



ANNEXURE A

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1. Statement of support to whistleblowers

The Yarra City Council (“the Council”) is committed to the aims and objectives of the *Whistleblowers Protection Act 2001* (“the Act”). It does not tolerate improper conduct by its councillors or staff, nor the taking of reprisals against those who come forward to disclose such conduct.

The Council recognises the value of transparency and accountability in its administrative and management practices, and supports the making of disclosures that reveal corrupt conduct, conduct involving a substantial mismanagement of public resources, or conduct involving a substantial risk to public health and safety or the environment.

The Council will take all reasonable steps to protect people who make such disclosures from any detrimental action in reprisal for making the disclosure. It will also afford natural justice to the person who is the subject of the disclosure.

2. Purpose of these procedures

These procedures establish a system for reporting disclosures of improper conduct or detrimental action by the Council or its employees. The system enables such disclosures to be made to the Chief Executive Officer. Disclosures may be made by employees or by members of the public.

These procedures are designed to complement normal communication channels between supervisors and employees. Employees are encouraged to continue to raise appropriate matters at any time with their supervisors. As an alternative, employees may make a disclosure of improper conduct or detrimental action under the Act in accordance with these procedures.

3. Objects of the Act

The Act commences operation on 1 January 2002. The purpose of the Act is to encourage and facilitate the making of disclosures of improper conduct by public officers and public bodies. The Act provides protection to whistleblowers who make disclosures in accordance with the Act, and establishes a system for the matters disclosed to be investigated and rectifying action to be taken.

4. Definitions of key terms

Three key concepts in the reporting system are improper conduct, corrupt conduct and detrimental action. Definitions of these terms are set out below.

4.1 *Improper conduct*

A disclosure may be made about improper conduct by a public body or public official. Improper conduct means conduct that is corrupt, a substantial mismanagement of public resources, or conduct involving substantial risk to public health or safety or to the environment. The conduct must be serious enough to constitute, if proved, a criminal offence or reasonable grounds for dismissal.

4.2 *Corrupt conduct*

Corrupt conduct means:

- conduct of any person (whether or not a public official) that adversely affects the honest performance of a public officer's or public body's functions;
- the performance of a public officer's functions dishonestly or with inappropriate partiality;
- conduct of a public officer, former public officer or a public body that amounts to a breach of public trust;
- conduct by a public officer, former public officer or a public body that amounts to the misuse of information or material acquired in the course of the performance of their official functions; or
- a conspiracy or attempt to engage in the above conduct.

4.3 *Detrimental action*

The Act makes it an offence for a person to take detrimental action against a person in reprisal for a protected disclosure. Detrimental action includes:

- action causing injury, loss or damage;
- intimidation or harassment; and
- discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action.

5. The reporting system

5.1 Contact persons within the City of Yarra

Disclosures of improper conduct or detrimental action by the Council or its employees, may be made to:

Chief Executive Officer
City of Yarra
333 Bridge Rd
Richmond 3121

Tel 9205 5050

Where a person is contemplating making a disclosure and is concerned about approaching the Chief Executive Officer in the workplace, he or she can call her and request a meeting in a discreet location away from the workplace.

5.2 Disclosures concerning Councilors

A disclosure about improper conduct or detrimental action by a Councilor, must be made directly to the Ombudsman:

The Ombudsman Victoria
Level 22, 459 Collins Street
Melbourne Victoria 3000
(DX 210174)

Internet: www.ombudsman.vic.gov.au
Email: ombudvic@ombudsman.vic.gov.au

Tel: 9613 6222
Toll Free: 1800 806 314

Ombudsman: Dr Barry Perry Tel: (03) 9613 6202

6. Roles and responsibilities

6.1 Employees

Employees are encouraged to report known or suspected incidences of improper conduct or detrimental action in accordance with these procedures.

Council staff have an important role to play in supporting those who have made a legitimate disclosure. They must refrain from any activity that is, or could be perceived to be, victimisation or harassment of a person who makes a disclosure. Furthermore, they should protect and maintain the confidentiality of a person they know or suspect to have made a disclosure.

