaviour are identified and dealt with appropriately.

To state the Shire’s commitment to the aims and objectives of the *Public Interest Disclosure Act 2003*, the purpose of which is to facilitate the disclosure of information in the public interest, and to provide protection to those who make a disclosure or who are the subject of a disclosure

#### **Policy Statement**

The Council and Shire are committed to the aims and objectives of the *Public Interest Disclosure Act 2003*. It recognises the value and importance of employees and others to enhance administrative and management practices, and strongly supports disclosures being made as to alleged Misconduct.

The Shire will not tolerate Misconduct and has developed its Policy and Procedures to assist elected members, employees, contractors, consultants and members of the public to raise concerns through a constructive and safe process.

The Shire will achieve this through the creation of an open working environment in which elected members, employees (whether they are full-time, part-time or casual), contractors and consultants, as well as members of the public, are able to raise concerns regarding actual or suspected Misconduct.

The Shire recognises that any genuine commitment to detecting and preventing Misconduct must include a mechanism whereby employees and others can report their concerns freely and without fear of reprisal or intimidation. The Public Interest Disclosure (Whistle-blower) Policy and Procedure (“the Policy”) provides such a mechanism and encourages the reporting of such conduct.

The Shire will endeavour to provide protection to “Whistle-blowers” from any detrimental action in reprisal for the making of a public interest disclosure.

The Shire’s Codes of Conduct for Council and Employees (“the Code”) require elected members and employees to observe high standards of business and personal ethics in the

conduct of their duties and responsibilities. As elected members and employees and representatives of the Shire, everyone has a responsibility to practice honesty and integrity in fulfilling their responsibilities and to comply with all applicable laws and regulations.

## **PART B - Management Procedures**

### **Purpose**

To establish procedures that encourage employees, elected members, contractors and consultants to report unlawful unethical, or undesirable conduct (“Misconduct”) that they genuinely believe has been committed by a person or persons in breach of the Shire’s Codes of Conduct for Council and Employees, policies or the law.

To demonstrate the Shire’s commitment to a fair workplace and outline the process for managing matters of Misconduct.

To protect individuals who in good faith report conduct which they reasonably believe to be Misconduct, on a confidential basis, without fear of reprisal, dismissal or discriminatory treatment.

### **Definitions**

For the purposes of this Policy and procedure:

Investigation	A search of evidence connecting or tending to connect a person (either a natural person or a body corporate) with conduct that infringes the criminal law or the policies and standards set by the Shire.
Misconduct	A breach of the Shires Codes of Conduct for Council and Employees, policies or the law. Matters which should be reported under this Policy, whether actual or suspected may include: <ul style="list-style-type: none"><li>• Dishonest, fraudulent, corrupt or unlawful conduct or practices.</li><li>• Misleading or deceptive conduct, including conduct or representations which amount to improper or misleading accounting or financial reporting practices.</li><li>• Conduct or any proposed conduct, bid, proposal, offer, contract, product or other aspect of the Shire’s business that breaches the provisions of the Trades Practices Act 1974, all associated legislation in all States and Territories in Australia.</li><li>• Coercion, harassment or discrimination by, or affecting, any member of the Shire or its affiliates.</li><li>• A breach of Shire policies or Codes of Conduct for Council and Employees.</li><li>• Conduct within the Shire’s control which is a significant danger to the environment.</li><li>• Conduct endangering the health and safety of any person or persons which has been reported to management but not acted upon.</li><li>• Any action taken against, or harm suffered by a person as a result of making a report under this Policy.</li><li>• Any other conduct or act which may cause loss to the Shire or which may otherwise be detrimental to its interests.</li></ul>

<p>Public Interest Disclosure Officer (“PID Officer”)</p>	<p>A designated representative tasked with the responsibility of:</p> <ul style="list-style-type: none"> <li>• Protecting and safeguarding the interests of Whistle-blowers within the meaning of this Policy.</li> <li>• Conducting preliminary investigations into reports received from a whistle blower.</li> </ul> <p>The PID Officer is to investigate the substance of the complaint to determine whether there is evidence in support of the matters raised or, alternatively, to refute the report made. The PID Officer will have access to independent financial, legal and operational advisers as required.</p> <p>The PID Officer is the Shire of Dandaragan’s Executive Manager Corporate and Community Services.</p>
<p>Whistle-blower</p>	<p>Any person who, whether anonymously or not, makes, attempts to make or wishes to make a report in connection with Misconduct and where the Whistle-blower wishes to avail themselves of protection against reprisal for having made the report.</p>

**Detail**

Reporting Responsibility

It is the responsibility of all elected members and employees to comply with the Code and to report violations or suspected violations in accordance with the Whistle-blower Policy.

Reporting Misconduct

If a person becomes aware of an issue or behaviour believed to constitute a breach of the Shire’s Codes of Conduct for Council and Employees, policies or the law, then the following reporting mechanisms are available.

