



GOVERNANCE – PROTECTED DISCLOSURE PROCEDURES

Policy is compliant with the Charter of Human Rights legislation

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Document Approved by:

Executive Manager Governance

Date 30 July 2013

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1. STATEMENT OF PROCEDURE

The Protected Disclosure Procedures

The key purpose of these Procedures is to confirm the manner in which the Council will:

- receive and process disclosures made; and
- provide support for persons making protected disclosures,

pursuant to the *Protected Disclosure Act 2012* (the PD Act) and the *Independent Broad-based Anti-corruption Commission Act 2011* (the IBAC Act).

2. PURPOSE OF THE ACT - SUMMARY

Purpose of the PD Act is to:

- (a) encourage and facilitate the disclosure of:
 - improper / corrupt conduct by public officers, public bodies or other persons; and
 - detrimental action taken in reprisal for a person making a disclosure under the Act;
- (b) provide protection for:
 - persons who make a disclosure; and
 - persons who may have suffered detrimental action in reprisal for a disclosure;
- (c) provide for the confidentiality of:
 - the content of disclosures; and
 - the identity of persons who make disclosures.

Purpose of the IBAC Act is to:

- (a) define types of conduct; and
- (b) define certain investigation and reporting requirements.

These Procedures therefore apply in accordance with the Acts, to the Yarra City Council (the Council) and its Councillors, officers, employees and to contractors, consultants, volunteers and/or employees of any entity providing services on the Council's behalf.

Who can make disclosures under the PD Act?

A **natural person** can disclose:

- information that shows (or tends to show); or
- information that the person believes on reasonable grounds shows (or tends to show)

that:

- a person, public officer or public body has engaged, is engaging, or proposes to engage, in improper conduct: or
- a public officer or public body has taken, is taking, or proposes to take, detrimental action against a person who has made a protected disclosure.

Who can disclosures be made to?

A disclosure can be made to:

- the Independent Broad-based Anti-corruption Commission (IBAC);
- in certain circumstances, an investigating entity (being the IBAC, the Chief Commissioner of Police, the Ombudsman and the Victorian Inspectorate); or
- a public body, a Council or a prescribed body **(if the disclosure relates to an employee or officer of that body, including the employees, contractors, consultants, volunteers of any entity providing services on the Council's behalf).**

How can disclosures be made?

Oral disclosures made to a Council must be made:

- in private;
- in person, by telephone or some form of electronic communication not involving writing; and
- to one of the persons specified below,

and may be made anonymously.

Written disclosures made to a Council must be:

- delivered personally to the office of the council; or
- sent by post addressed to the office of the Council; or
- sent to the email address of a Council officer who directly indirectly supervises the person making the disclosure or the person the subject of the disclosure,

and may be made anonymously.

NOTE: If a disclosure is received from an email address from which the identity of the person making the disclosure cannot be determined, the disclosure should be treated as an anonymous disclosure.

Forms of disclosure are to be made as follows:

An **oral disclosure** may be made to:

- the Chief Executive Officer;
- the Council's Protected Disclosure Co-ordinator (PDC) or Protected Disclosure Officer (PDO);
- if the person making the disclosure is an employee or officer of the Council, to an employee who directly or indirectly supervises or manages that person;
- if the disclosure relates to an employee or officer of a Council, to an employee who directly or indirectly supervises or manages that person.

A **written disclosure** made by email must be sent to the email address of the officer of the Council or to the official email address of a supervisor or a manager specified above (specified person).

Form of disclosure:

A person wishing to make a disclosure may do so, even if they do not know the identity of the person or body to whom the disclosure relates.

A disclosure may be made orally or in writing and anonymously.

NOTE: Disclosures relating to a Councillor MUST be made to the IBAC or the Ombudsman. They cannot be made to the Council.

In the instance of the Council, the process enables such disclosures to be made to the Council's PDC. Disclosures may be made by Councillors, employees or by members of the public.

These procedures are designed to complement normal communication channels between Councillors and Executive Officers, supervisors and employees. Employees are encouraged to continue to raise appropriate matters at any time with their supervisors.

Employees may also make a disclosure of improper / corrupt conduct or detrimental action under the PD Act in accordance with these procedures. These procedures should be read in conjunction with Council's *Fraud and Corruption Control Policy*, which can be found in the Policy Management Framework.

3. OBJECTIVES OF THE PROTECTED DISCLOSURE ACT 2012

The PD Act commenced operation on 10 February 2013. As noted above, the purpose of the Act is to encourage and facilitate the making of disclosures of improper / corrupt conduct by:

- '**public officers**' (in the context of Council, this means Councillors and/or employees of the Council and/or employees, contractors, consultants or volunteers of an entity providing services on the Council's behalf); and
- a '**public body**' (ie the Council).

The PD Act provides certain protections to a person making a disclosure (the Discloser), who makes such a disclosure in accordance with the PD Act, and establishes a system for the matters disclosed to be investigated and rectifying action to be taken.

Further information can be obtained from each of, the PD Act, the IBAC Act, the *Public Interest Monitor Act 2011*, the *Victorian Inspectorate Act 2011*, the *Information Privacy Act 2000* and the Ombudsman's Guidelines. The Acts can be viewed on website www.legislation.vic.gov.au and the Ombudsman's Guidelines can be viewed on website www.ombudsman.vic.gov.au

SCOPE

These procedures apply to all Yarra City Council Councillors, officers, employees, contractors, consultants and volunteers of the Council and/or the employees of any entity providing services on the Council's behalf.

