



***Protected Disclosure Act 2012***

**Policy  
and  
Procedures**

**Adopted by Executive: August 2013**

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## **POLICY**

### **Support to disclosers**

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

Council recognises the value of transparency and accountability in its administrative and management practices, and supports the making of disclosures that reveal corrupt 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 protect and support people who make such disclosures from any detrimental action in reprisal for making the disclosure.

### **Relevant Legislation:**

*Independent Broad-Based Anti-Corruption Commission Act 2011*

*Protected Disclosure Act 2012*

*Protected Disclosure Regulations 2013*

### **Associated Council Documents:**

Discipline (Executive) Policy 17 July 2002

Fraud and Corruption (Council) Policy and Procedure November 2010

Harassment, Discrimination and Vilification (Council) Policy 7 July 2003

### **Responsible Officer:**

Corporate Counsel

## PROCEDURES

### 1 Purpose of these procedures

As of 11 February 2013, the new *Protected Disclosure Act 2012* ("Act") replaced the *Whistleblowers Protection Act 2001* and created a new framework for dealing with disclosures and the people who make them ("disclosers").

Section 58 of the Act requires entities that may receive disclosures to establish procedures to facilitate the making and handling of those disclosures.

These procedures ("procedures") have been prepared in accordance with the Act, the *Protected Disclosure Regulations 2013* ("Regulations") and IBAC guidelines for making and handling protected disclosures and for protected disclosure welfare management (together "IBAC's guidelines"). The procedures facilitate the making of disclosures and the subsequent handling of disclosures of improper conduct or detrimental action by Council, its employees or Councillors. Disclosures may be made by employees, Councillors or by members of the public.

The 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 under the Act in accordance with these procedures.

### 2 Objects of the Act

The Act commenced operation on 10 February 2013. The purpose of the Act is to encourage and facilitate the making of disclosures of:

- (a) improper conduct by public officers, public bodies and other persons; and
- (b) detrimental action taken in reprisal for a person making a disclosure.

The Act provides protection to disclosers who make disclosures in accordance with the Act and persons who may suffer detrimental action in reprisal for those disclosures. It also provides for the confidentiality of the content of those disclosures and the identity of the disclosers. The Act establishes a process for the matters disclosed to be investigated and rectifying action to be taken.

### 3 Definitions of key terms

Three key concepts in the protected disclosure regime are:

- improper conduct,
- corrupt conduct; and
- detrimental action.

Definitions of these terms are set out below.

#### 3.1 Improper conduct

A disclosure may be made about improper conduct by a public body or public official.

Improper conduct means:

- A. Conduct that is corrupt (see section 3.2 below); or
- B. Conduct:
  - (a) listed in section 3.2; and
  - (b) of a public officer or public body that involves:
    - a substantial mismanagement of public resources,
    - substantial risk to public health or safety; or
    - substantial risk to the environment;

where the conduct is not corrupt conduct but serious enough to constitute, if proved, a criminal offence or reasonable grounds for dismissal.

### 3.2 Corrupt conduct

Corrupt conduct means:

- A. Conduct of any person that adversely affects the honest performance of a public officer's or public body's functions;
- B. Conduct of a public officer or public body that constitutes or involves the dishonest performance of his or her or its functions ;
- C. Conduct of a public officer, former public officer or a public body that constitutes or involves knowingly or recklessly breaching public trust;
- D. Conduct by a public officer, former public officer or a public body that amounts to the misuse of information or material acquired in the course of the performance of their official functions; or
- E. Conduct that could constitute a conspiracy or attempt to engage in any of the conduct set out in paragraphs A to D above.