6.2 Protected Disclosure Co-ordinator

The Chief Executive Officer has a central 'clearinghouse' role in the internal reporting system. She will:

- receive all disclosures;
- receive all phone calls, emails and letters from members of the public or employees seeking to make a disclosure;
- make arrangements for a disclosure to be made privately and discreetly and, if necessary, away from the workplace; and
- take all necessary steps to ensure the identity of the whistleblower and the identity of the person who is the subject of the disclosure are kept confidential.

6.3 Protected Disclosure Officer

Yarra's Protected Disclosure Officer is the Manager Governance who will:

- be a contact point for general advice about the operation of the Act for any person wishing to make a disclosure about improper conduct or detrimental action;
- receive any disclosure referred by the Chief Executive Officer;
- impartially assess the allegation and determine whether it is a disclosure made in accordance with Part 2 of the Act (that is, 'a protected disclosure');
- take all necessary steps to ensure the identity of the whistleblower and the identity of the person who is the subject of the disclosure are kept confidential; and
- impartially assess each disclosure to determine whether it is a public interest disclosure;
- be responsible for carrying out, or appointing an investigator to carry out, an investigation referred to the Council by the Ombudsman;
- be responsible for overseeing and coordinating an investigation where an investigator has been appointed;
- advise the whistleblower of the progress of an investigation into the disclosed matter;
- establish and manage a confidential filing system; and
- collate and publish statistics on disclosures made.

6.4 Investigator

The Manager Governance will be responsible for carrying out an internal investigation into a disclosure where the Ombudsman has referred a matter to the Council. An investigator may be a person from within an organisation or a consultant engaged for that purpose.

6.5 Welfare manager

The welfare manager is responsible for looking after the general welfare of the whistleblower. Yarra's Welfare Manager is the Manager Organisational Development who will:

- examine the immediate welfare and protection needs of a whistleblower who has made a disclosure and seek to foster a supportive work environment;
- advise the whistleblower of the legislative and administrative protections available to him or her;
- listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making disclosure; and
- ensure the expectations of the whistleblower are realistic.

7. Confidentiality

The Council will take all reasonable steps to protect the identity of the whistleblower. Maintaining confidentiality is crucial in ensuring reprisals are not made against a whistleblower.

The Act requires any person who receives information due to the handling or investigation of a protected disclosure, not to disclose that information except in certain limited circumstances. Disclosure of information in breach of section 22 constitutes an offence that is punishable by a maximum fine of 60 penalty units (\$6000) or six months imprisonment or both.

The circumstances in which a person may disclose information obtained about a protected disclosure include:

- where exercising the functions of the public body under the Act;
- when making a report or recommendation under the Act;
- when publishing statistics in the annual report of a public body; and
- in criminal proceedings for certain offences in the Act.

However, the Act prohibits the inclusion of particulars in any report or recommendation that is likely to lead to the identification of the whistleblower. The Act also prohibits the identification of the person who is the subject of the disclosure in any particulars included in an annual report.

The Council will ensure all files, whether paper or electronic, are kept in a secure room and can only be accessed by the Manager Governance, the investigator or welfare manager (in relation to welfare matters). All printed material will be kept in

files that are clearly marked as a Whistleblower Protection Act matter, and warn of the criminal penalties that apply to any unauthorised divulging information concerning a protected disclosure. All electronic files will be produced and stored in a non shared directory and be given password protection. Backup files will be kept on floppy disc. All materials relevant to an investigation, such as tapes from interviews, will also be stored securely with the whistleblower files.

The Council will not email documents relevant to a whistleblower matter and will ensure all phone calls and meetings are conducted in private.

8. Collating and publishing statistics

The Manager Governance will establish a secure register to record the information required to be published in the annual report, and to generally keep account of the status of whistleblower disclosures. The register will be confidential and will not record any information that may identify the whistleblower.