4. KEY DEFINITIONS

The four key elements in the reporting system are improper conduct, corrupt conduct, specified conduct and detrimental action. Definitions of these terms are set out as follows.

4.1. Protected Disclosure:

A protected disclosure is a disclosure which satisfies Part 2 of the PD Act. To be assessed as a protected disclosure it must meet the following criteria:

- Did a natural person (i.e. 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?

If one or more of the above elements IS NOT satisfied, the person has NOT made a disclosure under Part 2 of the PD Act.

4.2. Improper conduct

A disclosure may be made about improper conduct by a Councillor, officer, employee (always to include the employees of any entity providing services on the Council's behalf), contractor, consultant or volunteer of the Council.

Improper conduct is defined by section 4 of the PD Act as follows:

- (1) For the purposes of this Act, **improper conduct** means –
- (a) corrupt conduct; or
 - (b) conduct specified in subsection (2) that is not corrupt conduct but that, if proved, would constitute –
 - (i) a criminal offence; or
 - (ii) reasonable grounds for dismissing or dispensing with, or otherwise terminating the services of the officer who was, or is, engaged in that conduct.
- (2) For the purposes of subsection (1)(b), **specified conduct** is conduct –
- (a) of any person that adversely affects the honest performance by a public officer or public body of his or her or its functions as a public officer or public body; or
 - (b) of a public officer or public body that constitutes or involves the dishonest performance of his or her or its functions as a public officer or public body; or
 - (c) of a public officer or public body that constitutes or involves knowingly or recklessly breaching the public trust; or
 - (d) of a public officer or public body that involves the misuse of information or material acquired in the course of the performance of his or her or its functions as a public officer or public body, whether or not for the benefit of the public officer or public body or any other person; or
 - (e) that could constitute conspiracy or an attempt to engage in any conduct referred to in paragraph (a), (b), (c) or (d); or
 - (f) of a public or public body in his or her capacity as a public officer or its capacity as a public body that –
 - (i) involves substantial mismanagement of public resources; or
 - (ii) involves substantial risk to health or safety; or
 - (iii) involves substantial risk to the environment.

The conduct must be serious enough to constitute, if proved, a criminal offence or reasonable grounds for dismissal.

Examples

To avoid closure of a town's only industry, an environmental health officer ignores or conceals evidence of illegal dumping of waste.

A building inspector tolerates poor practices and structural defects in the work of a leading local builder.

4.3. Corrupt conduct

Corrupt conduct is defined by section 4 of the IBAC Act as follows:

- (1) *For the purposes of this Act, **corrupt conduct** means conduct –*
 - (a) *of any person that adversely affects the honest performance by a public officer or public body of his or her or its functions as a public officer or public body;*
 - (b) *of a public officer or public body that constitutes or involves the dishonest performance of his or her or its functions as a public officer or public body;*
 - (c) *of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust;*
 - (d) *of a public officer or a public body that involves the misuse of information or material acquired in the course of the performance of his or her or its functions as a public officer or public body, whether or not for the benefit of the public officer or public body or any other person;*
 - (e) *that could constitute a conspiracy an attempt to engage in any conduct referred to in paragraph (a), (b), (c) or (d) –*
being conduct that would, if the facts were found proved beyond a reasonable doubt at a trial, constitute a relevant offence.
- (2) *Conduct may be **corrupt conduct** for the purposes of this Act if –*
 - (a) *all or any part of the conduct occurs outside Victoria, including outside Australia;*
and
 - (b) *the conduct would be corrupt conduct if it occurred in Victoria.*

The conduct must be serious enough to constitute, if proved, a criminal offence, being an indictable offence, an attempt to pervert the course of justice, bribery of a public official or perverting the course of justice.

Examples

A Councillor/Council employee takes a bribe or receives a payment other than his or her wages or salary (in the case of employees) in exchange for the discharge of a public duty.

A Council employee favours unmeritorious applications for jobs or permits by friends and relatives.

A Councillor/Council employee sells confidential information.

4.4. Detrimental action

Detrimental action is defined by section 3 of the PD Act as including:

- (a) *action causing injury, loss or damage;*
- (b) *intimidation or harassment;*

- (c) *discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including taking of disciplinary action.*

The PD Act makes it an offence for a person to take detrimental action against a person in reprisal for a protected disclosure because or in the belief that:

- the other person or anyone else has made, or intends to make, a disclosure;
- the other person or anyone else has cooperated, or intends to co-operate, with an investigation of a disclosure; or
- a person incites or permits someone else to take, or threaten to take, detrimental action against the other person.

A public body employing a person who takes detrimental action may also be jointly and severally liable for the detrimental action.

Management action that is detrimental action can be taken if the fact that the person has made a protected disclosure is not a substantial reason for taking it.

Examples

The Council refuses a deserved promotion of a person who makes a disclosure.

The Council demotes, transfers, isolates in the workplace or changes the duties of a person due to the making of a disclosure.

A person threatens, abuses or carries out other forms of harassment directly or indirectly, against the Discloser or his or her family, friends or associates.

The Council discriminates against the Discloser or his or her family, friends or associates in subsequent applications for jobs, permits or tenders.

