



# PROTECTED DISCLOSURE POLICY

COUNCIL POLICY	
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Responsible Officer/s:	Group Manager, Corporate & Community Manager, Governance and Regulatory Services

## 1. PURPOSE

The purpose of Council's Protected Disclosure Policy is to support the ethical behaviour and values expected from Councillors, Council officers and employees and members of Council committees for handling and making of protected disclosures that complies with the *Protected Disclosure Act 2012* (the Act).

## 2. OBJECTIVE

The objectives of the Protected Disclosure Policy are:

1. To encourage and facilitate the disclosure of improper conduct or detrimental action by Councillors or Council officers or employees;
2. To protect Council against improper conduct or detrimental action by Councillors or Council officers or employees;
3. To ensure proper protection of the person making the complaint from retribution for making the disclosure;
4. To provide for confidentiality for the content of the disclosure and the identity of the complainant; and
5. To establish a process for the making of disclosures of improper conduct by Councillors and Council officers or employees and to provide a system of investigation of such disclosures.

## 3. SCOPE

The *Act* requires Council to establish internal processes that facilitate disclosures, effectively manage the receipt of information and provide protection for looking after all parties who may be involved.

Under the Act, Council may receive disclosures regarding the improper conduct of Council or its officers or employees and members of Council committees. Disclosures regarding Councillors must be made directly to the Independent Broad-based Anti-Corruption Commission (**IBAC**) or the Victorian Ombudsman.

This Policy will apply to Councillors, Council officers or employees, members of Council Committees and they are accountable for complying with all relevant legislative and policy requirements.

#### 4. DEFINITIONS

Reference term	Definition
Act	<i>Protected Disclosure Act 2012.</i>
Corrupt conduct	Refer “improper conduct” below.
Council	"Council" has the same meaning as it has in section 3(1) of the <i>Local Government Act 1989</i> . "Council means a municipal council (including the Council of the City of Melbourne and the Council of the City of Geelong) whether constituted before or after the commencement of this section."
Councillor	"Councillor" has the same meaning as it has in section 3(1) of the <i>Local Government Act 1989</i> . "Councillor means a person who holds the office of member of a Council."
Detrimental action	"detrimental action" includes— (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 the taking of disciplinary action.
IBAC	"IBAC" means the Independent Broad-based Anti-corruption Commission established under section 12 of the <i>Independent Broad-based Anti-corruption Commission Act 2011</i> ;
Improper conduct	"improper conduct" means— (a) corrupt conduct; or (b) conduct specified in Section 4 subsection (2) of the Act 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.
Ombudsman	"Ombudsman" means the person appointed as the Ombudsman under section 3 of the <i>Ombudsman Act 1973</i> .

Protected disclosure	The <i>Protected Disclosure Act 2012</i> provides that a person may disclose information that shows or tends to show, or the person believes on reasonable grounds shows, or tends to show: <ul style="list-style-type: none"> <li>• A person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct; or</li> <li>• A public officer or public body has taken, is taking or proposes to take detrimental action against a person.</li> </ul> "protected disclosure" means— <ol style="list-style-type: none"> <li>(a) a disclosure made in accordance with Part 2; or</li> <li>(b) a complaint made in accordance with Section 167 (3) of the Victoria Police Act 2013</li> </ol>
Protected Disclosure Co-Ordinator	"Protected Disclosure Coordinator" means the person(s) appointed by Council to impartially assess each disclosure to determine whether it appears to be a protected disclosure and to receive a complaint of the nature described in this Policy (Director, Innovation and Performance at 3/12/18)
Protected Disclosure Officer	"Protected Disclosure Officer" means the person(s) appointed by Council to receive a complaint of the nature described in this Policy (Group Manager, Corporate and Community at 3/12/18)

## 5. POLICY

### 5.1 Policy Statement

Council is committed to the aims and objectives of the *Protected Disclosure Act 2012*. Council does not tolerate improper conduct, or reprisals against those who come forward to disclose such conduct.

Council recognises and values transparency in its administrative and management practices and supports the making of disclosures that may reveal improper conduct.

