



## PROTECTED DISCLOSURE POLICY

Responsible Officer: <b>Governance and Risk Advisor</b>	Adoption Date:	August 2015
	Approved By:	Council
Authorising Officer: <b>Director Corporate Services</b>	Review Date:	August 2018
	Policy Type	Council Policy

### SCOPE

This policy applies to Council, Councillors, Council employees and any other persons who are involved in improper conduct or detrimental action, or who wish to make disclosures relating to Council, Councillors, Council employees and any other persons who are involved in improper conduct or detrimental action.

### PURPOSE

This policy seeks to encourage and facilitate the making of disclosures of improper conduct by Council, Councillors, Council employees and other persons and disclosure of detrimental action taken in reprisal for a person making a disclosure under the *Protected Disclosure Act 2012* (the Act).

It also aims to provide for the protection of persons making disclosures from detrimental actions and to provide for the confidentiality of the content of those disclosures and the confidentiality of the identity of persons who make those disclosures.

This policy is framed in accordance with the Act, Regulations and the Independent Broad-Based Anti-Corruption Commission (IBAC) guidelines. It covers the high level principles relating to the function and activities of protected disclosures. Each requirement consists of a statement of best practice followed by an explanation of what is meant by the requirement and why the requirement is important.

### POLICY

#### EMPLOYEE RESPONSIBILITIES

##### 1. MAKING A DISCLOSURE

- 1.1. **Community members, Councillors and Council employees are encouraged to report improper conduct related to the functions and activities performed by Council, Councillors or Council staff.**

Explanation

*Employees are best placed to detect wrongdoing.*

*Reporting improper conduct is important as it can:*

- *Expose systemic corruption that would otherwise remain hidden; and*
- *Support integrity in Council through honest and accountable local government.*

**1.2 A disclosure may be a disclosure made in accordance with the Act even if it is a complaint, notification or disclosure (however described) made under another Act.**

**1.3 Any person can make a disclosure about improper conduct by public bodies and public officers. This includes a person who is a member, officer or employee of a public body or public officer. However, the making of disclosure is not limited to 'internal' disclosers.**

Explanation

*Council is defined as a public body under the Act.*

*Councillors and Council staff are defined as public officers under the Act.*

*Improper conduct includes corrupt conduct and specified conduct:*

- *Corrupt conduct is conduct that if proven would constitute a relevant offence, including:*
  - *Conduct of any person that adversely affects the honest performance by Council, Councillors, or a member, officer or employee of Council of their functions;*
  - *Conduct of Council, Councillors, or a member, officer or employee of Council dishonestly performing their functions;*
  - *Conduct of Council, Councillors, or a member, officer or employee of Council involving knowingly or recklessly breaching public trust;*
  - *Conduct of Council, Councillors, or a member, officer or employees of Council that involves the misuse of information or material acquired in the course of the performance of their functions; and*
  - *Conduct that could constitute a conspiracy or attempt to engage in any of the above.*
- *Specified conduct is conduct that, if proved, would constitute a criminal offence or reasonable grounds for dismissal, including:*
  - *Conduct of any person that adversely affects the honest performance by a public officer or public body of functions;*
  - *Conduct of Council, Councillors, or a member, officer or employee of Council that constitutes or involves the dishonest performance of their functions;*
  - *Conduct of Council, Councillors, or a member, officer or employee of Council that constitutes or involves knowingly or recklessly breaching public trust;*
  - *Conduct of Council, Councillors, or a member, officer or employee of Council that involves the misuse of information or material acquired in the course of the performance of their functions;*
  - *Conduct that could constitute a conspiracy or an attempt to engage in any of the above;*
  - *Conduct of Council, Councillors, or a member, officer or employee of Council that involves substantial mismanagement of public resources;*

- *Conduct of Council, Councillors, or a member, officer or employee of Council that involves substantial risk to public health or safety or to the environment.*

**1.4 Any person can make a disclosure about detrimental action against a person by Council, Councillors, or a member, officer or employee of Council in reprisal for the making of a protected disclosure by any person.**

Explanation

*The Act creates an offence for a person to take detrimental action against another person in reprisal for someone making a protected disclosure.*

*Detrimental action by a person is defined as including the following:*

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

**1.5 For a disclosure to be a protected disclosure it must be made in accordance with the requirements of the Act and in accordance with the Protected Disclosure Procedures.**

Explanation

*Refer to Council's Protected Disclosure Procedures.*

**1.6 A person may only make a disclosure to Council that relates to the conduct of Council or its own members, officers or employees. Such disclosures may also be made to IBAC, or to the Victorian Ombudsman.**