- **Internal Reports**

Whistle-blowers may wish to discuss the matter informally with their direct manager or with Human Resources first, to determine whether an incident of Misconduct has occurred. This is an opportune time to clarify the incident, ask questions and become familiar with the process. At all times, discussions will remain confidential.

Where this is not appropriate, or where the Whistle-blower does not feel comfortable in doing so, or where the Whistle-blower has previously done so and believes no action has been taken, the Whistle-blower may contact the Shire’s PID Officer directly to discuss the incident or complete a Misconduct Report Form (“MRF”) and submit it to the PID Officer.

There are procedures in place for disclosures made under the protection of the PID Act – the PID Officer must determine whether the report is being made under that Act, and if so, ensure that the disclosure is treating appropriately and according to those procedures.

Refer to Attachment 1 for a sample MRF.

- **External Reports**

It is the Shire's aim to ensure that employees, elected members, contractors and consultants do not feel the need to discuss Shire related concerns outside of the Shire. However, nothing in this Policy/Procedure should be interpreted as restricting an employee, elected member, contractor or consultant from raising issues or providing information to an external party, in accordance with any relevant law, regulation or prudential standard.

Therefore, a Whistle-blower may report Misconduct (anonymously if preferred) to an external independent Whistle-blower service. Depending on the type of Misconduct, this could include the Corruption and Crime Commission, Ombudsman, the Police or the Auditor General.

It may also be appropriate to report irregularities relating to accounting matters to the Shire's Auditor.

Members of the public who wish to make a disclosure of public information, as defined in the *Public Interest Disclosure Act 2003* (PID), are to contact the PID Officer directly.

All reports under this Policy/Procedure are treated very seriously and will be investigated appropriately.

#### Misconduct Involving the PID Officer

If the issue of Misconduct involves the actions of the PID Officer, then the reporting of such matters should be directly to the Chief Executive Officer.

#### Confidentiality

Violations or suspected violations may be submitted on a confidential basis by the complainant or may be submitted anonymously. Reports of violations or suspected violations will be kept confidential to the extent possible, consistent with the need to conduct an adequate investigation.

If the report is made under the PID Act, the confidentiality requirements in relation to information which might identify or tend to identify a discloser or a person in respect of whom a public interest disclosure has been made must be complied with at all times. The disclosure of this identifying information, except in accordance with the PID Act, is an offence.

#### Handling of Reported Violations

The Shire's PID Officer is responsible for investigating and resolving (where possible) all reported complaints and allegations concerning violations of the Code, as well as disclosures made under the PID Act.

The Shire's PID Officer has responsibility for protecting and safeguarding the interests of whistle-blowers within the meaning of this Policy. The PID Officer will have access to independent financial, legal and operational advisers as required.

The PID Officer has direct access to the Audit Committee and is required to report to the Audit Committee at least annually on compliance activity related to this Policy if any matters are reported.

The PID Officer will notify the sender and acknowledge receipt of the reported violation or suspected violation within five business days. All reports will be promptly investigated and appropriate corrective action will be taken if warranted by the investigation.

#### Accounting and Auditing Matters

The Audit Committee shall investigate all reported concerns or complaints regarding corporate accounting practices, internal controls or auditing and may appropriate recommendations to Council. The PID Officer shall immediately notify the Audit Committee of any such complaint (within the constraints of any legislated confidentiality requirements) and work with the Committee until the matter is resolved.

#### Investigation

All reports of Misconduct will be treated seriously and be the subject of a thorough investigation with the objective of locating evidence that either substantiates or refutes the claims / allegations made by the Whistle-blower. Investigations are to be undertaken by the PID Officer. The PID Officer will cause an investigation to be carried out, this may require referring the matter to another person or agency.

Following a report of Misconduct, either internally or externally, the following procedure is to be followed:

- The completed MRF is to be forwarded to the PID Officer.
- The PID Officer is to review the report and determine the appropriate manner of investigation, and then inform the Whistle-blower of how the investigation will proceed.
- The PID Officer is to determine what resources are needed and secure access to those resources, including where necessary the assistance of other employees or external professional help (including lawyers, accountants, forensic analysts or operational experts).
- The PID Officer plans and conducts the investigation.
- The PID Officer is to consider process / control improvements (risk assessments, audits, etc).
- The PID Officer prepares an Investigation Report and forwards the Investigation Report to the Chief Executive Officer or Audit Committee.
- The PID Officer advises and debriefs the Whistle-blower.

## Reporting of Investigation Findings

At the end of the investigation, the PID Officer will report their findings to the Audit Committee who will, in conjunction with the Chief Executive Officer, determine the appropriate response. This report must take into account the confidentiality requirements of the PID Act.