### 3.3 Detrimental action

The Act makes it an offence for a person to take detrimental action against a person in reprisal for making a protected disclosure. Detrimental action includes:

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

**Examples of Improper Conduct**

*To avoid closure of a town's only industry, an environmental health officer ignores or conceals evidence of illegal dumping of waste.*

*An agricultural officer delays or declines imposing quarantine to allow a financially distressed farmer to sell diseased stock.*

*A building inspector tolerates poor practices and structural defects in the work of a leading local builder.*

**Examples of Corrupt Conduct**

*A Council officer takes a bribe or receives a payment other than his or her wages or salary in exchange for the discharge of a public duty.*

*A Council officer favours unmeritorious applications for jobs or permits by friends and relatives.*

*A Council officer or Councillor sells confidential information.*

**Examples of Detrimental Action**

*Council refuses the promotion of a person who makes a disclosure because they made the disclosure.*

*Council demotes, transfers, isolates in the workplace or changes the duties of a discloser due to the making of a disclosure.*

*A person threatens, abuses or carries out other forms of harassment directly or indirectly against the discloser, his or her family or friends.*

*Council discriminates against the discloser or his or her family and associates in subsequent applications for jobs, permits or tenders.*

## **4 The reporting system**

Contact persons within Council

Disclosures may be made to the Protected Disclosure Coordinator, who is the central role in the internal reporting system (see section 6.2 for a description of the roles and responsibilities).

Corporate Counsel

Email: [protecteddisclosure@gleneira.vic.gov.au](mailto:protecteddisclosure@gleneira.vic.gov.au)

Letters are to be enclosed within a sealed envelope (and emails to include subject line) clearly marked:

*“CONFIDENTIAL – Attention Protected Disclosure Co-ordinator ”*

A disclosure may also be made to the manager or supervisor of the discloser, or a manager or supervisor of the person who is the subject of the disclosure. The manager or supervisor will then escalate the disclosure to the Protected Disclosure Coordinator.

A disclosure may be made in any of the following ways:

- in correspondence, including by fax;
- by phone;
- in an email;
- in person by an approach by staff or members of the public.

All correspondence, phone calls and emails from internal or external disclosers will be referred to the Protected Disclosure Coordinator. The Protected Disclosure Coordinator has the authority to make enquiries of officers and employees within Council.

Where a person is contemplating making a disclosure and is concerned about approaching the Protected Disclosure Coordinator (or relevant manager or supervisor) he or she can call or email the Protected Disclosure Coordinator (or relevant manager or supervisor) and request a meeting in a discreet location away from the workplace.

A disclosure relating to Council or its employees may also be made directly to the other bodies listed in Table 1 below.

**A disclosure about a Councillor must be made directly to IBAC or the Ombudsman.**

Table 1: Summary of persons to whom disclosure may be made

Person who is the subject of the disclosure	Person/body to whom the disclosure may be made
<ul style="list-style-type: none"> <li>- An employee of Council; or</li> <li>- Any person otherwise engaged by Council; or</li> <li>- Any person performing a public function on behalf of Council (whether under contract or otherwise); or</li> <li>- Council itself.</li> </ul>	<ul style="list-style-type: none"> <li>- Council to:               <ul style="list-style-type: none"> <li>• the Protected Disclosure Coordinator;</li> <li>• a manager or supervisor of the discloser; or</li> <li>• a manager or supervisor of the person who is the subject of the disclosure.</li> </ul> </li> <li>• the CEO;</li> <li>- IBAC; or</li> <li>- the Ombudsman; or</li> <li>- Victorian Inspectorate; or</li> <li>- Chief Commissioner of Police.</li> </ul>
Councillor	IBAC or the Ombudsman

## Contact

### details: IBAC

Level 1, North Tower  
459 Collins Street  
Melbourne VIC 3000  
GPO Box 24234  
Melbourne, VIC 3001

Website: [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)  
Online email enquiry form:  
[www.ibac.vic.gov.au/report-corruption-or-misconduct/online-form](http://www.ibac.vic.gov.au/report-corruption-or-misconduct/online-form)

Tel: 1300 735 135  
TTY: 1800 555 677  
Fax: (03) 8635 6444

### Victorian Inspectorate

PO Box 617 Collins Street West  
Melbourne VIC 8007

Website: [www.vicinspectorate.vic.gov.au](http://www.vicinspectorate.vic.gov.au)  
Email: [info@vicinspectorate.vic.gov.au](mailto:info@vicinspectorate.vic.gov.au)