Explanation

*If Council receives a disclosure about an employee, officer or member of another public body or about a Councillor, the disclosure has not been made in accordance with the Act.*

**1.7 A person must only make a disclosure that relates to a Councillor to IBAC, or to the Victorian Ombudsman (if within the Ombudsman's jurisdiction to investigate).**

Explanation

*The Act provides that disclosures about Councillors must only be made to particular entities.*

**1.8 A company or a business cannot make a disclosure. The person making the disclosure must be an individual or a group of individuals making a joint disclosure.**

Explanation

*The protections afforded by the Act can only be applied to a natural person or persons.*

**1.9 A disclosure can be made anonymously.**

Explanation

*A discloser need not identify themselves to Council to make a disclosure to Council under the Act.*

*An anonymous disclosure can be made by using unverifiable email addresses, through anonymous phone calls or in a face-to-face conversation or meeting where the person refuses to be identified.*

*This creates potential difficulties for Council in being able to assess whether a complaint is a disclosure.*

**1.10 A person can make a disclosure in circumstances where they cannot identify the person or organisation to which the disclosure relates.**

Explanation

*This creates potential difficulties in being able to assess whether a complaint is a disclosure made under the Act.*

**1.11 A person may make a disclosure verbally.**

Explanation

*A person can make a verbal disclosure:*

- *In person;*
- *By phone;*
- *By leaving a voice mail message;*
- *By any other form of electronic communication that does not require writing (note that an email is considered to be a written disclosure).*

**1.12 A disclosure must be made in private.**

Explanation

*This means that the person making the disclosure must reasonably believe that only the following people are present or able to listen to the conversation:*

- *The person making the disclosure*
- *A lawyer representing the person (if any)*
- *One or more people to whom a disclosure can be made under the Act or Regulations.*

*This does not preclude a group of individuals making of a joint disclosure at the one time.*

**1.13 An oral disclosure to Council may only be made to a person identified in the prescribed procedure for making the disclosure to Council.**

Explanation

*Persons in Council who may receive a disclosure can include:*

- *The Chief Executive Officer; or*

- *A person identified as a person who can receive disclosures in the procedures established by Council (Protected Disclosure Coordinator); or*
- *If the person making the disclosure is a member, officer or employee of Council:*
  - *The Chief Executive Officer; or*
  - *A person identified as a person who can receive disclosures in the procedures established by Council (Protected Disclosure Coordinator); or*
  - *A member, officer or employee of Council who directly or indirectly manages that person; or*
- *If the disclosure relates to a person who is a member, officer or employee of Council:*
  - *The Chief Executive Officer; or*
  - *A person identified as a person who can receive disclosures in the procedures established by Council (Protected Disclosure Coordinator); or*
  - *A member, officer or employee of Council who directly or indirectly supervises or manages the person making the disclosure; or*
  - *A member, officer or employee of Council who directly or indirectly manages the person to which the disclosure relates.*

#### **1.14 A person may make a disclosure in writing.**

Explanation

*A written disclosure can only be provided to Council by:*

- *Personal delivery to the Council office;*
- *Mail addressed to the Council office; or*
- *Email to the official email address of:*
  - *Council; or*
  - *The Chief Executive Officer; or*
  - *A person identified as a person who can receive disclosures in the procedures established by Council( Protected Disclosure Coordinator); or*
  - *A member, officer or employee of Council who directly or indirectly manages the person making the disclosure; or*
  - *A member, officer or employee of Council who directly or indirectly manages the person to which the disclosure relates.*

## **2. PROTECTION FOR PERSONS MAKING A DISCLOSURE**

### **2.1 Protections are provided to persons who make a disclosure that is a protected disclosure from the time at which the disclosure is made.**

Explanation

*They apply even if Council does not notify the disclosure to IBAC, and whether or not IBAC has determined that it is a protected disclosure complaint.*

*The protections also apply to further information relating to a protected disclosure made by the original discloser, if the further information has been provided, verbally or in writing, to:*

- *Council;*
- *IBAC, or*

- *An investigating entity investigating the protected disclosure.*

**2.2 A person who makes a protected disclosure is not subject to any civil or criminal liability or any liability arising by way of administrative process (including disciplinary action) for making the disclosure unless that person provides information under the Act that that person knows is false or misleading.**

Explanation

*Persons making protected disclosures are immune from liability unless they mislead.*

**2.3 A person who makes a protected disclosure does not by doing so commit an offence under any Act or obligation that imposes a duty to maintain confidentiality unless that person provides information under the Act that that person knows is false or misleading.**