The register will contain the following information:

- the number and types of disclosures made to the Council during the year;
- the number of disclosures referred to the Ombudsman for determination as to whether they are public interest disclosures;
- the number and types of disclosed matters referred to the Council by the Ombudsman for investigation;
- the number and types of disclosures referred by the Council to the Ombudsman for investigation;
- the number and types of investigations taken over from the Council by the Ombudsman;
- the number of requests made by a whistleblower to the Ombudsman to take over an investigation by the Council;
- the number and types of disclosed matters that the Council has declined to investigate;
- the number and types of disclosed matters that were substantiated upon investigation and the action taken on completion of the investigation; and
- any recommendations made by the Ombudsman that relate to the Council.

9. Receiving and assessing disclosures

9.1 *Has the disclosure been made in accordance with Part 2 of the Act?*

Where a disclosure has been received by the Manager Governance, he will assess whether the disclosure has been made in accordance with Part 2 of the Act and is, therefore, a protected disclosure.

9.1.1 Has the disclosure been made to the appropriate person ?

For the disclosure to be responded to by the Council it must concern a councillor or staff member. If the disclosure concerns an employee, officer or member of another public body, the person who has made the disclosure must be advised of the correct person or body to whom the disclosure should be directed. (See the table in 5.2). If the disclosure has been made anonymously, it should be referred to the Ombudsman.

9.1.2 Does the disclosure contain the essential elements of a protected disclosure?

To be a protected disclosure, a disclosure must satisfy the following criteria:

- did a natural person (that is, an individual person rather than a corporation) make the disclosure?
- does the disclosure relate to conduct of a public body or public officer acting in their official capacity?
- is the alleged conduct either improper conduct or detrimental action taken against a person in reprisal for making a protected disclosure?
- does the person making a disclosure have reasonable grounds for believing the alleged conduct has occurred?

Where a disclosure is assessed not to be a protected disclosure, the matter does not need to be dealt with under the Act. The Manager Governance will decide how the matter should be responded to in consultation with the Chief Executive Officer.

9.2 *Is the disclosure a public interest disclosure?*

Where the Manager Governance has received a disclosure that has been assessed to be a protected disclosure, the Manager Governance will determine whether the disclosure amounts to a public interest disclosure. This assessment will be made within 45 days of the receipt of the disclosure.

In reaching a conclusion as to whether a protected disclosure is a public interest disclosure, the Manager Governance will consider whether the disclosure shows, or tends to show, that the public officer to whom the disclosure relates:

- has engaged, is engaging or proposes to engage in improper conduct in his or her capacity as a public officer; or
- has taken, is taking or proposes to take detrimental action in reprisal for the making of the protected disclosure.

Where the Chief Executive Officer concludes that the disclosure amounts to a public interest disclosure, she will:

- notify the person who made the disclosure of that conclusion; and

- refer the disclosure to the Ombudsman for formal determination as to whether it is indeed a public interest disclosure.

Where the Chief Executive Officer concludes that the disclosure is not a public interest disclosure, she will:

- notify the person who made the disclosure of that conclusion; and
- advise that person that he or she may request the Council to refer the disclosure to the Ombudsman for a formal determination as to whether the disclosure is a public interest disclosure, and that this request must be made within 28 days of the notification.

In either case, the Chief Executive Officer will make the notification and the referral within 14 days of the conclusion being reached by the public body.

10. Investigations

10.1 Introduction

Where the Ombudsman refers a protected disclosure to the Council for investigation, the Chief Executive officer will appoint an investigator, (normally the Manager Governance), to carry out the investigation.

The objectives of an investigation will be:

- to collate information relating to the allegation as quickly as possible. This may involve taking steps to protect or preserve documents, materials and equipment;
- to consider the information collected and to draw conclusions objectively and impartially;
- to maintain procedural fairness in the treatment of witnesses and the person who is the subject of the disclosure; and
- to make recommendations arising from the conclusions drawn concerning remedial or other appropriate action.

