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1. INTRODUCTION

In February 2013, Victoria's first ever anti-corruption body, IBAC, became fully operational. The primary purpose of the Independent Broad-based Anti-Corruption Commission is to strengthen the integrity of the Victorian public sector and to enhance community confidence in public sector accountability. IBAC is responsible for identifying and preventing serious corrupt conduct across the whole Victorian public sector, including members of Parliament, the judiciary, state and local government

In addition to the launch of IBAC, the *Protected Disclosure Act 2012* (PD Act) replaced the *Whistleblowers Protection Act 2001*. The objectives of the PD Act are to:

- facilitate disclosures of improper conduct by public officers/bodies;
- prevent detrimental action being taken in reprisal for a person making a disclosure;
- provide protection for persons who make disclosures or are the subject of a disclosure; and
- confidentially manage the content of disclosures and the identity of persons who make disclosures.

2. SCOPE

The objective of this policy is to establish an administrative framework to facilitate and manage disclosures made directly to Council about Yarra Ranges Council employees. The framework includes provisions for the welfare management and prevention of detrimental action against individuals involved with a protected disclosure, as per the PD Act.

The management of reports about the improper conduct of Yarra Ranges Councillors will not be included in this policy. All disclosures regarding local government councillors **must** be made directly to IBAC or the Victorian Ombudsman.

3. DEFINITIONS

Disclosure:

A report made by a person against a public officer or public body with specific reference to improper conduct or detrimental action. The term 'disclosure' is interpreted under the PD Act as a 'revelation'.

Protected Disclosure:

For a disclosure to be a protected disclosure it must be made in accordance with:

- the requirements of Part 2 of the PD Act; and
- the prescribed procedures

Protected disclosures must be about the **improper** or **corrupt** conduct of a person or organisation in their official capacity as a public officer or public body.

Protected disclosure must be based on **information** or a **reasonable belief** that shows or tends to show a person, public officer or public body has engaged, is engaging in 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.

Individuals wishing to make a protected disclosure may do so verbally or in writing. A disclosure may also be made anonymously.

Complaints or allegations that are already in the public domain would not normally be considered protected disclosure, i.e. a matter already subject to media or other public commentary.

Improper, Corrupt and Specified Conduct:

Improper conduct is defined in section 4 of the PD Act to mean:

- corrupt conduct (as defined in the *IBAC Act*); or
- specified conduct.

The IBAC Act 2011 sets out **corrupt conduct** as conduct of any:

- person that adversely affects the honest performance by a public officer or public body of their functions;
- public officer or public body that constitutes or involves the dishonest performance of their functions;
- public officer or public body that knowingly or recklessly breaches public trust;
- public officer or public body that involves the misuse of information or material acquired in the course of the performance of their role or function, whether or not for the benefit of the public body or person;
- public officer or public body who conspires or attempts to engage in the above corrupt activity.

The conduct must, if the facts were found proved beyond reasonable doubt at a trial, constitute an indictable offence.

Improper conduct is defined in the Protected Disclosure Act 2012 to mean **corrupt conduct** or **specified conduct** that is outside 'corrupt conduct' which includes:

- a substantial mismanagement of public resources, or
- a substantial risk to public health or safety, or
- a substantial risk to the environment.

The conduct must be serious enough that if proven would constitute a criminal offence or reasonable grounds for dismissal based on the Yarra Ranges Council Staff Code of Conduct.

Detrimental Action:

The PD Act creates an offence for a person to take, or threaten to take, detrimental action against another person in reprisal for making a protected disclosure. An agency must consider not just the nature of the detrimental action, but also whether it is being taken in reprisal for a protected disclosure. The person(s) taking the detrimental action must be a public officer or body.

Section 3 of the PD Act defines detrimental action by a person as:

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

Public Body:

A body, whether corporate or unincorporated, established by or under an Act for a public purpose.

Public Officer:

A person employed in any capacity or holding any office in council under the Local Government Act 1989.

4. POLICY STATEMENT

Yarra Ranges Council is committed to the principles of the Protected Disclosure regime and the objectives of IBAC. Council does not tolerate improper conduct by any public officer, nor the taking of detrimental actions against those who come forward to expose such conduct.

Council recognises the value of transparency and accountability in all administrative and management practices. It supports the making of disclosures that reveal corrupt or improper conduct, 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 receive and appraise disclosures with full confidentiality. It will protect people who make such disclosures from any detrimental action in reprisal for making a disclosure. Council will also afford natural justice to any person who is the subject of a disclosure.

