

Title:	Protected Disclosure Policy
Type:	Council
Adopted:	25 January 2017
File No:	16/52444
Attachments:	<p>Guidelines for making and handling protected disclosures 2016 IBAC (16/65322)</p> <p>Guidelines for protected disclosure welfare management 2016 IBAC (16/65323)</p> <p>Murrindindi Shire Council website text – Reporting Protected Disclosures (17/4300)</p> <p>MSC Website - Protected Disclosures</p>

1. Purpose

The purpose of Council's Protected Disclosure Policy is to support the ethical behaviours and values expected from Councillors and Council officers or agents as detailed in the Councillor and Employee Codes of Conduct.

The Protected Disclosure Policy is intended to encourage and support people to make disclosures about improper conduct or any resulting detrimental action. The policy and associated procedures provide guidance on how to report on improper conduct and outlines protections for people making a disclosure or those who may be witness to an investigation.

Implementation of a robust policy which encourages people to report their concerns under protection, enables Council to reduce the likelihood of corruption or other improper conduct, and supports the honest performance of the functions of Council.

2. Rationale

The *Protected Disclosure Act 2012* (the *Act*) requires Council to maintain internal processes that facilitate disclosures, effectively manage the receipt of information (a disclosure) and provide protection for all parties who may be involved. The *Act*, which commenced operation on 10 February 2013, replaced the former *Whistleblowers Protection Act 2001* and amended the *Ombudsman Act 1973*.

The objectives of the Protected Disclosure Policy are:

- i) To encourage and facilitate the disclosures of improper conduct or detrimental action by Councillors or Council officers or agents;
- ii) To protect Council against improper conduct or detrimental action by Councillors or Council officers or agents;
- iii) To ensure proper protection of the person making the complaint from retribution for making the disclosure;
- iv) To provide for confidentiality for the content of the disclosure and the identity of the complainant;
- v) To provide for natural justice to all parties including any person who is the subject of the disclosure and
- vi) To establish a process for the making of disclosures of improper conduct by Councillors and Council officers or agents and to provide a system of investigation of such disclosures.

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3. Scope

Anyone (internally or externally to Council) may make a disclosure about the improper conduct by the organisation, the Councillors or Council officers or agents of Council. Under the *Act*, Council may receive disclosures about Council officers or agents of Council, but disclosures regarding Councillors must be made directly to the Independent Broad-based Anti-Corruption Commission (IBAC) or the Victorian Ombudsman.

This policy applies to Councillors, Council officers, Council agents including volunteers, and members of Special Committees, who all must comply with all relevant legislative and the policy requirements.

4. Definitions

Reference term	Definition
Act	<i>Protected Disclosure Act 2012</i>
Conduct - improper conduct	Under Section 4 of the Act "improper conduct" means - (a) corrupt conduct; or (b) specified conduct
Conduct - corrupt conduct	<p>Under the <i>IBAC Act</i> corrupt conduct is defined as a "relevant offence" being:</p> <ul style="list-style-type: none"> • indictable offences (punishable by imprisonment for five years or more) against an <i>Act</i> • common law offences such as attempting to pervert the course of justice, perverting the course of justice, bribery of a public official or misconduct in public office. <p>The types of conduct that can be corrupt conduct are:</p> <ul style="list-style-type: none"> • conduct of any person that adversely affects the honest performance by a public officer or public body of their official functions • conduct of a public officer or public body that: <ul style="list-style-type: none"> ○ constitutes or involves a dishonest performance of their official functions ○ constitutes or involves knowingly or recklessly breaching public trust ○ involves misuse of information or material that was obtained in their official capacity • conduct that could constitute a conspiracy or attempt to engage in any of the above conduct • conduct intended to adversely affect the effective performance of a public officer or public body which leads to a benefit as described in the Act. <p>Under amendments to related legislation – the <i>Integrity and Accountability Legislation Amendment (A Stronger System) Bill 2015</i>, the definition of corruption is expanded. Examples of these definitions for anyone in a public office includes:</p> <ul style="list-style-type: none"> • deliberately falsifying accounts to conceal or obtain a benefit • entering into a secret commission with another person while acting in an official capacity • colluding with other public officers to share profits with tender recipients and concealing the over-valuation of tenders • using public office to deceive a member of the public to gain a financial advantage • misusing power to harm, oppress or disadvantage a person.