4.5. Public Body

Public body is defined by section 6 of the PD Act to include a 'public body' within the meaning of the IBAC Act, section 6 of which defines 'public body' as follows:

- (a) *a public sector body within the meaning of section 4(1) of the **Public Administration Act 2004**;*
- (b) *a body, whether corporate or unincorporated, established by or under an Act for a public purpose including a university;*
- (c) *the Electoral Boundaries Commission constituted under the **Electoral Boundaries Commission Act 1982**;*
- (d) *a Council;*
- (e) *a body that is performing a public function on behalf of the State or a public body or public officer (whether under contract or otherwise);*
- (f) *any other body or entity prescribed for the purposes of this definition.*

According to section 6 of the PD Act, IBAC is also a 'public body'.

4.6. Public Officer

Public officer is defined by section 6 of the PD Act to include a 'public officer' within the meaning of the IBAC Act, section 6 of which contains an extensive list of persons who are 'public officers' for the purposes of the IBAC Act and the PD Act, relevantly providing:

(a) *a person employed in any capacity or holding any office in the public sector within the meaning of section 4(1) of the **Public Administration Act 2004**;*

...

(l) *a Councillor within the meaning of section 3(1) of the **Local Government Act 1989**;*

(m) *a member of Council staff employed under the **Local Government Act 1989**;*

...

(y) *a person that is performing a public function on behalf of the State or a public officer or public body (whether under contract or otherwise)...*

According to section 6 of the PD Act, IBAC Officers are also a 'public officers'.

4.7. Substantial

Reference to "substantial" has the effect of confirming the definition of a situation in which the mismanagement is of a significant or considerable degree.

4.8. Mismanagement

Is to manage badly or wrongly (not misuse).

4.9. Reasonable Grounds for Belief

Is to be read as requiring more than a mere suspicion or rumour. The belief must have supporting facts and circumstances. (*Objectively apply the usual test - "whether a reasonable person would have formed that belief, having regard to all the circumstances".*)

5. THE REPORTING / DISCLOSURE SYSTEM

5.1. Establish - has a protected disclosure been made?

To be assessed as a protected disclosure, the disclosure must:

- be made by a natural person;
- relate to the conduct of a person, public body or public officer;
- show:
 - improper conduct or detrimental action has occurred; OR
 - the person making the disclosure has reasonable grounds for believing that improper conduct or detrimental action has occurred or will occur;
- be made to the appropriate body about a body about which disclosures can be made under the Act.

5.2. Internal reporting / disclosure

In order to offer impartiality whilst maintaining the rights of individuals, the Council has appointed a Protected Disclosure Co-ordinator (PDC), being the Council's **Executive Manager Governance, Ivan Gilbert**.

Disclosures of improper conduct or detrimental action by Council or its employees or its service providers, may be made directly to the PDC: **Ivan Gilbert, Executive Manager Governance**, whose office is located at Richmond Town Hall. Ivan may be contacted on 9205 5110 or by e-mail on ivan.gilbert@yarracity.vic.gov.au.

To support the PDC, the Council has appointed a Protected Disclosure Officer (PDO), being the Council's **Director of Corporate & Financial Services, Jack Crawford**.

In the absence of Ivan Gilbert, or if you are uncomfortable making a disclosure to him for any reason, you may contact the PDO: **Jack Crawford, Director of Corporate & Financial Services**. Jack may be contacted on 9205 5210 or by e-mail on jack.crawford@yarracity.vic.gov.au.

Where a person is contemplating making a disclosure and is concerned about approaching the PDC or the PDO in the workplace, he or she can call the above-named officer/s and request a meeting in a discreet location away from the workplace.

In the event that a disclosure of improper conduct may involve the PDC or PDO, the disclosure should be made to the Chief Executive Officer of the Council. In the event that a disclosure of improper conduct may involve the Chief Executive Officer of the Council, the disclosure should be made to the PDC.

All correspondence, phone calls and emails from internal or external Disclosers will immediately be referred to the PDC for processing strictly in accordance with the provisions of the PD Act.

5.3. External reporting / disclosure

In accordance with the PD Act, disclosures of improper conduct may also be made directly to the IBAC or the Victorian Ombudsman. Where a disclosure relates to improper conduct on the part of a Councillor, the disclosure **MUST** be made directly to the IBAC or the Ombudsman.

Contact details IBAC:

Mail: The Independent Broad-based Anti-corruption Commissioner
Level 1, 459 Collins Street (North Tower)
Melbourne Victoria 3000
GPO Box 24234
Melbourne Victoria 3000

Tel: 1300 735 135
Fax: (03) 8635 6444
Email:
Interpreter Service: 131 450
Internet: www.ibac.vic.gov.au

Contact details Ombudsman:

Mail: The Ombudsman Victoria
Level 9, 459 Collins Street (North Tower)
Melbourne Victoria 3000
(DX 210174)

Tel: 9613 6222
Email: ombudvic@ombudsman.vic.gov.au
Interpreter Service: 131 450
Toll Free: 1800 806 314 (Regional only)
Internet: www.ombudsmanvic.vic.gov.au

6. ROLES AND RESPONSIBILITIES

6.1. Councillors, officers, employees of the Council or employees, contractors, consultants, volunteers providing services on the Council's behalf.

All persons noted above are encouraged to report known or suspected incidents of improper conduct or detrimental action in accordance with these procedures.

