

## PROTECTED DISCLOSURE (*WHISTLE-BLOWER*) POLICY

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### INTRODUCTION

- 1) The Protected Disclosures (Protection of Whistleblowers) Act 2022 (PDA) and its amendments commits the Buller District Council (Council) to develop and abide by an internal procedure for dealing with serious wrongdoing in or by the Council. Council will comply with the PDA through adhering to the following objectives:
- 2) Recognising the Council's responsibility in ensuring matters of serious wrongdoing within, or by the organisation are made known and investigated;
  - a) Protecting individuals who provide information about serious wrongdoing occurring within the Council;
  - b) Ensuring complaints are dealt with in a serious and professional way;
  - c) Complying with the principles of natural justice; and
  - d) Making this procedure available to all staff and publishing it at regular intervals.
- 3) Under the PDA an individual may make protected disclosures provided:
  - a) The individual believes on reasonable grounds that there is, or has been serious wrongdoing in or on behalf of the Council and that the information is true or is likely to be true (i.e., not made in bad faith); and
  - b) The individual wishes to disclose the information so that the serious wrongdoing may be investigated; and
  - c) The individual wishes the disclosure to be protected by making a disclosure in accordance with this policy.
- 4) An individual who makes a protected disclosure is considered a "discloser" in accordance with the PDA.

### DEFINITIONS

- 5) "Serious Wrongdoing" as defined in the PDA includes any of the following:
  - a) an offence; or



- b) a serious risk to:
    - i) public health; or
    - ii) public safety; or
    - iii) the health and safety of an individual; or
    - iv) the environment; or
  - c) a serious risk to the maintenance of law, including the prevention, investigation, and detection of offences or the right to a fair trial; or
  - d) an unlawful, corrupt, or irregular use of public funds or public resources; or
  - e) oppressive, unlawfully discriminatory, or grossly negligent, or that is gross mismanagement, and is done (or is an omission) by an employee or a person performing or purporting to perform or exercise a function or duty on behalf of the Council.
- 6) “Discloser” may be individuals currently or formerly: employed by Council, seconded or contracted to the Council (i.e. a contractor), a person concerned in the governance of the organisation (e.g. Mayor or Councillors), or a volunteer.
- 7) “Receiver” is the Council or an Appropriate Authority.
- 8) “Appropriate Authority” as defined in the PDA includes:
- a) the head of any public sector organisation
  - b) an officer of Parliament
  - c) persons or bodies operating in the public sector (listed in Schedule 2 of the PDA), and
  - d) the membership body of a particular profession, trade, or calling with the power to discipline its members.
- 9) The definition does not include a Minister or a member of Parliament.

## **PROTECTIONS**

- 10) When an individual is aware of an incident of serious wrongdoing the PDA provides protection for that individual to make a protected disclosure. These protections are outlined below:

- 11) The receiver of a disclosure will use their best endeavours to keep confidential any information that might identify the discloser unless:
  - a) the discloser has consented to the release of the identifying information; or
  - b) where there are reasonable grounds to believe that the release of the identifying information is essential:
    - (1) to the effective investigation of the disclosure;
    - (2) to prevent serious risk to public health or safety, the health or safety of any individual, or to the environment;
    - (3) to comply with the principle of natural justice; or
    - (4) to an investigation by law enforcement or regulatory agency for the purpose of law enforcement.
- 12) Prior to releasing the discloser's information, because it is essential to the effective investigation or to comply with the principles of natural justice, the receiver will consult with the discloser about the release of information.
- 13) After releasing the discloser's information for any reason, the receiver will inform the discloser that information has been released.
- 14) A discloser is protected from any retaliatory action by their employer or from being victimised on account of being involved in a protected disclosure. If an employer retaliates or threatens to retaliate or treat a person less favourably because of a protected disclosure, that may give rise to a personal grievance under the Employment Relations Act 2000 or may be unlawful under the provisions of the Human Rights Act 1993.
- 15) Protection under the PDA does not apply to disclosures made that are known to be false or in an act of bad faith.
- 16) Anyone making or receiving a disclosure under the PDA is not liable to civil or criminal proceedings relating to the making or receipt of the disclosure.
- 17) Requests for information under the Official Information Act 1982, or Local Government Official Information and Meetings Act 1987 may be refused if it might identify the person who made the disclosure.