Tel: 03 8614 3225  
Fax: 03 8614 3200

### Victorian Ombudsman

Level 9 , North Tower  
459 Collins Street  
Melbourne VIC 3000  
(DX 210174)

Website: [www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au)  
Email:  
[ombudvic@ombudsman.vic.gov.au](mailto:ombudvic@ombudsman.vic.gov.au)

Tel: 9613 6222  
Toll Free (regional only): 1800 806 314

### Chief Commissioner of Police

Victoria Police Centre switchboard  
G.P.O Box 913  
Melbourne VIC 3001

Website: <http://www.police.vic.gov.au>

## 5 Training

Employees and Councillors will be provided with all relevant information and given appropriate training to ensure they are familiar with the protected disclosure policies and procedures, particularly confidentiality obligations and resulting consequences of a breach of the Act.

Similarly, Records staff, Customer Service Centre staff, staff in receipt of mail from Council's general email address ([mail@gleneira.vic.gov.au](mailto:mail@gleneira.vic.gov.au)) and other employees will be made aware of the general nature of protected disclosures and the established reporting channels so that identified disclosures are dealt with appropriately.

## 6 Roles and responsibilities

### 6.1 Employees and Councillors

Employees and Councillors are encouraged to report known or suspected incidents of improper conduct or detrimental action in accordance with these procedures.

Employees and Councillors have an important role to play in supporting those who have made a legitimate disclosure. They must refrain from any activity that is, or could be perceived to be, victimisation or harassment of a person who makes a disclosure. They should also protect and maintain the confidentiality of a person they know or suspect to have made a disclosure.



## 6.2 Protected Disclosure Coordinator

The Protected Disclosure Coordinator will:

- Manage the reporting system used by Council;
- Be a contact point for general advice about the operation of the Act and for integrity agencies such as IBAC;
- Make arrangements for a disclosure to be made privately and discreetly;
- Receive any disclosure made orally (and commit it to writing) or in writing;
- Impartially assess any allegation and determine whether it may be a protected disclosure;
- Refer all protected disclosures to IBAC;
- Keep the discloser advised of the progress of the disclosure;
- Receive all phone calls, emails and letters from members of the public or employees seeking to make a disclosure;
- Appoint a Welfare Manager (see section 10.2) or arrange for appropriate welfare support to protect the discloser from any reprisals;
- Establish and manage a confidential records management system;
- Collate and publish statistics on disclosures made;
- Take all necessary steps to ensure the identity of the discloser and the identity of the person who is the subject of the disclosure are kept confidential; and
- Liaise with the CEO.

## 6.3 Manager or supervisor in receipt of a disclosure

A manager or supervisor who receives a disclosure will:

- Make arrangements for the disclosure to be made privately and discreetly and, if necessary, away from the workplace;
- Commit to writing any disclosure made orally;
- Advise the Protected Disclosure Coordinator of the disclosure immediately and forward all details, emails, letters and any other documents relating to the disclosure as soon as possible;
- Advise the discloser that the disclosure has been escalated to the Protected Disclosure Coordinator; and
- Take all necessary steps to ensure the identity of the discloser and the identity of the person who is the subject of the disclosure are kept confidential.

# 7 Confidentiality

## 7.1 Confidentiality of identity and information

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 prohibits any person who receives information, including information likely to lead to the identification of a person who has made a disclosure, from disclosing that information except in certain limited circumstances. Disclosure of information in breach of the Act constitutes an offence that is punishable by a maximum fine of 120 penalty units or 12 months imprisonment or both for an individual, and 600 penalty units for a body corporate.

However, there are specific circumstances in which a person may disclose information obtained about a protected disclosure and these include:

- Where exercising Council's functions under the Act;
- When making a report or recommendation under the Act;
- When publishing statistics in Council's annual report; and
- During criminal proceedings for certain offences under the Act.