All Councillors, officers, employees and service providers of the Council 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 protected disclosure. Furthermore, they should protect and maintain the confidentiality of a person they know or suspect to have made a disclosure. (The PD Act provides for substantial penalties for offences in this regard.)

6.2. The Protected Disclosure Co-Ordinator

The PDC will:

- impartially assess each disclosure to determine whether it appears to be a protected disclosure;
- coordinate the reporting system used by the organisation;
- be the contact point for general advice about the operation of the PD Act and for integrity agencies such as IBAC;
- be responsible for ensuring that the public body carries out its responsibilities under the Acts and the Guidelines;
- liaise with IBAC in regard to the Acts;
- where necessary, arrange for appropriate welfare support for the person making a protected disclosure;
- advise, to the extent possible, the person making a protected disclosure of the progress of an investigation into the disclosed matter;

- establish and manage a confidential filing system to be located in the PDC's Office (*refer Section 7 of these Procedures*);
- collate statistics on disclosures made;
- take all necessary steps to ensure the identity of the person making a protected disclosure and the identity of the person who is subject of the disclosure are kept confidential;
- provide information and disclosure forms to any person wishing to make a disclosure (*Refer Appendix B*);
- make arrangements for a disclosure to be made privately and discreetly and, if necessary, away from the workplace;
- commit to writing any disclosure made orally;
- receive all phone calls, emails and letters from members of the public or employees seeking to make a disclosure;
- within 28 days of receipt, notify a disclosure which the PDC thinks constitutes a protected disclosure to the IBAC for assessment;
- provide the Discloser with contact details of any Welfare Manager(s) appointed to support the Discloser and to protect him or her from any reprisals (*refer to Section 6.4 of these Procedures*);

6.3. Protected Disclosure Officer (PDO)

The PDO will:

- receive phone calls, emails and letters from members of the public or employees seeking to make a disclosure;
- take all necessary steps to ensure the identity of the person making a protected disclosure and the identity of the person who is subject of the disclosure are kept confidential;
- liaise with the PDC;
- provide information and disclosure forms to any person wishing to make a disclosure (*Refer Appendix B*);
- make arrangements for a disclosure to be made privately and discreetly and, if necessary, away from the workplace.

6.4. Welfare Manager

The PDC may appoint an independent Welfare Manager. The Welfare Manager will be responsible for looking after the general welfare of the Discloser.

The Welfare Manager will:

- examine the immediate welfare and protection needs of a Discloser and seek to foster a supportive work environment;
- advise the Discloser of the legislative and administrative protections available to him or her;
- ensure total confidentiality is maintained in strict accordance with the PD Act and the IBAC Act;

- listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making the disclosure; and
- ensure the expectations of the Discloser are realistic.

7. CONFIDENTIALITY

7.1. Statutory requirements

The Council and all appointed officers will, in compliance with sections 52 and 53 of the PD Act, take all reasonable steps to protect and keep confidential the content of a disclosure and the identity of the person making it. Maintaining confidentiality is crucial in ensuring that reprisals are not made against a Discloser.

It is an offence to disclose the content of a disclosure made under the PD Act and/or the identity of a Discloser, punishable by fine of 120 penalty units (\$17,323.20) or imprisonment for 12 months or both for a natural person and 600 penalty units (\$86,616.00) for a body corporate. Circumstances where information may be disclosed are noted in sections 52, 53 and 54 of the PD Act and include:

- where the disclosure is made with the consent of the Discloser to the disclosure of their identity;
- where IBAC or the Victorian Inspectorate has determined that the assessable disclosure is not a protected disclosure and the person or the Council subsequently discloses information about the content of the disclosure or the identity of the Discloser;
- where necessary for the purpose of the exercise of functions under the PD Act or the IBAC Act;
- where necessary for the purpose of obtaining legal advice;
- where necessary to use an interpreter for persons who require such assistance;
- to a parent or guardian of a person who is under 18 years of age; and
- to an independent person, for the purpose of enabling a person who is suffering a disability to understand an obligation under the PD Act.

However, the PD Act prohibits the disclosure of particulars in an annual report and other reports to Parliament that might lead to the identification of a person against whom a protected disclosure is made.

7.2. Establishing a Confidential Electronic and Paper Filing System

The Council will ensure:

- all files relating to disclosures, whether paper or electronic, will be kept in a secure environment and only accessed by Council staff authorised to do so (i.e. the PDC and the PDO);
- all printed material will be kept in files that are clearly marked as "*Protected Disclosure Act Matter*", and will warn of the criminal penalties that apply to any unauthorised divulging of information concerning a protected disclosure;
- any electronic files saved will be password protected or have limitations on access rights to those members of Council staff authorised to access the information (ie the PDC and the PDO);
- any other material, such as tapes from interviews, will be stored securely with access available only to those members of Council staff authorised to access the information (ie the PDC and the PDO); and
- the security of communications between nominated officers and/or contracted officers (i.e. sensitive information or documents) will not be emailed or faxed to a machine to which staff has general access; personal delivery of documents is the best way to ensure confidentiality.

The electronic filing system shall be entirely separate from Council's centralised records system, electronic document management system or customer request/complaints system. Under no circumstances shall details of, or references to, any disclosures be recorded on any of the above systems, except for inclusion of non-personalised case summary details on the Fraud and Corruption Register. All electronic files will be produced and stored on a stand-alone computer and be given password protection. Backup files will be kept on a secured encrypted flash drive. These electronic records will be under the control of the PDC.