Explanation

*Council employees are given specific protections under the Act to provide information to other Council employees or IBAC in dealing with a disclosure they have received. The employee does not commit an offence under section 95 of the Constitution Act or other Act imposing a duty to maintain confidentiality, or breach confidentiality obligations or information disclosure restrictions when he or she acts in good faith and in accordance with the Act and Regulations and these guidelines.*

**2.4 In any proceeding for defamation there is a defence of absolute privilege in respect of the making of a protected disclosure unless a person provides information under the Act that that person knows is false or misleading.**

Explanation

*Persons making protected disclosures have a defence against defamation action.*

**2.5 A person's liability for their conduct is not affected by the person's disclosure of that conduct under the Act.**

Explanation

*A person remains liable for their own conduct even though the person has made a disclosure of that conduct under the Act.*

**2.6 A person must not take detrimental action against another person in reprisal for a protected disclosure.**

Explanation

*The Act creates an offence for a person to take detrimental action against another person in reprisal for someone making a protected disclosure. Detrimental action is defined as including:*

- *Action causing injury, loss or damage;*
- *Intimidation or harassment; or*

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

**2.7 A person who takes detrimental action against another person in reprisal for a protected disclosure is liable in damages for any injury, loss or damage to that other person.**

### **3. CONFIDENTIALITY**

**3.1 The content or information about the content, of an assessable disclosure must not be disclosed.**

Explanation

*This applies to any person:*

- *To whom an assessable disclosure has been made; or*
- *Who receives an assessable disclosure in performance of their duties or functions; or*
- *To whom IBAC or the Victorian Inspectorate provides information about the content of an assessable disclosure in the course of assessing the disclosure to determine whether the disclosure is a protected disclosure complaint; or*
- *To whom an assessable disclosure, or information about the content of an assessable disclosure, is disclosed in any of the following circumstances:*
  - *In accordance with the circumstances in which information may be disclosed; or*
  - *In accordance with a direction or authorisation given by the investigating entity that is investigating the disclosure; or*
  - *To the extent necessary for the purpose of taking lawful action in relation to the conduct that is the subject of the assessable disclosure including a disciplinary process or action;*
- *To whom an assessable disclosure, or information about the content of an assessable disclosure, has been disclosed in contravention of the above.*

**3.2 A person must not disclose information likely to lead to the identification of a person who has made an assessable disclosure unless in certain limited circumstances.**

Explanation

*Circumstances in which information may be disclosed include:*

- *The person who made the assessable disclosure has given written consent to an investigating entity to disclose; or*
- *IBAC or the Victorian Inspectorate has determined that the assessable disclosure is not a protected disclosure complaint and the person discloses the information after that determination; or*
- *An investigating entity has published in a report to Parliament under this or any other Act, or otherwise made public, the information; and in doing so, acted consistently with the obligations relating to confidentiality that apply to the investigating entity under this Act and the person discloses the information after that publication.*

**3.3 There are only certain limited circumstances in which the content or information about the content, of an assessable disclosure or information**

**likely to lead to the identification of a person who has made an assessable disclosure may be disclosed.**

Explanation

*Circumstances in which information may be disclosed include:*

- *Where necessary for the purpose of the exercise of functions under the Act;*
- *By an investigating entity, or an officer of an investigating entity, where necessary for the purpose of the exercise of functions under the Independent Broad-based Anti-corruption Commission Act 2011, the Victorian Inspectorate Act 2011 or the Ombudsman Act 1973;*
- *For the purpose of a proceeding for an offence against the Act, the Independent Broad-based Anti-corruption Commission Act 2011, the Victorian Inspectorate Act 2011, the Ombudsman Act 1973 or the Evidence (Miscellaneous Provisions) Act 1958 arising from an investigation by the Ombudsman;*
- *For the purpose of a disciplinary process or action instituted in respect of conduct that could constitute an offence against the Act, the Independent Broad-based Anti-corruption Commission Act 2011, the Victorian Inspectorate Act 2011, the Ombudsman Act 1973 or the Evidence (Miscellaneous Provisions) Act 1958 arising from an investigation by the Ombudsman;*
- *For the purpose of obtaining legal advice or representation in relation to a witness summons, a confidentiality notice, a notice cancelling a confidentiality notice or an order extending a confidentiality notice;*
- *For the purpose of obtaining legal advice or representation in relation to the person's rights, liabilities, obligations and privileges under the Act, the Independent Broad-based Anti-corruption Commission Act 2011, the Victorian Inspectorate Act 2011 or the Ombudsman Act 1973;*
- *By an Australian legal practitioner to whom an assessable disclosure or information has been disclosed in the circumstances specified in relation to obtaining legal advice as set out above, for the purpose of complying with a legal duty of disclosure or a professional obligation arising from his or her professional relationship with his or her client;*
- *To an interpreter, to assist a person who does not have a sufficient knowledge of the English language;*
- *To a parent or guardian of a person or to an independent person, to assist a person who is under the age of 18 years;*
- *To an independent person, for the purpose of enabling a person who is illiterate or has a mental or physical impairment that prevents the person from understanding an obligation.*