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Reference term	Definition
Conduct - specified conduct	<p>“Specified conduct” under the <i>Protected Disclosure Act 2012</i> covers a broader range of conduct where that conduct would, if proved, constitute a criminal offence or reasonable grounds for dismissal.</p> <p>The types of conduct that can be specified conduct are:</p> <ul style="list-style-type: none"> • all types of <u>corrupt conduct</u>, and • conduct of a public officer or public body in their official capacity that: <ul style="list-style-type: none"> ○ involves substantial mismanagement of public resources ○ involves substantial risk to public health or safety, or ○ involves substantial risk to the environment.
Council	"Council" is a public body and has the same meaning as it has in section 3(1) of the <i>Local Government Act 1989</i> .
Council officers or agent	<p>“Council officers” are employed by Council</p> <p>“Council agents” are people who formally represent Council in some capacity either contractors, volunteers or members of Special Committees.</p>
Councillor	<p>"Councillor" has the same meaning as it has in section 3(1) of the <i>Local Government Act 1989</i>.</p> <p>“Councillor means a person who holds the office of member of a Council.”</p>
Detrimental action	<p>“Detrimental action” is any action against a person in reprisal for making a protected disclosure. This includes -</p> <ol style="list-style-type: none"> (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. <p>Taking detrimental action is an offence under the <i>Act</i>.</p>
False or misleading disclosure	A “false or misleading disclosure” is when someone reports information intending it be acted on as a protected disclosure, or provides further information that relates to a protected disclosure, while knowing it to be false or misleading. This is an offence under the <i>Act</i> .
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 (IBAC Act)</i> .
Ombudsman	"Ombudsman" means the person appointed as the Victorian Ombudsman under section 3 of the <i>Ombudsman Act 1973</i> .
Protected disclosure	<p>A "protected disclosure" is a report about the improper conduct of public bodies or public officers -</p> <ol style="list-style-type: none"> (a) made in accordance with Part 2 of the <i>Protected Disclosure Act 2012</i>; or (b) a complaint made in accordance with section 86L(2A) of the <i>Police Regulation Act 1958</i>. <p>It can relate to conduct that:</p> <ul style="list-style-type: none"> • may have already happened • is currently happening or • may happen in the future

Reference term	Definition
	<p>A protected disclosure provides the person making the complaint with security from detrimental action.</p> <p>A complaint or allegation already in the public domain is not usually a protected disclosure.</p>
Protected Disclosure Officer	<p>“Protected Disclosure Officer (PDO)” means the person(s) appointed by Council to receive a complaint of the nature described in this policy. The principal PDO will also be the Protected Disclosure Coordinator.</p> <ol style="list-style-type: none"> 1. General Manager Corporate and Community Services (GM CCS) 2. General Manager Infrastructure and Development (if the disclosure relates directly to something under the control of the GM CCS) 3. Coordinator Human Resources

5. Policy

5.1. Policy Statement

Murrindindi Shire Council is committed to the aims and objectives of the *Protected Disclosure Act 2012*.

Council is committed to encouraging and investigating reports/disclosures of any improper conduct to protecting those who come forward to disclose such conduct, or who are witnesses in any investigation.

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 agents;

- Council is committed to implementing the aims and objectives of the *Protected Disclosure Act 2012*
- Councillors, Council officers or agents of Council are encouraged to report to the Protected Disclosure Officer(s) 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 or agents, 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; and to manage their welfare during the process
- Council will afford natural justice to all parties including the person who is the subject of the disclosure
- All disclosures will be treated confidentially

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- The only method of making a protected disclosure relating to a Councillor is to the Ombudsman or IBAC
- Council will maintain and publish procedures 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 that there are reasonable grounds to support or suspect that a Councillor or Council officer or agent is engaging in improper action or detrimental action, that person may report the conduct (protected disclosure) to the appropriate person or entity and be assured of confidentiality and protection from reprisal as a result of making the protected disclosure.

Relationship between protected disclosures and CEO's mandatory reporting obligations

Under the *Integrity and Accountability Legislation Amendment (A Stronger System) Bill 2015* Council CEOs have mandatory notification obligations to advise IBAC if they suspect corruption is occurring within their Council.

If the CEO suspects corrupt action within Council, then this is to be notified to IBAC in line with the mandatory obligation, and this will be treated by IBAC as a protected disclosure. If suspected corrupt conduct has already been notified to IBAC specifically as a potential protected disclosure, IBAC will also treat it as a suspected corrupt conduct notification and there will be no need for the CEO to further notify IBAC.

5.4. Who can make a protected disclosure?

A protected disclosure can be made by any 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 either:

- In writing;
- 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 *Act* and penalties may be applied.

6. Related Policies, Strategies and Legislation

- Council Plan 2013-2017
- *Protected Disclosure Act 2012*
- *Protected Disclosure Regulations 2013*
- *Independent Broad-based Anti-corruption Commission Act 2011*
- *Integrity and Accountability Legislation Amendment (A Stronger System) Bill 2015*

Supporting Documents

- Guidelines for making and handling protected disclosures 2016 (IBAC)
- Guidelines for protected disclosure welfare management 2016 (IBAC)

Related Policies

- Councillor Code of Conduct
- Employee Code of Conduct

Responsible Officer: General Manager Corporate and Community Services

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- Enterprise Risk Management Policy
- Financial Delegations Policy
- Fraud Prevention and Control Policy
- Volunteers Policy

6. Council Plan

Adoption of this policy complies with our Council Plan 2013-2017 objective to deliver quality customer outcomes by continuing to find better ways of doing things.

7. Management and Review

It is the responsibility of the General Manager Corporate and Community Services to maintain the Protected Disclosure Policy and related procedures 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 Officer(s) 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 Ombudsman or IBAC, and not to the Council.

8. Consultation

There is no external community consultation required in the development of this policy.

9. Human Rights Charter

This policy has been developed with consideration of the requirements under the Charter of Human Rights and Responsibilities.