These records will eventually be disposed of in accordance with the schedule issued by the Public Record Office Victoria.

The Council will not email documents relevant to a protected disclosure matter and will ensure all phone calls and meetings are conducted in private. Sensitive documents will be hand delivered internally by the PDC.

8. COLLATING AND PUBLISHING STATISTICS

The PD Act (section 67) requires the IBAC to include in its annual report or report of operations information about the number and types of disclosures notified to it by the Council. It shall be the responsibility of the Council's PDC to establish a secure register, in the form of *Appendix A*, to record the information required for reporting requirements of both the PD Act and the Council and to generally keep account of the status of protected disclosures. The register will be confidential and will not record any information that may identify the Discloser.

Describing the type of disclosure requires a statement about the nature of the disclosure, (*for example, an allegation of bribery or fraudulent use of public funds*).

The register will therefore contain the following information relating to any matters concerning the Council:

- the number and types of disclosures made directly to the Council during the year;
- the number and types of disclosures assessed by the Council to be protected disclosures and notified to the IBAC during the year;
- the number and types of disclosures assessed by the Council not to be protected disclosures;
- the number and types of protected disclosures investigated, referred or dismissed by the IBAC (to the extent that the Council has access to that information); and
- any recommendations made by the IBAC or the Ombudsman that relate to the Council.

9. RECEIVING AND ASSESSING DISCLOSURES

9.1. Establish - has the disclosure been made in accordance with Part 2 of the PD Act?

Where the PDC (or PDO or CEO) receives a disclosure relating to improper conduct or detrimental action, the first step is to determine whether the disclosure has been made to the right person or body and then whether the matter falls under the PD Act as a protected disclosure.

It should be noted that the Council has a number of other systems and policies for dealing with complaints and requests, both from members of the public and its staff and/or Council service providers, which are not disclosures under the PD Act.

9.2. Establish - has the disclosure been made to the appropriate person?

A disclosure can only be made to the Council where it concerns an officer, employee, contractor, consultant or volunteer of the Council or providing services on the Council's behalf. A disclosure can be made to:

- the Chief Executive Officer;
- the Council's Protected Disclosure Co-ordinator (PDC) or Protected Disclosure Officer (PDO);

- if the person making the disclosure is an employee or officer of the Council, to an employee who directly or indirectly supervises or manages that person;
- if the disclosure relates to an employee or officer of a Council, to an employee who directly or indirectly supervises or manages that person.

If the disclosure concerns an employee, officer or member of **another public body**, the Council will endeavour to advise the person who has made the disclosure of the correct person or body to whom the disclosure should be directed.

If such a disclosure has been made anonymously, it should be referred to the IBAC.

It is essential to get the disclosure into a written format, even if it is necessary to transcribe it, and get the Discloser to sign it (if possible). This reduces the chance of subsequent dispute about the precise nature of the disclosure, and whether it should have been treated as a protected disclosure. The Council recognises that a person making an oral disclosure may not wish to provide a written, signed statement of that disclosure and will accommodate such a wish. It is also essential to immediately commit an oral disclosure to a written format so it can be dated.

NOTE: Disclosures relating to improper conduct on the part of, or involving, Councillors MUST be made to the IBAC or the Ombudsman. The Council will not accept such disclosures.

9.3. Establish - 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 (i.e. an individual person rather than a corporation) make the disclosure?
- Does the disclosure relate to conduct of the Council, officer or employee at the Council acting in their official capacity or to an employee, contractor, consultant or volunteer of any entity providing services on the Council's behalf?
- 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 the disclosure have reasonable grounds for believing the alleged conduct has occurred?

The PDC will make an assessment as to whether the disclosure is a protected disclosure.

NOTE: There may be situations where a public body receives an allegation of improper conduct or detrimental action, but the person making the allegation/s has not referred to the PD Act. If, on assessment, an allegation meets the criteria set out above, the allegation/s will be treated as a disclosure under the PD Act.

Where the PDC has received a disclosure that has been assessed to be a protected disclosure, the PDC will notify the protected disclosure to the IBAC. This notification **MUST** be made within 28 days of the receipt of the disclosure.

If the disclosure is assessed as NOT being a protected disclosure, the Council must notify the person making the disclosure of that decision and the matter does not need to be dealt with under the PD Act. The PDC will, in consultation with the Chief Executive Officer, decide how the matter should be responded to and the person making the disclosure will be advised of alternative complaint mechanisms available for addressing the allegations comprising the original disclosure.

In reaching a conclusion as to whether a disclosure is a protected disclosure, the PDC will consider whether the disclosure would, if proved true, show, or tend to show, that the officer or employee to whom the disclosure relates:

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

Where the PDC concludes that the disclosure amounts to a protected disclosure, he or she will:

- notify the person who made the disclosure of that conclusion; and
- notify the disclosure to the IBAC for formal determination as to whether it is indeed a protected disclosure.

Notification to the Discloser is not required where the disclosure has been made anonymously.

9.4. Conduct of the Assessment

The PDC will make notes of all discussions and phone calls, and all interviews will be recorded during the course of assessing whether a disclosure is a protected disclosure. Where the Discloser agrees, written statements from the Discloser shall include the Discloser's name and address and each page shall be signed by the Discloser, after the last paragraph.