**3.4 A person making a disclosure, or other persons who receive information from a discloser, must not disclose, subject to the specific exceptions listed in the explanation below, that:**

- **Their disclosure has been notified to IBAC for assessment; or**
- **IBAC or the Victorian Inspectorate has determined their disclosure to be a protected disclosure complaint.**

Explanation

*The disclosure must remain confidential except for disclosure:*

- *To any person where necessary for the purposes of obtaining any information, document or other thing to comply with a witness summons, a confidentiality*

- notice, a notice cancelling a confidentiality notice or an order extending a confidentiality notice or compliance with confidentiality provisions, including:*
- *Disclosure to an interpreter if a person does not have a sufficient knowledge of the English language;*
  - *Disclosure to a parent, guardian or independent person in the case of a person under the age of 18 years;*
  - *Disclosure to an independent person if a person is illiterate or has a mental, physical or other impairment which prevents the person from understanding.*
  - *For the purposes of obtaining legal advice or representation in relation to:*
    - *A witness summons, a confidentiality notice, a notice cancelling a confidentiality notice, an order extending a confidentiality notice or compliance with confidentiality provisions;*
    - *The person's rights, liabilities, obligations and privileges under a relevant Act.*
  - *By an Australian legal practitioner who receives a disclosure for the purposes of complying with a legal duty of disclosure or a professional obligation arising from his or her professional relationship with his or her client;*
  - *For the purposes of making a complaint to IBAC under the Independent Broad-based Anti-corruption Commission Act 2011, or a complaint to the Victorian Inspectorate under the Victorian Inspectorate Act 2011;*
  - *For the purposes of complying with a witness summons served on a person by the IBAC under the Independent Broad-based Anti-corruption Commission Act 2011, or a witness summons served on a person by the Victorian Inspectorate under the Victorian Inspectorate Act 2011;*
  - *Of information that has been published by IBAC in a report or has otherwise been made public in accordance with the Act, the Independent Broad-based Anti-corruption Commission Act 2011, the Victorian Inspectorate Act 2011 or the Ombudsman Act 1973;*
  - *To a person's spouse or domestic partner;*
  - *To a person's employer or manager or both;*
  - *As is otherwise authorised or required to be made by or under the Act, the Independent Broad-based Anti-corruption Commission Act 2011, the Victorian Inspectorate Act 2011 or the Ombudsman Act 1973.*

#### **4. PROCEDURES**

##### **4.1 Employees must comply with this policy and any procedures established by Council for the making of disclosures and for the handling of disclosures and, where appropriate, the notification of those disclosures to the IBAC.**

###### Explanation

*It is important for Council to have effective processes and procedures for managing the receipt of information, its assessment and notification. This also includes effective processes for looking after people who have made protected disclosures, those who are the subject of the protected disclosure and those who might be witnesses in an investigation.*

*This includes completing any related training or induction sessions.*

## CEO RESPONSIBILITIES

### 5. RECEIVING A DISCLOSURE

- 5.1 **The Chief Executive Officer may only receive disclosures that relate to Council or a member, officer or employee of Council.**

Explanation

*The CEO is unable to receive disclosures that relate to Councillors, other public bodies, other public officers, investigating entities or IBAC.*

### 6. HANDLING A DISCLOSURE

- 6.1 **The Chief Executive Officer must ensure that a person is appointed within Council who can receive disclosures made in accordance with the Act. This role will also be responsible for the effective implementation of the protected disclosure procedures and related welfare processes. The role must be occupied by a senior manager of Council.**

Explanation

*This role is the primary management role in Council concerned with the effective implementation of the Act.*

- 6.2 **The Chief Executive Officer must refer all disclosures received by them to the Protected Disclosure Coordinator for assessment and if required notification to IBAC, unless the disclosure relates to that person, in which case the disclosure must be forwarded to that person's direct manager.**

Explanation

*This ensures that Council is consistent in its execution of the protected disclosure procedures.*

### 7. PROCEDURES

- 7.1 **The Chief Executive Officer must ensure that Council establishes procedures to facilitate the making of disclosures and for the handling of disclosures and, where appropriate, the notification of those disclosures to the IBAC. The procedures must be consistent with the Act, the regulations made under the Act and guidelines issued by IBAC.**