10.2 Terms of reference

The terms of reference will set a date by which the investigation report is to be concluded, and will describe the resources available to the investigator to complete the investigation within the time set. The Chief Executive Officer may approve, if reasonable, an extension of time requested by the investigator. The terms of reference will require the investigator to make regular reports to the Chief Executive Officer who, in turn, is to keep the Ombudsman informed of general progress.

10.3 Investigation plan

The investigator will prepare an investigation plan for approval by the Chief Executive Officer. The plan will list the issues to be substantiated and describe the avenue of inquiry. It will address the following issues:

- what is being alleged?
- what are the possible findings or offences?
- what are the facts in issue?
- how is the inquiry to be conducted?
- what resources are required?

At the commencement of the investigation, the whistleblower should be:

- notified by the investigator that he or she has been appointed to conduct the investigation;
- asked to clarify any matters; and
- provide any additional material he or she might have.

The investigator will be sensitive to the whistleblower's possible fear of reprisals and will be aware of the statutory protections provided to the whistleblower.

10.4 Natural justice

The principles of natural justice will be followed in any investigation of a public interest disclosure. The principles of natural justice concern procedural fairness and ensure a fair decision is reached by an objective decision maker. Maintaining procedural fairness protects the rights of individuals and enhances public confidence in the process.

The Council will have regard to the following issues in ensuring procedural fairness:

- the person who is the subject of the disclosure is entitled to know the allegations made against him or her and must be given the right to respond. (This does not mean the person must be advised of the allegation as soon as the disclosure is received or the investigation has commenced);
- if the investigator is contemplating making a report adverse to the interests of any person, that person should be given the opportunity to put forward further material that may influence the outcome of the report and that person's defence should be fairly set out in the report;
- all relevant parties to a matter should be heard and all submissions should be considered;

- a decision should not be made until all reasonable inquiries have been made;
- the investigator or any decision maker should not have a personal or direct interest in the matter being investigated;
- all proceedings must be carried out fairly and without bias. Care should be taken to exclude perceived bias from the process; and
- the investigator must be impartial in assessing the credibility of the whistleblowers and any witnesses. Where appropriate, conclusions as to credibility should be included in the investigation report.

10.5 Conduct of the investigation

The investigator will make contemporaneous notes of all discussions and phone calls, and all interviews with witnesses will be taped. All information gathered in an investigation will be stored securely. Interviews will be conducted in private and the investigator will take all reasonable steps to protect the identity of the whistleblower. Where disclosure of the identity of the whistleblower cannot be avoided, due to the nature of the allegations, the investigator will warn the whistleblower and his or her welfare manager of this probability.

It is in the discretion of the investigator to allow any witness to have legal or other representation or support during an interview. If a witness has a special need for legal representation or support, permission should be granted.

10.6 Referral of an investigation to the Ombudsman

The Chief Executive Officer will make a decision regarding the referral of an investigation to the Ombudsman where, on the advice of the investigator:

- the investigation is being obstructed by, for example, the non-cooperation of key witnesses; or
- the investigation has revealed conduct that may constitute a criminal offence.

10.7 Reporting requirements

The Chief Executive Officer will ensure the whistleblower is kept regularly informed concerning the handling of a protected disclosure and an investigation.

The Chief Executive Officer will report to the Ombudsman about the progress of an investigation.

Where the Ombudsman or the whistleblower requests information about the progress of an investigation, that information will be provided within 28 days of the date of the request.

11. Action taken after an investigation

11.1 Investigator's final report

At the conclusion of the investigation, the investigator will submit a written report of his or her findings to the Chief Executive Officer. The report will contain:

- the allegation/s;
- an account of all relevant information received and, if the investigator has rejected evidence as being unreliable, the reasons for this opinion being formed;
- the conclusions reached and the basis for them; and
- any recommendations arising from the conclusions.