Notes must be taken at the time of interview. All information gathered in an interview will be stored securely. Interviews will be conducted in private and the PDC will take all reasonable steps to protect the identity of the Discloser.

Where disclosure of the identity of the Discloser cannot be avoided, due to the nature of the allegations, the PDC will warn the Discloser and his or her Welfare Manager of this probability.

9.5. Reporting requirements

Insofar as it is possible, the PDC will ensure that the Discloser is kept regularly informed about the handling of their disclosure and whether it has been assessed as a protected disclosure and therefore notified to the IBAC.

10. PREVENTING DETRIMENTAL ACTIONS

10.1. Commitment to protecting persons making disclosures

The Council is committed to the protection of persons making genuine disclosures against detrimental action taken in reprisal for the making of those disclosures. The appointed Welfare Manager is responsible for ensuring that Disclosers are protected from direct and indirect detrimental action, and that the culture of the workplace is supportive of protected disclosures being made.

All employees will be 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 (\$34,646.40) 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 PD Act and can result in an investigation.

The Welfare Manager must not divulge any details relating to the disclosed matter to any person other than the PDC (or the PDO or the Chief Executive Officer, as the case may be). All meetings between the Welfare Manager and the Discloser must be conducted discreetly to protect the confidentiality of the disclosure and the Discloser.

Other statutory protections (contained in the PD Act) applicable to a Discloser include:

- immunity from civil and criminal liability and disciplinary action for the making of the disclosure (section 39);
- immunity from liability for breaching a confidentiality provision (section 40);
- protection from actions in defamation (section 41);
- provision of a statutory right to sue for damages for reprisals made (section 45);
- provision of a statutory right to apply for reinstatement where detrimental action involves termination or variation of employment (section 46); and
- provision of a statutory right to apply to the Supreme Court for an injunction or order requiring detrimental action to be remedied (section 49).

The above protections attach to the making of the disclosure. A person who makes a disclosure is not immune from liability for his or her own conduct.

10.2. Occurrence of detrimental action

If a Discloser 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 PDC will:

- record details of the incident; and
- advise the Discloser of his or her rights under the PD Act.

The taking of detrimental action in reprisal for the making of a disclosure can be an offence against the PD Act as well as grounds for making a further disclosure. Where such detrimental action is reported, the PDC will assess the report as a new disclosure under the PD Act.

11. MANAGEMENT OF PERSONS AGAINST WHOM A DISCLOSURE HAS BEEN MADE

The Council recognises that employees against whom disclosures are made must also be supported during the handling of disclosures. The Council will take all reasonable steps to ensure the confidentiality of the person who is the subject of the disclosure.

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.

12. CRIMINAL OFFENCES

The Council will ensure that officers appointed to handle protected disclosures and all other employees are aware of the following offences created by the Act:

1. 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 (\$36,646.40) or two years imprisonment or both.
2. It is an offence for a person to disclose information about the content of a disclosure without legislative authority. The Act provides a maximum penalty of a fine of 120 penalty units (\$17,323.20) or 12 months imprisonment or both for a natural person and 600 penalty units (\$86,616.00) for a body corporate.
3. It is an offence for a person to obstruct IBAC Officers or the Ombudsman in the performance of their responsibilities under the IBAC Act. The Act provides a maximum penalty of 120 penalty units (\$17,323.20) or 12 months imprisonment or both.
4. 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 120 penalty units (\$17,323.20) or 12 months imprisonment or both.

13. Related documents and attachments

Fraud & Corruption Control Policy

Protected Disclosure Act 2012

Independent Broad-based Anti-corruption Commission Act 2011

14. Appendices

14.1. Appendix A: Protected Disclosure Act 2012 Register

YARRA CITY COUNCIL

PROTECTED DISCLOSURE ACT 2012 REGISTER

The register below records information about disclosures made to the Council under *Protected Disclosure Act 2012* that have been determined to be protected disclosures.

| | File A | File B | File C | File D | File E |
|---|--------|--------|--------|--------|--------|
| Date Disclosure Received | | | | | |
| Type of disclosure | | | | | |
| Is disclosure a protected disclosure? | | | | | |
| Date above determination made | | | | | |
| Date Discloser informed of determination | | | | | |
| Date disclosure referred to the IBAC (or Ombudsman) | | | | | |
| Determination made by the IBAC (or Ombudsman) | | | | | |
| Recommendations made by the IBAC (or Ombudsman) | | | | | |
| Date reporting requirements satisfied | | | | | |

14.2. Appendix B: Protected Disclosure Form

PROTECTED DISCLOSURE FORM

Protected Disclosure Act 2012 INFORMATION

1. Making a disclosure under the *Protected Disclosure Act 2012*

A disclosure can be made by any person wishing to disclose “*improper conduct*” or “*detrimental action*” by a Council officer, member or employee in their official capacity or an employee, contractor, consultant or volunteer providing services on the Council’s behalf.

A person wishing to make such a disclosure can do so by:

- completing this disclosure form and submitting it by mail or personal delivery to the office of the Council; or
- by arranging to meet with the Protected Disclosure Co-ordinator, Protected Disclosure Officer or Chief Executive Officer to make the disclosure directly to him/her; or
- by telephone or some form of electronic communication not involving writing to:
 - the Chief Executive Officer; or
 - the Protected Disclosure Co-ordinator; or
 - the Protected Disclosure Officer; or
 - a member, officer or employee of the Council who directly or indirectly supervises or manages the person making the disclosure (if that person is a member, officer or employee of the Council); or
 - a member, officer or employee of the Council who directly or indirectly supervises or manages the person the subject of the disclosure (if that person is a member, officer or employee of the Council).