Notwithstanding this, the Act prohibits the inclusion of particulars in any report (including an annual report) or recommendation that is likely to lead to the identification of the discloser.

There are also other circumstances where information may be disclosed including:

- where the discloser has consented to the disclosure of their identity;
- where IBAC or the Victorian Inspectorate have determined that the disclosure is not a protected disclosure and the information is subsequently disclosed;
- where necessary for the purpose of the exercise of functions under the Act or the IBAC Act;
- where an investigating entity publishes a report to Parliament, made in accordance with its confidentiality requirements;
- for the purposes of a proceeding for an offence against a relevant Act;
- for the purpose of Council, the discloser or the person the subject of the disclosure obtaining legal advice;
- to an interpreter acting for Council, the discloser or the person the subject of the disclosure;
- to a parent or guardian of the discloser or the person the subject of the disclosure if he or she is under 18 years of age; and
- to an independent person, for the purposes of enabling the discloser or the person the subject of the disclosure (if either of them has a disability) to understand an obligation under the Act.

The Protected Disclosure Coordinator should be consulted before any information is disclosed.

## **7.2 Record Keeping**

Council will ensure that:

- all paper and electronic files are secure and can only be accessed by the Protected Disclosure Coordinator and the CEO (or Welfare Manager in relation to welfare matters);
- all printed material is kept in files that are clearly marked as a protected disclosure matter and include a prominent warning on the front of the file that criminal penalties apply to any unauthorised divulging of information concerning a protected disclosure;
- any electronic files saved are password protected or have limitations on access rights;
- any other material, such as recordings from interviews, photographs etc. are stored securely with the discloser files, with access only to the Protected Disclosure Coordinator and the CEO (or Welfare Manager in relation to welfare matters);
- the communications relating to a disclosure are made securely i.e. sensitive information or documents are not emailed or faxed to a machine to which staff have general access; and

- all relevant phone calls and meetings are conducted in private.

## **8 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 disclosures. The register will be confidential and will not record any information that may identify the discloser.

The register will contain the following information:

- The number and types of disclosures made to Council during the year;
- The number and types of disclosures referred by Council to IBAC for assessment and investigation;
- The number and types of disclosed matters that Council has assessed as not being protected disclosures;
- The number and types of disclosed matters that were substantiated by IBAC upon investigation and the action taken by Council on completion of IBAC's investigation; and
- Any recommendations made by IBAC that relate to Council.

## **9 Receiving and assessing disclosures**

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

The Protected Disclosure Coordinator, will assess whether a disclosure has been made in accordance with Part 2 of the Act and is, therefore, a protected disclosure.

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

For the disclosure to be responded to by Council, it must concern an employee, an officer or any person otherwise engaged by or performing a public function on behalf of Council, or Council itself. If the disclosure concerns an employee or officer of another public body or a Councillor, the disclosure has not been made in accordance with the Act. The person who has made the disclosure must be advised of the correct person or body to whom the disclosure should be directed. (Refer to Table 1 in section 4).

Disclosures may be received from anonymous sources, including unverified email addresses (where the identity of the person making the disclosure cannot be determined), phone calls, by facsimile, in a conversation or meeting. If the disclosure is made orally, contemporaneous notes should be made of the disclosure.

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

To be a protected disclosure, a disclosure must be satisfied that the answer to each of the following questions is Yes:

- Did a natural person (that is, an individual person rather than a corporation) make the disclosure?
- Does the disclosure relate to conduct of Council or a Council officer/employee or a Councillor 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 the disclosure have reasonable grounds for believing the alleged conduct has occurred?

The Protected Disclosure Coordinator must assess whether the disclosure is a protected disclosure within 28 days of the receipt of the disclosure.

The discloser does not need to specifically request the protections of the Act, or refer to the 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.

In reaching a conclusion as to whether a disclosure may be a protected disclosure, the Protected Disclosure Coordinator will consider whether the disclosure meets all of the requirements for a protected disclosure in Part 2 of the Act and the Regulations and shows, or tends to show, that the public officer to whom the disclosure relates:

- has engaged, is engaging or proposes to engage in improper conduct in his or her capacity as a public officer; or
- has taken, is taking or proposes to take detrimental action in reprisal for the making of a protected disclosure.