### ***DRAFT PROCEDURES FOR REPORTING A SERIOUS WRONGDOING***

Refer to Appendix A. for the Buller District Council Internal Procedure.

## **APPENDIX A**

### ***The Protected Disclosures (Protection of Whistleblowers) Act 2022 (PDA) Draft Buller District Council Internal Procedures***

#### ***Initiating the Procedure***

A discloser who wishes to raise concerns about serious wrongdoing within the Council may notify a Council Protected Disclosure Act (PDA) Coordinator orally or in writing. Otherwise, a disclosure can be made to an Appropriate Authority.

#### ***Council PDA Coordinators:***

Council PDA Coordinators (in order of reference) are:

- All Council 2nd tier Managers and
- Chief Executive; and
- The Mayor; and
- The Independent Chair of the Risk and Audit Committee

If possible, concerns about wrongdoing should be raised in order of the above reference.

#### ***Dealing with the Disclosure***

Within 20 working days of having received a disclosure, the Council will:

- acknowledge in writing the receipt of the disclosure and record the date that the disclosure was made; and
- consider the disclosure and whether it warrants investigation; and
- check with the discloser whether the disclosure has been made elsewhere (and any outcome); and
- deal with the matter by doing one or more of the following:
  - Investigate the disclosure; or
  - Address any serious wrongdoing by acting or recommending action; or
  - Referring the disclosure to an Appropriate Authority; or
  - Deciding that no action is required.
- Inform the discloser in writing about what the Council has done or is doing to deal with the matter and give reasons as to why this approach has been taken.

### ***Communication with the Discloser***

- Where the procedures set out above take longer than 20 working days in total, the Council will communicate with the discloser and provide an estimate for how long it is expected to take.
- Where the Council decides to take no action in relation to the disclosure, the discloser will be informed of the reasons of the decision made.
- Where the Council decides to refer the disclosure to an Appropriate Authority, the Council will consult with discloser and the intended recipient of the referral.

### ***Where the PDA Coordinator is a Manager***

- The PDA Coordinator is to advise the Chief Executive of the alleged wrongdoings.
- If the Chief Executive is implicated in the alleged wrongdoings, the Manager shall advise the Mayor or the Independent Chair of the Risk and Audit Committee of the alleged wrongdoings.
- The Chief Executive is responsible for commissioning any investigative or restorative or disciplinary actions considered necessary to deal with the alleged wrongdoing.
- The Chief Executive is to ensure that the PDA Coordinator is advised how the matter is being dealt with or how it has been resolved so that the disclosure is dealt with in accordance with this policy.

### ***Where the PDA Coordinator is the Chief Executive***

- The Chief Executive is responsible for commissioning any investigative or restorative or disciplinary actions considered necessary to deal with the alleged wrongdoing.
- The Chief Executive is to ensure that the disclosure is dealt with in accordance with this policy.

### ***Where the PDA Coordinator is the Mayor***

- The Mayor [or in their absence the Deputy Mayor] is responsible for commissioning any investigative or restorative or disciplinary actions considered necessary to deal with the alleged wrongdoing.
- The Mayor is to ensure that the disclosure is dealt with in accordance with this policy.

### ***Where the PDA Coordinator is the Independent Chair of the Risk and Audit Committee***

- The Chair is responsible for commissioning any investigative or restorative or disciplinary actions considered necessary to deal with the alleged wrongdoing.

- The Chair is to ensure that the disclosure is dealt with in accordance with this policy.

***Natural Justice***

These procedures have been developed with regard to principles of natural justice and should be applied with regard to those principles. Natural justice requires the observance of minimum standards and procedural fairness.

***Other Appropriate Action***

Should the discloser believe on reasonable grounds that the Council has not acted in accordance with this policy or the PDA or has not dealt with the matter so as to address the serious wrongdoing, the discloser may make a further disclosure to any Minister or Appropriate Authority.

***Confidentiality***

Every person to whom a serious wrongdoing notification is made, pursuant to any statutory exceptions, must use his or her best endeavours not to disclose information that might identify the discloser who made the notification in accordance with this policy (refer section 17 of the PDA).

***Procedures not to be Read in Isolation***

This internal procedure is to be read in conjunction and in accordance with the provisions of the PDA. These will be provided to all employees and each PDA Coordinator.