Contact details of Protected Disclosure Co-ordinator - Ivan Gilbert, Executive Manager
Governance:

Mail: Yarra City Council Protected Disclosure Co-ordinator
Mr Ivan Gilbert
P.O. Box 168
RICHMOND 3121

Tel: 9205 5110
Fax: (03) 8417 6666
Email: ivan.gilbert@yarracity.vic.gov.au
Interpreter Service:
Telephone 03 9280 1940

Contact details of Chief Executive Officer – Ms Vijaya Vaidyanath:

Mail: Yarra City Council Chief Executive Officer
Ms Vijaya Vaidyanath
P.O. Box 168
RICHMOND 3121

Tel: 9205 5051
Fax (03) 8417 6666
Email: vijaya.vaidyanath@yarracity.vic.gov.au
Interpreter Service:
Telephone 03 9280 1940

NOTE: A disclosure should only be made to the Chief Executive Officer when it involves the Protected Disclosure Co-ordinator.

Contact details of Protected Disclosure Officer – Mr Jack Crawford:

Mail: Yarra City Council Protected Disclosure Officer
Mr Jack Crawford
P.O. Box 168
RICHMOND 3121

Tel: 9205 5210
Fax (03) 8417 6666
Email: jack.crawford@yarracity.vic.gov.au
Interpreter Service:
Telephone 03 9280 1940

Disclosures about Councillors must be made to the Independent Broad-based Anti-corruption Commission office:

Mail: The Independent Broad-based Anti-corruption Commissioner
Level 1, 459 Collins Street (North Tower)
Melbourne Victoria 3000
GPO Box 24234
Melbourne Victoria 3000

Tel: 1300 735 135
Fax (03) 8635 6444
Email:
Interpreter Service: 131 450
Internet: www.ibac.vic.gov.au

or to the Ombudsman's office:

Mail: The Ombudsman Victoria
Level 9, 459 Collins Street (North Tower)
Melbourne Victoria 3000
(DX 210174)

Tel: 9613 6222

Email: ombudvic@ombudsman.vic.gov.au

Interpreter Service: 131 450

Toll Free: 1800 806 314 (Regional only)

Internet: www.ombudsman.vic.gov.au

A person can make an anonymous disclosure. If you do this, all the information and evidence should be provided so that an assessment can be made about the conduct disclosed.

2. What can a disclosure be made about?

If a person has reasonable grounds for believing that a Council employee, or the employee, contractor, consultant or volunteer of any entity providing services on the Council's behalf, has engaged, is engaging or proposes to engage in "improper conduct" or "detrimental action" in reprisal for a protected disclosure then grounds exist for making a disclosure.

"*Improper conduct*" includes corrupt conduct, substantial mismanagement of public resources, conduct involving substantial risk to public health or safety or conduct involving substantial risk to the environment that, if proven would either constitute a criminal offence or constitute reasonable grounds for terminating the services of the employee or officer.

"*Detrimental action*" includes:

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

The conduct or action about which a person wishes to make a disclosure may have occurred before the commencement of the *Protected Disclosure Act 2012*. However, if the conduct has already been investigated under other legislation or complaint processes then no action will be taken under the *Protected Disclosure Act 2012* unless there is new evidence.

3. What evidence or information do you need to provide about the disclosure?

A person making a disclosure should provide as much detail and supporting evidence of the disclosure as possible. The Protected Disclosure Co-ordinator (or the Protected Disclosure Officer or the Chief Executive Officer, as the case may be) must determine whether the disclosure shows, or tends to show, that the officer or employee engaged, or is engaging, or proposes to engage, in improper conduct or detrimental action and is therefore a protected disclosure attracting the protections of the *Protected Disclosure Act 2012* and requiring notification to the IBAC.

A *mere suspicion* that improper conduct or detrimental action has occurred will not necessarily be enough for the Protected Disclosure Co-ordinator, Protected Disclosure Officer or Chief Executive Officer to determine that a disclosure is a protected disclosure.

4. Confidentiality

To ensure the protection, confidentiality and security of the information in this form, it should be handed to the Council Protected Disclosure Co-ordinator, Protected Disclosure Officer or CEO.

Duplicate copies of the form should **not** be made, to protect confidentiality.

In the event that copies of the form are made prior to submission, the Council cannot be responsible for the consequences of any breach of confidentiality that may occur arising from disclosure of the material.

The form and information contained in it, once submitted to the Council is **confidential**.

5. Council Action

After a disclosure has been lodged, the Council must assess whether it is a protected disclosure for the purposes of the *Protected Disclosure Act 2012*. This means:

- The Protected Disclosure Co-ordinator (or the Protected Disclosure Officer or the Chief Executive Officer, as the case may be) will assess whether the disclosure is a protected disclosure. That is, whether the disclosure:
 - has been made by a natural person; and
 - relates to the conduct of a person, public body or public officer; and
 - shows that an officer or employee of the Council or an employee, contractor, consultant or volunteer of an entity providing services on the Council's behalf has engaged, is engaging, or proposes to engage, in improper conduct, or has taken, is taking, or proposes to take, detrimental action in reprisal for a protected disclosure; OR
 - the person making the disclosure believes on reasonable grounds that an officer or employee of the Council or an employee, contractor, consultant or volunteer of an entity providing services on the Council's behalf has engaged, is engaging, or proposes to engage, in improper conduct, or has taken, is taking, or proposes to take, detrimental action in reprisal for a protected disclosure.
- If each of the above matters is satisfied, the disclosure is a protected disclosure for the purposes of the *Protected Disclosure Act 2012* and will be notified to the IBAC. The Discloser will have the benefit of the protections set out in paragraph 6 below.
- A person making a disclosure will be notified when a decision has been made about whether the disclosure is a "protected disclosure" and has been notified to IBAC as required by the *Protected Disclosure Act 2012*.