This response will include addressing any unacceptable conduct and taking remedial action required to prevent any future occurrences of the same Misconduct. In the event of the Chief Executive Officer being the subject of an investigation or allegation, the Audit Committee is to seek independent advice on possible corrective or remedial actions.

Where issues of discipline arise the response will be in line with the Shire's Disciplinary Procedure. Where allegations of unacceptable conduct made against another person cannot be substantiated, that person will be advised accordingly and will be entitled to continue in their role as if the allegations had not been made

## Acting in Good Faith

Anyone filing a complaint concerning a violation or suspected violation of the Code must be acting in good faith and have reasonable grounds for believing the information disclosed indicates a violation of the Code. Any allegations that prove not to be substantiated and which prove to have been made maliciously or knowingly to be false will be viewed as a serious disciplinary offense and in some cases may result in termination of employment.

Where a disclosure is made under the PID Act, the discloser is only protected if they believe on reasonable grounds that the information to be disclosed is or may be true. They will commit an offence, and lose the protection of the Act, if they know the information to be false or misleading in a material particular or are reckless about whether the information is false or misleading in a material particular.

## False Misconduct Reports

Where it is established by the PID Officer that the Whistle-blower is not acting in good faith, or has made a false report of Misconduct (including where the allegation has been made maliciously, vexatiously or without any basis), then he or she will be subjected to disciplinary proceedings, including the possibility of summary dismissal.

Whilst not intending to discourage Whistle-blowers from reporting matters of genuine concern, Whistle-blowers must ensure as far as possible, that reports are factually accurate, complete, from firsthand knowledge, presented in an unbiased fashion (and any possible perception of bias of the Whistle-blower is disclosed), and without material omission.

Where the report has been made under the PID Act, the provisions in that Act relating to making false or misleading disclosures apply.

## Whistle-blower Anonymity

If requested, the identity of the Whistle-blower will be kept strictly confidential unless:

- The person making the report consents to the disclosure.
- The disclosure is required by law.
- The disclosure is necessary to prevent or lessen a serious threat to a person's health or safety.
- It is necessary to protect or enforce the Shire's legal rights or interests.
- It is necessary to defend any claims.

## Whistle-blower Protection

A Whistle-blower who reports matters in good faith, and provided he or she has not been involved in the Misconduct reported, will not be penalised or personally disadvantaged because they have reported a matter. The Whistle-blower Policy is intended to encourage and enable employees and others to raise serious concerns within the Organisation prior to seeking resolution outside the Organisation.

The Shire will not tolerate any instances of legitimate Whistle-blowers being:

- Dismissed.
- Demoted.
- Subjected to any form of harassment and persecution.
- Discriminated against.

A Whistle-blower who believes he or she, or his or her family, has been the victim of any of the above by reason of their status as a Whistle-blower, should immediately report the matter to the PID Officer. Where an incident of this nature occurs, the Shire's Codes of Conduct for Council and Employees will apply, as well as the provisions of the PID Act.

Any employee, elected member, contractor or consultant who is found to have dismissed, demoted, harassed, or discriminated against a Whistle-blower by reason of their status as a Whistle-blower, may be subjected to disciplinary measures.

A Whistle-blower who has been involved in the reported Misconduct may be provided with immunity or due consideration from Shire initiated disciplinary proceedings by agreement, however, the Shire has no power to provide immunity from criminal prosecution.

Where victimisation or reprisals are reported, a record of the report and the action taken must be placed on the file relating to the public interest disclosure. Steps taken to prevent acts of victimisation or reprisal should be recorded in a manner that they will be accessible for reference, should legal action be taken against the Shire.

## Feedback and Communication with the Whistle-blower

Where possible, and assuming the identity of the Whistle-blower is known, the Whistle-blower will be kept informed of the outcome of the investigation of his or her report, subject to privacy and confidentiality considerations.

All Whistle-blowers must maintain confidentiality of all such reports, and not disclose details to any person.



## MISCONDUCT REPORT FORM (MRF)

<b>PERSON COMPLETING THE MRF</b>	
Whistle-blower Name	
Confidential contact details	
Date of Report	
Has the Misconduct been reported in any other by you or, to your knowledge by any other person?	<b>Yes/No/Uncertain (please circle)</b>
Identity of person/s engaged in Misconduct	
Location of Misconduct	
Describe in as much detail as possible the facts, circumstances and events of the Misconduct  <i>(Attach additional pages if required)</i>	

<b>RECEIPT OF MRF</b>	
Signature	
Name	
Position	
Date	

**Notes:**

1. This form can be anonymously completed and the Whistle-blower can choose not to reveal their identity.
2. Unless express consent is given, the person to whom the disclosure is made cannot reveal the Whistle-blower's identity to any other party, except in relation to the Corporations Act of the ASIC Act, in which case the information may be disclosed ASIC, APRA or the Federal Police, or otherwise to the extent allowed by law.

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