Where the investigator has found that the conduct disclosed by the whistleblower has occurred, recommendations made by the investigator will include:

- the steps that need to be taken by the Council to prevent the conduct from continuing or occurring in the future; and
- any action that should be taken by the Council to remedy any harm or loss arising from the conduct. This action may include bringing disciplinary proceedings against the person responsible for the conduct, and referring the matter to an appropriate authority for further consideration.

The report will be accompanied by:

- the transcript or other record of any oral evidence taken, including tape recordings; and
- all documents, statements or other exhibits received by the officer and accepted as evidence during the course of the investigation.

Where the investigator's report is to include an adverse comment against any person, that person will be given the opportunity to respond and his or her defence will be fairly included in the report.

The report will not disclose particulars likely to lead to the identification of the whistleblower.

11.2 Action to be taken

If the Chief Executive Officer is satisfied that the investigation has found that the disclosed conduct has occurred, he or she will recommend to the Chief Executive Officer the action that must be taken to prevent the conduct from continuing or occurring in the future. The Chief Executive Officer may also recommend that action be taken to remedy any harm or loss arising from the conduct.

The Chief Executive Officer will provide a written report to the Minister for Local Government or the Council (where disclosure relates to employee of the Council), the Ombudsman and the whistleblower setting out the findings of the investigation and any remedial steps taken.

Where the investigation concludes that the disclosed conduct did not occur, the Chief Executive Officer will report these findings to the Ombudsman and to the whistleblower.

12. Managing the welfare of the whistleblower

12.1 *Commitment to protecting whistleblowers*

The Council is committed to the protection of genuine whistleblowers against detrimental action taken in reprisal for the making of protected disclosures. The Chief Executive Officer is responsible for ensuring whistleblowers are protected from direct and indirect detrimental action, and that the culture of the workplace is supportive of protected disclosures being made.

The Chief Executive Officer will appoint a welfare manager to all whistleblowers who have made a protected disclosure. The welfare manager will:

- examine the immediate welfare and protection needs of a whistleblower who has made a disclosure and, where the whistleblower is an employee, seek to foster a supportive work environment;
- advise the whistleblower of the legislative and administrative protections available to him or her;
- listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making disclosure;
- keep a contemporaneous record of all aspects of the case management of the whistleblower including all contact and follow-up action; and
- ensure the expectations of the whistleblower are realistic.

All employees are advised that it is an offence for a person to take detrimental action in reprisal for a protected disclosure. The maximum penalty is a fine of 240 penalty units (\$24,000) or two years imprisonment or both. The taking of detrimental action in breach of this provision can also be grounds for making a disclosure under the Act and can result in an investigation.

Detrimental action includes:

- causing injury, loss or damage;
- intimidation or harassment; and
- discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business (including the taking of disciplinary action).

12.2 Keeping the whistleblower informed

The Chief Executive Officer will ensure the whistleblower is kept informed of action taken in relation to his or her disclosure, and the time frames that apply. The whistleblower will be informed of the objectives of an investigation, the findings of an investigation, and the steps taken by the Council to address any improper conduct that has been found to have occurred. The whistleblower will be given reasons for decisions made by the Council in relation to a protected disclosure. All communication with the whistleblower will be in plain English.

12.3 Occurrence of detrimental action

If a whistleblower reports an incident of harassment, discrimination or adverse treatment that would amount to detrimental action taken in reprisal for the making of the disclosure, the welfare manager will:

- record details of the incident;
- advise the whistleblower of his or her rights under the Act; and
- advise the Chief Executive Officer of the detrimental action.

The taking of detrimental action in reprisal for the making of a disclosure can be an offence against the Act as well as grounds for making a further disclosure. Where such detrimental action is reported, the protected disclosure coordinator will assess the report as a new disclosure under the Act. Where the Chief Executive Officer is satisfied that the disclosure is a public interest disclosure, he or she will refer it to the Ombudsman. If the Ombudsman subsequently determines the matter to be a public interest disclosure, the Ombudsman may investigate the matter or refer it to another body for investigation as outlined in the Act.