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

## 5.2 Policy Principles and Application

Council will apply the following fundamental principles in facilitating the appropriate reporting of, and supporting the people involved and managing the process of, disclosure of improper conduct and detrimental action by Councillors or Council officers or employees and members of Council Committees;

- Council is committed to the aims and objectives of the *Protected Disclosure Act 2012*.
- Council officers, employees and members of Council Committees may report to the Protected Disclosure Coordinator or an appropriate Protected Disclosure Officer or external authority any behaviour that violates any law, rule or regulation or represents corrupt or improper conduct (including bribery), mismanagement of resources, or is a danger to public health or safety.
- Council will not tolerate improper conduct by Councillors or Council officers, employees and members of Council Committees nor the taking of reprisals against those who come forward to disclose such conduct.
- Council recognises the value of transparency and accountability in its administrative and management practices, and supports the making of disclosures that reveal corrupt or improper conduct (including bribery), conduct involving a substantial mismanagement of public resources, or conduct involving a substantial risk to public health and safety or the environment.
- 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 afford natural justice to all parties including the person who is the subject of the disclosure.
- All disclosures will be treated confidentially.
- The only method of making a protected disclosure relating to a Councillor is to the IBAC.
- Council will establish a procedure in relation to the management and handling of protected disclosures in accordance with this Policy.

## 5.3 What is a protected disclosure?

Where a person believes there is reasonable grounds to support that a Councillor or Council officer or employee or member of a Council Committee is engaging in improper action or detrimental action, that person may report the conduct (protected disclosure) to the appropriate person or IBAC and be assured of confidentiality and protection from reprisal as a result of making the protected disclosure.

## 5.4 Who can make a protected disclosure?

A protected disclosure can be made where a person who has reasonable grounds for believing that improper or corrupt conduct or detrimental action has occurred.

## **5.5 How to make a disclosure**

A protected disclosure may be made even if the person making the disclosure cannot identify the person or the body about whom they are making the disclosure. A protected disclosure can be made:

- In writing ( using Council's complaints form or by post);
- In person;
- By telephone; or
- By email.

Disclosures may be made anonymously.

## **5.6 False disclosures**

A person must not knowingly make a false disclosure or provide false information. It is an offence under the protected disclosure Act and penalties may be applied.

## **5.7 Roles & Responsibilities**

It is the responsibility of the Group Manager Corporate & Community to maintain the Protected Disclosure Policy and to establish a procedure for the management of disclosures which are covered by this Policy.

In the event that a disclosure is received, the Council will acknowledge receipt of the disclosure, initially review the matter and may make a determination as to whether the disclosure is covered by the provisions of the Act. If required, the disclosure will also be referred to IBAC for consideration and investigation. The person who made the disclosure will be advised if the information received is not deemed to be a protected disclosure under the Act.

It is also the responsibility of the nominated Protected Disclosure Coordinator or Protected Disclosure Officer to ensure the effective handling of information and people involved in a protected disclosure. These actions will include taking all reasonable steps to ensure that the identity of the person making a protected disclosure and the person who is subject to the protected disclosure are kept confidential.

Where a complaint in the nature of a protected disclosure is made against a Councillor, the notification must be made to the IBAC, and not to the Council.

## **6. MONITORING, REVIEW AND EVALUATION**

The Corporate and Community Directorate is responsible for implementing, monitoring, evaluating and reviewing the Protected Disclosure Policy as required from time to time.

**7. Charter of Human Rights and Responsibilities Act 2006 and the Equal Opportunity Act 2010**

The Council acknowledges the legal responsibility to comply with the *Charter of Human Rights and Responsibilities Act 2006* and the *Equal Opportunity Act 2010*. The *Charter of Human Rights and Responsibilities Act 2006* is designed to protect the fundamental rights and freedoms of citizens. The Charter gives legal protection to 20 fundamental human rights under four key values that include freedom, respect, equality and dignity.

**8. RELATED DOCUMENTS**

**8.1 Policies**

- Councillor Code of Conduct
- Staff Code of Conduct
- Risk Management Policy
- Procurement Policy
- Fraud and Corruption Policy
- Privacy and Data Protection Policy
- Acceptance of Gifts and Hospitality Policy
- Purchasing Card Policy
- Discretionary Expenditure Policy

**8.2 Strategies and Procedures**

- Council Plan
- Protected Disclosure Procedures

**8.3 Legislation**

- *Protected Disclosure Act 2012*
- *Protected Disclosure Regulations 2013*

**9. ATTACHMENTS**

Nil