In accordance with section 58 of the PD Act, Yarra Ranges Council Protected Disclosure Procedure will be publically available from the 10th August 2013. The procedure document will provide a full explanation of how Yarra Ranges Council will respond to 'Protected Disclosures'. It will also provide definitions of what constitutes corrupt or improper conduct, detrimental action and will outline the different roles of the various people involved in dealing with Protected Disclosures.

5. ROLES & RESPONSIBILITIES

5.1 Receipt of disclosures:

Disclosures about council or council staff can be made directly to IBAC or to Yarra Ranges Council for assessment. Disclosures about Councillors **must** be made directly to IBAC or the Victorian Ombudsman.

Yarra Ranges Council nominates the following individuals within council as being able to receive disclosures:

- Protected Disclosure Coordinator
- Protected Disclosure Officers
- Direct and indirect supervisors and managers

The Protected Disclosure Coordinator, Protected Disclosure Officers and direct/indirect supervisors and managers will take all necessary steps to ensure that the identity of the person making a protected disclosure and the person who is subject of the disclosure are kept confidential. Where necessary, all relevant officers will arrange for appropriate welfare support for the person making a protected disclosure.

6. THE REPORTING PROCESS

When Council receives a disclosure containing allegations of improper conduct or detrimental action, the first step is to direct the report to the PD Coordinator for appraisal. The PD Coordinator will determine if the disclosure is a protected disclosure by conducting an assessment process which evaluates the disclosure against set criteria outlined in the PD Act and PD Regulations.

In some circumstances, a disclosure may be about improper conduct that poses an immediate threat to the health and safety of individuals, relates to the preservation of property, or constitutes serious criminal conduct. It may be necessary for Council to report such criminal conduct to Victoria Police for immediate investigation, or take appropriate action against an employee, in accordance with existing organisational policy and procedures, to prevent further improper conduct.

If a disclosure is assessed to be potentially valid, the PD Coordinator will notify the disclosure to IBAC within 28 days for further assessment, and advise the discloser the matter has been escalated. The discloser will also be advised that it is an offence under section 74 of the PD Act to reveal to others that the disclosure has been notified to IBAC for assessment under the PD Act.

If the PD Coordinator does not consider the disclosure to be a protected disclosure, the discloser will be notified within 28 days of initial notification that the disclosure is not considered to be a protected disclosure, that IBAC has not been notified to

conduct an assessment, and that the protections under Part 6 of the PD Act can apply to them if they so choose. If necessary, the disclosure should then be dealt with as a standard complaint by the relevant Director/Manager.

The Protected Disclosure Procedure document provides full details on the reporting and assessment process.

4.3 IBAC

Once a notification is made to IBAC, then IBAC must assess whether, in its view, the assessable disclosure is a protected disclosure.

If IBAC is of the view that the assessable disclosure is a protected disclosure, then it must determine that the disclosure is a 'protected disclosure complaint'.

Once IBAC has determined whether or not the assessable disclosure is a protected disclosure complaint, then it determines what action it might take under the IBAC Act. Under section 58 of the IBAC Act, IBAC may dismiss, investigate, or refer the matter.

Once IBAC has made a determination in respect to an assessable disclosure, the commission has a responsibility to advise the PD Coordinator and/or the discloser of its determination and the action IBAC intends to take. This advice must be provided within a reasonable time of the action being taken, or an investigations commencement.

At the conclusion of its investigation, IBAC must provide the discloser with information about the results of its investigation, including any action taken by IBAC and any recommendation by IBAC that action or further action be taken.

4.4 Welfare

Yarra Ranges Council is committed to ensuring our workplace culture supports people making protected disclosures and people who cooperate with protected disclosure complaint investigations.

The protection of persons making disclosures about improper conduct or detrimental action is an essential component of the Yarra Ranges Council protected disclosure administrative framework.

If a disclosure is determined to be a protected disclosure complaint by IBAC, Council has further obligations with respect to the discloser. Council must protect the identity of the discloser and the content of the person's disclosure to ensure confidentiality.

The management of both types of persons making protected disclosures or cooperating with protected disclosure complaint investigations may, however, be different. There are different legislative responsibilities placed on council for looking

after their employees, than for members of the public, even if those people may be clients or users of council's services. The Protected Disclosure Procedure outlines these distinctions further.

4.4 Confidentiality

The identity of a discloser, the content of a disclosure or details of an assessment of a disclosure must not be divulged to any individuals or bodies not involved in the management or processing of a disclosure as per Part 7 of the PD Act.

Public Officers are given specific protections under the PD Act to provide information to other public officers or IBAC in dealing with a disclosure they have received. The public officer 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 PD Act and Regulations and these guidelines.

5. RELATED DOCUMENTS

Protected Disclosure Procedure 2015