Explanation

*It is important for Council to have effective processes and procedures for managing the receipt of information, its assessment and notification. This also includes effective processes for looking after people who have made protected disclosures, those who are the subject of the protected disclosure and those who might be witnesses in an investigation.*

## **8. PROTECTION FOR PERSONS MAKING A DISCLOSURE**

- 8.1 The Chief Executive Officer must ensure that employees or agents of Council do not take action against another person in reprisal for a protected disclosure. Otherwise, Council and the employee or agent may be jointly and severally civilly liable for the detrimental action.**

Explanation

*This deals with the vicarious liability of Council related to detrimental action committed by an employee or agent of Council. It is a defence to a vicarious liability proceeding against Council if Council proves, on the balance of probabilities, that it took reasonable precautions to prevent the employee or agent from taking detrimental action against the other person in reprisal for the protected disclosure.*

## **9. REPORTING**

- 9.1 The Chief Executive Officer must ensure that Council includes in its annual report for a financial year:**

- **Information about how to access Council's protected disclosure procedures; and**
- **The number of disclosures notified to IBAC during the financial year.**

Explanation

*The matters required to be included in the annual report must not include information that is likely to lead to the identification of any person who has made an assessable disclosure.*

## **MANAGER RESPONSIBILITIES**

### **10. RECEIVING A DISCLOSURE**

- 10.1 Managers may only receive a disclosure that:**

- **Is made by a member, officer or employee of Council that the manager directly or indirectly manages; or**
- **Relates to a member, officer or employee of Council that the manager directly or indirectly manages.**

Explanation

*This provision meets the requirements of the Regulation 10 of the Protected Disclosure Regulations 2013.*

### **11. HANDLING A DISCLOSURE**

- 11.1 Managers must refer all disclosures received by them to the Protected Disclosure Coordinator for assessment and, if required, notification to IBAC, unless the disclosure relates to that person, in which case the disclosure should be referred to that person's direct manager.**

Explanation

*This ensures that Council is consistent in its execution of Council's protected disclosure procedures.*

## **12. PROTECTION FOR PERSONS MAKING A DISCLOSURE**

- 12.1 Managers must ensure that employees or agents of Council do not take action against another person in reprisal for a protected disclosure. Otherwise, Council and the employee or agent may be jointly and severally civilly liable for the detrimental action.**

Explanation

*This deals with the vicarious liability of Council related to detrimental action committed by an employee or agent of Council. It is a defence to a vicarious liability proceeding against Council if Council proves, on the balance of probabilities, that it took reasonable precautions to prevent the employee or agent from taking detrimental action against the other person in reprisal for the protected disclosure.*

## **13. CONFIDENTIALITY**

- 13.1 Managers must ensure that employees do not disclose:**

- **The content or information about the content, of an assessable disclosure; or**
- **Information likely to lead to the identification of a person who has made an assessable disclosure; or**
- **That a disclosure has been notified to IBAC for assessment; or**
- **That IBAC or the Victorian Inspectorate has determined a disclosure to be a protected disclosure complaint.**

Explanation

*Maintaining the confidentiality of information related to protected disclosures ensures the protection of persons making genuine protected disclosures about improper conduct or detrimental action and is essential for the effective implementation of the Act.*

## **14. PROCEDURES**

- 14.1 Managers must ensure that employees comply with this policy and any procedures established by Council for the making of disclosures and for the handling of disclosures and, where appropriate, the notification of those disclosures to the IBAC.**

Explanation

*It is important for Council to have effective processes and procedures for managing the receipt of information, its assessment and notification that are consistently applied. This also includes effective processes for looking after people who have made protected disclosures, those who are the subject of the protected disclosure and those who might be witnesses in an investigation.*

*Managers need to ensure that employees are aware of this policy and the related procedures and have completed any related training or induction sessions.*

## PROTECTED DISCLOSURE COORDINATOR RESPONSIBILITIES

### 15. RECEIVING A DISCLOSURE

- 15.1 The Protected Disclosure Coordinator may only receive disclosures that relate to Council or a member, officer or employee of Council.**

Explanation

*The Protected Disclosure Coordinator is unable to receive disclosures that relate to Councillors, other public bodies, other public officers, investigating entities or IBAC.*

### 16. ASSESSING A DISCLOSURE

- 16.1 When Council receives a complaint, report or allegation of improper conduct or detrimental action, the first step is to determine whether the disclosure may be a protected disclosure by going through the assessment process. This step will be undertaken in the main by the Protected Disclosure Coordinator.**