Where the Protected Disclosure Coordinator concludes that the disclosure amounts to a protected disclosure, within 28 days of receiving the disclosure, the Protected Disclosure Coordinator must:

- A. Notify IBAC of the disclosure for IBAC assessment as to whether it is a protected disclosure complaint; and
- B. Notify the discloser that:
  - the disclosure has been assessed by Council as a protected disclosure;
  - has been notified to IBAC for assessment; and
  - that it is an offence to disclose the fact that the disclosure has been notified to IBAC for assessment.

Where the Protected Disclosure Coordinator makes the assessment that a disclosure is not a protected disclosure, the matter does not need to be dealt with under the Act and Council may be able to deal with it under its own complaint handling process. The Protected Disclosure Coordinator will decide how the matter should be dealt with.

The Protected Disclosure Coordinator must then, within 28 days of receiving the disclosure:

- A. Notify the discloser that Council does not consider the disclosure to be a protected disclosure; and
- B. Advise the discloser that
  - the disclosure was not notified to IBAC; and
  - the discloser is still entitled to receive the protected disclosure protections.

Notification to the discloser is not necessary where the disclosure has been made anonymously.

#### 9.4 IBAC assessment and investigation

Once Council notifies IBAC of an assessable protected disclosure, IBAC must assess whether the disclosure is in fact a protected disclosure and if it is, determines it as a 'protected disclosure complaint'.

In making its assessment, IBAC may seek additional information from Council or from the discloser.

Whether or not IBAC determines the disclosure to be a protected disclosure complaint, the protections under Part 6 of the Act apply to the discloser.

A disclosure cannot be withdrawn once IBAC determines that it is a protected disclosure complaint. An ordinary complaint made to IBAC differs in that it can be withdrawn at any time after making it. However, IBAC can decide not to investigate a protected disclosure complaint if the discloser requests that it not be investigated.

If IBAC determines that the disclosure is a protected disclosure complaint, then it may dismiss, investigate, or refer the matter. Referral can be made to the Chief Commissioner of Police, the Ombudsman or the Victorian Inspectorate (if IBAC considers the disclosure relates to the performance of the duties, functions or the exercise of powers of that person/body and it would be more appropriate for the disclosure to be investigated by that person or body). IBAC has a responsibility to advise Council within a reasonable time of its determination and the action IBAC intends to take.

Where IBAC finds that the conduct disclosed by the discloser has occurred, IBAC may make a recommendation that further action be taken by Council.

The Protected Disclosure Coordinator may also at any time recommend to the CEO action that could be taken to prevent the conduct from continuing or occurring in the future or to remedy any harm or loss arising from the conduct.

### **10 Managing the welfare of the discloser**

#### 10.1 Commitment to protecting disclosers

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.

#### 10.2 Welfare Manager

The Protected Disclosure Coordinator may appoint a Welfare Manager to be responsible for looking after the general welfare of the discloser or any person affected by a protected disclosure, whether as a witness in the investigation of the disclosure or as a person who is a subject of that investigation ("cooperator"). Whether or not a Welfare Manager is appointed, welfare support will be provided by Council to the discloser or cooperator on an ongoing basis. The welfare provided will include:

##### A. Provision of Information

- confirmation that the disclosure has been received;