12.4 Whistleblowers implicated in improper conduct

Where a person who makes a disclosure is implicated in misconduct, the Council will handle the disclosure and protect the whistleblower from reprisals in accordance with the Act, the Ombudsman's guidelines and these procedures. The Council acknowledges that the act of whistleblowing should not shield whistleblowers from the reasonable consequences flowing from any involvement in improper conduct. Section 17 of the Act specifically provides that a person's liability for his or her own conduct is not affected by the person's disclosure of that conduct under the Act. However, in some circumstances, an admission may be a mitigating factor when considering disciplinary or other action.

The Chief Executive Officer will make the final decision on the advice of the protected disclosure coordinator as to whether disciplinary or other action will be taken against a whistleblower. Where disciplinary or other action relates to conduct that is the subject of the whistleblower's disclosure, the disciplinary or other action will only be taken after the disclosed matter has been appropriately dealt with.

In all cases where disciplinary or other action is being contemplated, the Chief Executive Officer must be satisfied that it has been clearly demonstrated that:

- the intention to proceed with disciplinary action is not causally connected to the making of the disclosure (as opposed to the content of the disclosure or other available information);
- there are good and sufficient grounds that would fully justify action against any non-whistleblower in the same circumstances; and
- there are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

The Chief Executive Officer will thoroughly document the process including recording the reasons why the disciplinary or other action is being taken, and the reasons why the action is not in retribution for the making of the disclosure. The Chief Executive Officer will clearly advise the whistleblower of the proposed action to be taken, and of any mitigating factors that have been taken into account.

13. Management of the person against whom a disclosure has been made

The Council recognises that employees against whom disclosures are made must also be supported during the handling and investigation of disclosures. The Council will take all reasonable steps to ensure the confidentiality of the person who is the subject of the disclosure during the assessment and investigation process. Where investigations do not substantiate disclosures, the fact that the investigation has been carried out, the results of the investigation, and the identity of the person who is the subject of the disclosure will remain confidential.

The Chief Executive Officer will ensure the person who is the subject of any disclosure investigated by or on behalf of the Council is:

- informed as to the substance of the allegations;
- given the opportunity to answer the allegations before a final decision is made;
- informed as to the substance of any adverse comment that may be included in any report arising from the investigation; and has
- his or her defence set out fairly in any report.

Where the allegations in a disclosure have been investigated, and the person who is the subject of the disclosure is aware of the allegations or the fact of the investigation, the protected disclosure coordinator will formally advise the person who is the subject of the disclosure of the outcome of the investigation.

The Council will give its full support to a person who is the subject of a disclosure where the allegations contained in a disclosure are clearly wrong or unsubstantiated. If the matter has been publicly disclosed, the Chief Executive Officer of the Council will consider any request by that person to issue a statement of support setting out that the allegations were clearly wrong or unsubstantiated.

14. Criminal offences

By making this information available, the Council aims to ensure officers appointed to handle protected disclosures and all other employees are aware of the following offences created by the Act:

- it is an offence for a person to take detrimental action against a person in reprisal for a protected disclosure being made. The Act provides a maximum penalty of a fine of 240 penalty units (\$24,000) or two years imprisonment or both;
- it is an offence for a person to divulge information obtained as a result of the handling or investigation of a protected disclosure without legislative authority. The Act provides a maximum penalty of 60 penalty units (\$6,000) or six months imprisonment or both;
- it is an offence for a person to obstruct the Ombudsman in performing his responsibilities under the Act. The Act provides a maximum penalty of 240 penalty units (\$24,000) or two years imprisonment or both; and
- it is an offence for a person to knowingly provide false information under the Act with the intention that it be acted on as a disclosed matter. The Act provides a maximum penalty of 240 penalty units (\$24,000) or two years imprisonment or both.

15. Review

These procedures will be reviewed annually to ensure they meet the objectives of the Act and accord with the Ombudsman's guidelines.