Explanation

*The discloser does not need to specifically request the protections of the Act, or refer to that Act at all. The initial assessment is made on the nature of the information disclosed or on the belief that the discloser has about the nature of the information, and not the discloser's intention.*

- 16.2 An assessment should be made as to whether the disclosure meets all of the requirements for a protected disclosure in Part 2 of the Act and the Protected Disclosure Regulations.**

Explanation

*For a disclosure to be a protected disclosure it must be about alleged conduct that relates to Council, or a member, officer or employee of Council that is either improper conduct or detrimental action taken against a person in reprisal for a protected disclosure and either:*

- *The information shows or tends to show that the improper conduct or detrimental action against a person has occurred, is occurring, or is proposed to be engaged in by a person; or*
- *The discloser believes on reasonable grounds the information shows or tends to show that the improper conduct or detrimental action against a person has occurred, is occurring, or is proposed to be engaged in by a person.*

*The person(s) or body taking detrimental action must be Council, or a member(s), officer(s) or employee(s) of Council. The person (or the person they have incited) must take or threaten the action, because, or in the belief that the:*

- *Other person or anyone else has made, or intends to make the disclosure; or*
- *Other person or anyone else has cooperated, or intends to cooperate with an investigation of the disclosure.*

### 17. ASSESSMENT DECISIONS

- 17.1 In some circumstances, a disclosure may be about improper conduct or detrimental action that may pose an immediate threat to health and safety of**

**individuals, preservation of property, or may consist of serious criminal conduct. In these cases Council can take immediate action to mitigate the risk involved.**

Explanation

*Council can take immediate action while considering whether or not it is an assessable disclosure that must be notified to IBAC or awaiting IBAC's decision on a notified matter. It may be necessary to report criminal conduct to Victoria Police for immediate investigation, or take management action against an employee to prevent future conduct.*

*The Act allows disclosure of the content of the disclosure by a person or body 'to the extent necessary for the purpose of taking lawful action in relation to the conduct that is the subject of an assessable disclosure including disciplinary process or action'. However, this does not allow the identity of the discloser to be revealed. Reporting the alleged conduct to the Victoria Police as criminal conduct, or taking legitimate management action against the subject of the disclosure in order to prevent future conduct, may be appropriate courses of action in these circumstances.*

**17.2 If Council does not consider the disclosure to be a protected disclosure, then it must advise the discloser in writing within 28 days after the disclosure was made, that:**

- **Council does not consider the disclosure to be a protected disclosure; and**
- **The disclosure has not been notified to IBAC for assessment; and**
- **The protections under Part 6 of the Act apply, regardless of whether the disclosure is notified to IBAC for assessment.**

Explanation

*However, Council does not have to provide the discloser with the above information unless the discloser has indicated to Council, or it otherwise appears to Council, that the discloser wishes to receive the protections that apply to a protected disclosure under the Act.*

*Council is not required to notify a disclosure to IBAC if it does not consider it may be a protected disclosure. It may also decide to deal with the matter as a complaint directed to normal Council complaint procedures for resolution.*

**17.3 If Council considers the disclosure may be a protected disclosure, then it is required to notify the disclosure to IBAC for assessment and to notify the discloser.**

Explanation

*These notifications can be done by persons specified in the Protected Disclosure Regulations 2013 as persons who can receive disclosures. Such a disclosure is called an 'assessable disclosure'.*

**18. NOTIFICATION TO IBAC & THE DISCLOSER**

**18.1 Council must provide the discloser with information in writing within 28 days after the disclosure being made that:**

- **The disclosure has been notified to IBAC for assessment; and**
- **It is an offence under section 74 of the Act to disclose that the disclosure has been notified to IBAC for assessment.**

**18.2 Council must notify IBAC in writing within 28 days after the disclosure was made that:**

- **Council considers the disclosure may be a protected disclosure; and**
- **Council is notifying the disclosure to IBAC for assessment.**

Explanation

*In notifying IBAC of an assessable disclosure Council may also provide IBAC with any information it has obtained regarding the disclosure in the course of its inquiries leading up to the notification. This information can be provided at the time of notification or at any later time.*

## **19. IBAC ASSESSMENT**

**19.1 If IBAC determines that the disclosure is not a protected disclosure complaint, and it is otherwise not a complaint or notification under the IBAC Act, it may advise the discloser that they should make a complaint directly to Council about the disclosure. If this is the case, IBAC will also advise the Council that the discloser has been given this advice.**

Explanation

*In this case Council should deal with the matter as a complaint directed to normal Council complaint procedures for resolution.*