6. Protection of persons making a disclosure

If your disclosure is a “*protected disclosure*” under the *Protected Disclosure Act 2012* then:

- it is an offence for any person to take any reprisals or actions that are detrimental to the Discloser;
- a Discloser has a defence to any defamation proceedings that arise from a disclosure;
- the disclosure is confidential and it is an offence for the information to be disclosed (unless in the exercise of functions under the *Protected Disclosure Act 2012*);
- a Discloser can commence civil proceedings in respect of any detrimental action or reprisals taking place against him/her; and
- a Discloser cannot be subject to any civil or criminal liability or any liability arising by way of administrative processes (including disciplinary action) for making the disclosure.

7. What if a disclosure is not a protected disclosure?

If a disclosure is not a protected disclosure then:

- the person making the disclosure will not receive the protections listed above and set out in the *Protected Disclosure Act 2012*;
- the disclosure will not be notified to the IBAC;
- there may be other avenues of complaint that may be explored with the Protected Disclosure Co-ordinator, the Protected Disclosure Officer or the Chief Executive Officer;
- the Council will regard the disclosure as confidential; however, it cannot guarantee that it is exempt from release under the FOI Act; and
- the Council may consider that, even though the disclosure does not meet the criteria of the – *Protected Disclosure Act 2012*, there are grounds on which to take other management or disciplinary action in respect of the allegations.

8. Responsibilities of a person making a disclosure

A person making a disclosure under the *Protected Disclosure Act 2012* is required to:

- keep a protected disclosure confidential; and
- provide all information in their possession or within their knowledge to verify the disclosure

9. What are the Penalties regarding false information

It is an offence to knowingly provide false information intending for it to be actioned under the *Protected Disclosure Act 2012*. The maximum penalty for that offence is \$17,323.20 or 12 months imprisonment (or both)



CONFIDENTIAL PROTECTED DISCLOSURE FORM

Note:

The person completing this form should provide as much information as is relevant to the disclosure including:

- information in their possession;
- information not in their possession but witnessed by the person; and
- details of any witnesses or people who can verify the conduct disclosed.

CONTACT DETAILS

Name

Address

Telephone.....

[A person may make an anonymous disclosure. However, for this disclosure to be protected under the Protected Disclosure Act 2012, it must comply with the requirements of the Act.

The Council may need to follow up your disclosure to ensure there is sufficient evidence of the matters alleged. It may not be able to do so if you elect to make your disclosure anonymously.]

IMPROPER CONDUCT DISCLOSURE

[Describe the 'improper conduct' – defined under the Protected Disclosure Act 2012 as being corrupt conduct, conduct which adversely effects the honest performance by a public officer of a public officer or public body of his, her or its functions, the dishonest performance of a public officer or public body of his, her or its functions, the knowing or reckless breaching of public trust by a public officer or public body, the misuse of information or materials by a public officer or public body in the course of the performance of his, her or its functions, conspiracy to engage in improper conduct, the substantial mismanagement of public resources or, conduct which involves a substantial risk to public health or safety or to the environment, action which caused injury, loss or damage, intimidation or harassment, discrimination disadvantage or adverse treatment.]

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SUPPORTING INFORMATION

Names

[Provide the **full name** (if known) and/or a description of any officer, employee or member of the Council or on a Council Committee or employee, contractor, consultant or volunteer of an entity providing services on the Council's behalf that you believe to have an involvement in the matter complained of.]

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.....

Council function

[Provide details (if known) of the function, role or responsibility of the officer, employee or member of the Council or on a Council Committee or employee, contractor, consultant or volunteer of an entity providing services on Council's behalf.]

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.....

Dates

[Provide the dates on which, you believe the disclosed conduct occurred.]

.....
.....

Location

[State the location at which the disclosed conduct occurred.]

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.....
.....



GOVERNANCE – PROTECTED DISCLOSURE PROCEDURES

Approval Date: 30/7/2013 Next Review 30/6/2015

Witnesses

[State the full name and contact details (if known) of any witnesses to the disclosed conduct, or who may be able to verify the conduct you have disclosed. State the incidence or conduct that the person is witness to.]

Name

.....

Contact details (Address and phone numbers)

.....

.....

What did the person witness?

.....

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.....

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Name

.....

Contact details (Address and phone numbers)

.....

.....

What did the person witness?

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Documentary evidence

[State the nature of any documents or written material that support your claim or that you have seen but cannot produce.]

.....

Other evidence

[State the nature of any other evidence that supports your claim.]

.....

Administration Details

Name of Officer taking the complaint

Date on which disclosure is made

Location at which disclosure is made

State presence of other persons

Officer responsible for disclosure

Date by which determination to be made

Other.....