

**Protected Disclosure Act 2012**

**Process and procedure for handling complaints**

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# Statement of support to persons making protected disclosures

Cardinia Shire Council (the Council) is committed to the aims and objectives of the *Protected Disclosure Act 2012* (the Act). It does not tolerate improper conduct by its employees, officers or Councillors, nor the taking of reprisals against those who come forward to disclose such conduct.

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

# Objective

The Protected Disclosure Act 2012 repealed the Whistleblowers Protection Act 2001 and created a new legislative framework for receiving protected disclosures and protecting those who make them.

The objective of these procedures are to provide guidance in regard to:

* making a disclosure
* assessing a disclosure
* handling a disclosure
* notifying a disclosure to the Independent Broad-based Anti-corruption Commission (IBAC) and action IBAC can take
* protections provided to disclosers
* protecting disclosers from detrimental action.

These guidelines are a resource for:

* Disclosers – any person who wants to make a disclosure about improper conduct by a councillor or member of council staff, and this includes any member of the public
* Councillors and council staff to which a disclosure can be made about their actions

These procedures must be read in conjunction with the Independent Broad-based Anti-corruption Commission ‘Guidelines for making and handling protected disclosures June 2013’ and ‘Guidelines for protected disclosures welfare management June 2013’

Further advice and guidance may be sought from IBAC telephone 1300 735 135 website [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)

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

# Purposes of the Act

The purposes of the *Protected Disclosure Act 2012* are:

(a) to encourage and facilitate disclosures of—

(i) improper conduct by public officers, public bodies and other persons; and

(ii) detrimental action taken in reprisal for a person making a disclosure under the Act; and

(b) to provide protection for—

(i) persons who make those disclosures; and

(ii) persons who may suffer detrimental action in reprisal for those disclosures; and

(c) to provide for the confidentiality of the content of those disclosures and the identity of persons who make those disclosures.

# The reporting system

## Persons who can receive disclosures relating to Council staff

A disclosure in relation to a Council staff member can be received by the Chief Executive Officer, the Manager Governance as the appointed Protected Disclosure Coordinator, Manager or supervisor of the discloser or the manager or supervisor of the person who is the subject of the disclosure.

All correspondence, phone calls and emails from internal or external disclosers will be referred to the protected disclosure coordinator.

Where a person is contemplating making a disclosure and is concerned about approaching the protected disclosure coordinator in the workplace, he or she can call the relevant officer and request a meeting in a discreet location away from the workplace.

## Disclosures relating to Councillors

A disclosure about improper conduct or detrimental action by a Councillor must be made to the Victorian Ombudsman or to the Independent Broad-based Anti-Corruption Commission (IBAC), refer to contact details below.

VICTORIAN OMBUDSMAN

Level 9 North Tower

459 Collins Street

Melbourne VIC 3000

Website [www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au)

Telephone 0396136222 or 1800806314

Email [ombudvic@ombudsman.vic.gov.au](mailto:ombudvic@ombudsman.vic.gov.au)

IBAC

GPO Box 24234

MELBOURNE, VICTORIA 3000

Website: [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)

Telephone: 1300 735 135

# Receiving disclosures

## Has the disclosure been made in accordance with the Act?

Where a disclosure has been received by the protected disclosure coordinator, he or she will assess whether the disclosure has been made in accordance with the Act and is, therefore, a protected disclosure.

### Has the disclosure been made to the appropriate person?

For the disclosure to be received by the Council, it must concern an employee of the Council. If the disclosure concerns an employee, officer or member of another public body, the person who has made the disclosure must be advised of the correct person or body to whom the disclosure should be directed.

If the disclosure concerns a Councillor it must be referred to IBAC.

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

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

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

### Referral to IBAC

Where a disclosure is assessed to be a protected disclosure, the protected disclosure coordinator will no later than 28 after the disclosure is made notify the disclosure to IBAC for assessment.

The council will 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 to disclose that the disclosure has been notified to IBAC for assessment

The council in notifying an assessable disclosure to IBAC may also provide IBAC with any information they have obtained regarding the disclosure in the course of their inquiries leading up to the notification. This information can be provided at the time of notification or at any later time.

### If the disclosure in not a protected disclosure

Where a disclosure is assessed not to be a protected disclosure, the matter does not need to be dealt with under the Act. The protected disclosure coordinator will decide how the matter should be responded and in accordance with any established complaints handling processes or procedures.

# Managing the welfare of the discloser

## Commitment to protecting disclosers

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

Depending upon the circumstances of the disclosure the protected disclosure coordinator may appoint a welfare manager to the discloser.

If appointed the welfare manager will:

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

All employees will be advised that it is an offence for a person to take detrimental action in reprisal for a protected disclosure.

Detrimental action includes:

* Causing injury, loss or damage;
* Intimidation or harassment; and
* Discrimination, disadvantage or adverse treatment in relation to a person s employment, career, profession, trade or business (including the taking of disciplinary action).

## Keeping the discloser informed

The protected disclosure coordinator will ensure the discloser is kept informed of action taken in relation to his or her disclosure, and the time frames that apply.

## 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 welfare manager will:

* Record details of the incident;
* Advise the discloser of his or her rights under the Act; and
* Advise the protected disclosure coordinator or Chief Executive Officer of the detrimental action.

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

## Discloser implicated in improper conduct

The discloser is not subject to criminal or civil liability for making the disclosure however a person’s liability for his or her own conduct is not affected by the person’s disclosure of that conduct.

A discloser is not protected from the reasonable consequences flowing from their involvement in any improper conduct.

Care will 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. The discloser will be clearly advised of the proposed action to be taken and of any mitigating factors that have been taken into account.

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

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

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

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

# Management of the person against whom a disclosure has been made

The Council recognises that employees against whom disclosures are made must also be supported during the handling and investigation of disclosures.

The Council will take all reasonable steps to ensure the confidentiality of the person who is the subject of the disclosure.

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 will consider any request by that person to issue a statement of support setting out that the allegations were clearly wrong or unsubstantiated.

# Confidentiality

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

The Act requires any person who receives information due to the handling or investigation of a protected disclosure, not to disclose that information except in certain limited circumstances.

The Council will ensure all files, whether paper or electronic, are kept securely and can only be accessed by the protected disclosure coordinator.

All printed material will be kept in files that are clearly marked as a protected disclosure matter, and warn of the criminal penalties that apply to any unauthorised divulging information concerning a protected disclosure.

All electronic files will have appropriate securities attached.

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

# Collating and publishing statistics

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

# Review

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