## **20. FURTHER CONTACT ABOUT INVESTIGATIONS**

**20.1 If IBAC or another investigating entity is conducting an investigation of a protected disclosure complaint concerning Council, it may be in contact with Council for the purpose of conducting investigative inquiries. In this situation Council will be able to disclose information about the protected disclosure complaint to the investigating entity without breaching the confidentiality requirements of the Act.**

**20.2 IBAC or the relevant investigating entity may disclose the identity of the discloser and the content of the disclosure if necessary to do so for the purposes of their investigative action. If this is the case, then Council, or the Council Officer to whom the information has been disclosed, is bound by the confidentiality requirements of Part 7 of the Act.**

**20.3 If Council is advised of the identity of the discloser, then it will be required to look after the welfare of the discloser and provide protection against possible detrimental action.**

Explanation

*A person making a protected disclosure may be employed by Council or may be a member of the public. A person cooperating with an investigation into a protected disclosure complaint will also fall into one of the same categories.*

*Council has obligations to protect people both from inside or outside the public body from detrimental action taken in reprisal for the making of the disclosure.*

## **21. PROCEDURES**

- 21.1 The Protected Disclosure Coordinator is responsible for establishing and maintaining this policy and procedures to facilitate the making of disclosures and for the handling of disclosures and, where appropriate, the notification of those disclosures to the IBAC. The procedures must be consistent with the Act, the regulations made under the Act and guidelines issued by IBAC.**

Explanation

*It is important for Council to have effective processes and procedures for managing the receipt of information, its assessment and notification. This also includes effective processes for looking after people who have made protected disclosures, those who are the subject of the protected disclosure and those who might be witnesses in an investigation.*

*Council procedures should also include a:*

- *Secure information management systems for the receipt, storage, assessment and notification of protected disclosures, including an internal reporting structure and identification of the roles and responsibilities of those in the reporting structure;*
- *Secure process for receiving verbal or written disclosures;*
- *Selection process for a person(s) identified as a person who can receive disclosures(protected disclosure coordinator);*
- *Secure means of notifying IBAC of assessable disclosures;*
- *Education and training for selected personnel in receipt, handling, assessing and notifying of disclosures, and welfare management of persons associated with a protected disclosure; and*
- *Process for the collection and collation of statistics on protected disclosures for the purpose of annual reporting.*

- 21.2 The Protected Disclosure Coordinator is responsible for preparation and delivery of training and awareness sessions relating to this policy and to the protected disclosure procedures.**

Explanation

*All employees should receive training in Council's policy and processes regarding protected disclosure.*

## **22. REPORTING**

**22.1 The Protected Disclosure Coordinator is responsible for collating and submitting the following information for Council's annual report for a financial year:**

- **Information about how to access Council's protected disclosure procedures; and**
- **The number of disclosures notified to IBAC during the financial year.**

Explanation

*The matters required to be included in the annual report must not include information that is likely to lead to the identification of any person who has made an assessable disclosure.*

## **23. PROVIDING WELFARE SUPPORT TO DISCLOSERS**

**23.1 The Protected Disclosure Coordinator is responsible for the provision of welfare services for any person making a protected disclosure, following due consideration of any risks faced by either an internal or external discloser. At the same time, there may also be welfare needs for other people who may be involved in the investigation.**

Explanation

*The following matters should be taken into consideration in deciding whether or not a welfare manager should be appointed in a particular case:*

- *Are there any real risks of detrimental action against the person, taking into account their particular circumstances?*
- *Is it assured that the person will be taken seriously and will be treated with respect?*
- *Is it assured that the person will be given effective support, including keeping them informed of the status of their disclosure?*
- *Can the person be protected from suffering repercussions, by dealing with the matter discreetly and confidentially, and responding swiftly and fairly to any allegations that the person has in fact suffered retribution?*

*If the answer to the first question is 'yes' then the appointment of a dedicated welfare officer is probably appropriate. If the answer to the first question is 'no' and the needs set out in the remainder of the questions can be met, there may be no need for a welfare officer.*

*A welfare officer can monitor the specific needs of the discloser and/or co-operator and provide practical advice and support. However, in most circumstances, a welfare officer will only be required where a protected disclosure complaint proceeds to investigation, but each case needs to be assessed on its own merits.*

**23.2 For internal disclosers, Council may wish to make use of the Employee Assistance Program (EAP) to provide additional welfare support.**

Explanation

*Counselling services for workers (including immediate family) and officers are available on a completely confidential basis through Council's Employee Assistance Program.*

**23.3 Various types of welfare support should be provided by Council for the discloser or co-operator on an ongoing basis.**

Explanation

*Welfare support should include:*

- *Providing information;*
- *Providing active support;*
- *Managing expectations;*
- *Maintaining confidentiality;*
- *Assessing the risks of detrimental action being taken in reprisal;*
- *Protecting the discloser and/or co-operator;*
- *Managing the impact of any investigation; and*
- *Maintaining records related to welfare support.*

**23.4 If the person making the disclosure is implicated in the improper conduct or detrimental action that is subject of the disclosure the discloser is not subject to criminal or civil liability for making the disclosure. However section 42 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. In this case the discloser should be clearly advised of any proposed disciplinary or other action to be taken and of any mitigating factors that have been taken into account.**

Explanation

*The management of the welfare of a discloser may become complicated when that person is implicated in misconduct, whether or not that misconduct is related to the disclosure. The general obligations of Council in relation to handling a disclosure and protecting the discloser still apply. A discloser is not protected from the reasonable consequences flowing from their involvement in any improper conduct.*

*Care should be taken to thoroughly document the process of any action taken against a discloser including recording the reasons why the disciplinary or other action is being taken, and the reasons why the action is not in retribution for making the disclosure.*

## **24. INFORMING THE SUBJECT OF A DISCLOSURE**

- 24.1 Council may give information about the disclosure to the subject of the disclosure if it is directed or authorised to do so by the entity investigating the disclosure or for the purpose of taking action with respect to the conduct alleged, including disciplinary action.**

Explanation

*A decision has to be made as to whether or when a person who is the subject of a disclosure should be informed about the allegation made against him or her by a discloser. It is possible that the subject of the disclosure may never be told about the disclosure if it is not determined to be a protected disclosure complaint, or a decision is made to dismiss the disclosure.*

*The Act limits the disclosure of information about the content of an assessable disclosure and the identity of the discloser to certain specified circumstances.*

*Investigating entities may also inform the subject of the disclosure in the course of their investigation for the purposes of conducting that investigation, or any actions that they propose to take as a result of the investigation.*

## **25. DEALING WITH DETRIMENTAL ACTION**

- 25.1 If any person reports an incident of harassment, discrimination or adverse treatment that may amount to detrimental action apparently taken in reprisal for a disclosure the Protected Disclosure Coordinator must record details of the incident and advise the person of their rights under the Act. Where the detrimental action is of a serious nature likely to amount to a criminal offence, consideration should be given to reporting the matter to the police or IBAC.**

Explanation

*In such circumstances, Council must be careful about making preliminary enquiries or gathering information concerning such an allegation of serious detrimental action so it does not compromise the integrity of any evidence that might be later relied upon in a criminal prosecution.*

*The taking of detrimental action in reprisal for making a disclosure can be grounds for a person to make a further disclosure with respect to that conduct. The disclosure of this allegation must be assessed by Council as a new disclosure under the Act.*

## **26. WELFARE OF THE SUBJECT OF A DISCLOSURE**

- 26.1 Council must meet the welfare needs of a person who is the subject of a protected disclosure. A person who is subject of a disclosure who is made aware of their status may have welfare services provided through the Protected Disclosure Coordinator, or be referred to Council's EAP program for welfare assistance.**

Explanation

*Until a protected disclosure complaint is resolved, either by dismissing, or investigating it and an outcome is reached, the information about the person is only*

*an allegation. This person is also likely to need support once they become aware that they are the subject of a disclosure. It is necessary to consider each matter on a case by case basis, taking into account the particular circumstances of the person.*

- 26.2 Council should take all reasonable steps to ensure the confidentiality of the person about whom the protected disclosure has been made during the assessment and any ensuing investigation. Where the disclosure is dismissed or investigations do not substantiate the allegations made against the person, the fact of the investigation, its results, and the identity of the person subject of the disclosure should still be kept confidential.**

Explanation

*This will assist to avoid or minimise the risk of adverse consequences for the subject of a disclosure.*

- 26.3 If a person has been the subject of allegations that are wrong or unsubstantiated, then it is necessary for Council and the investigating entity to ensure that there are no adverse consequences for this person arising out of the disclosure or its investigation.**

Explanation

*This is particularly crucial where information has been publicly disclosed that has identified the person, but also where such information has become well-known across the organisation where the person works.*

## **MANAGEMENT FRAMEWORK**

Council will maintain a Protected Disclosure Management Framework consisting of this policy and associated procedures.

## **REFERENCES**

*Protected Disclosure Act 2012*

IBAC Guidelines for protected disclosure welfare management

IBAC Guidelines for making and handling protected disclosures

## **REVIEW**

Any change or update which materially impacts and alters this policy must be by Council approval following review by the Corporate Management Team. This policy will be reviewed in August 2018 or if there has been a material change to any relevant laws.