- advice regarding the legislative and administrative protections available to the discloser;
  - a description of the action proposed to be taken; and
  - if action has been taken, details about results of the action.
- B. Provision of active support
- acknowledge the person for having come forward;
  - provide the person with assurance that they have done the right thing, and the organisation appreciates it;
  - make a clear offer of support;
  - assure them that all reasonable steps will be taken to protect them; and
  - give them an undertaking to keep them informed.
- C. Managing expectations
- Having an early discussion regarding:
- what outcome they want;
  - whether their expectations are realistic; and
  - what the organisation will be able to provide.
- D. Maintaining confidentiality
- The identity of the discloser and the subject matter of the disclosure need to be kept confidential by:
- making sure that other staff cannot infer the identity of the discloser or a person cooperating with the investigation from any information they receive;
  - reminding the discloser not to reveal themselves or give out information that would enable others to identify them as a discloser; and
  - making sure that hardcopy and electronic files relating to the disclosure are accessible only to those who are involved in managing disclosures and persons affected by them.
- E. Assessing the risks of detrimental action being taken in reprisal
- be proactive and do not wait for a complaint of victimisation, but actively monitor the workplace, anticipate problems and deal with them before they develop.
- F. Protecting the discloser/cooperator
- examine the immediate welfare and protection needs of a discloser and seek to foster a supportive work environment;
  - ensure the expectations of the discloser are realistic.
  - listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making disclosure (see 10.4 below); and
  - assess whether the concerns the person may have about harassment, intimidation or victimisation might be due to causes other than those related to a protected disclosure.
- G. Keeping records
- keep contemporaneous records of all aspects of the case management of the person, including all contact and follow-up action.

All employees will be advised that it is an offence for a person to take detrimental action in reprisal for a protected disclosure. The maximum penalty is a fine of 240 penalty units or two years imprisonment or both. The taking of detrimental action can also be a ground for making a protected disclosure under the Act and can result in an

investigation (see section 10.4). It may also be grounds for disciplinary action under Council's human resources policy.

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).

### 10.3 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.

### 10.4 Occurrence of detrimental action

If a discloser reports an incident 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 CEO 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 detrimental action is reported, the Protected Disclosure Coordinator will assess the report as a new disclosure under the Act. Where the Protected Disclosure Coordinator is satisfied that the disclosure is a protected disclosure, it will be referred to IBAC. If IBAC subsequently determines the matter to be a protected disclosure, IBAC may investigate the matter or refer it to another body for investigation as outlined in the Act.

### 10.5 Disclosers implicated in improper conduct

Where a person who makes a disclosure is implicated in misconduct, Council will handle the disclosure and protect the discloser from reprisals in accordance with the Act, IBAC's guidelines and these procedures. Council acknowledges that the act of making a disclosure should not shield disclosers from the reasonable consequences flowing from any involvement in improper conduct. 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 under the Act. However, in some circumstances, an admission may be a mitigating factor when considering disciplinary or other action.

The CEO 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 discloser. 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 CEO must be satisfied that it has been clearly demonstrated that:

- A. 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);
- B. There are good and sufficient grounds that would fully justify action against any person who did not make a disclosure in the same circumstances; and
- C. 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.

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

Council recognises that employees against whom disclosures are made must also be supported during the handling and investigation of disclosures. Council will take all reasonable steps to protect the confidentiality of the person who is the subject of the disclosure. Where the disclosure has not been substantiated, the fact that the investigation has been carried out, the results of the investigation, and the identity of the person who is the subject of the disclosure will remain confidential.

Council will give its full support to a person who is the subject of a disclosure where the allegations contained in a disclosure have been, after investigation, determined to be wrong or unsubstantiated. If the matter has been publicly disclosed, the CEO will consider any request by that person to issue a statement of support setting out that the allegations were wrong or unsubstantiated.

## **12 Criminal offences**

Council will ensure all employees and Councillors are aware of the following offences created by the Act:

- A. It is an offence for a person to take detrimental action against a person in reprisal for a protected disclosure being made. The Act provides a maximum penalty of a fine of 240 penalty units or 2 years imprisonment or both.
- B. It is an offence for a person to divulge information obtained as a result of the handling or investigation of a protected disclosure without legislative authority. The Act provides a maximum penalty of 120 penalty units or 12 months imprisonment or both.
- C. It is an offence for a person to hinder or obstruct an IBAC officer who is performing a function or exercising a power under the IBAC Act or the Ombudsman in the exercising a power under the *Ombudsman Act* 1973 ("Ombudsman Act"). The IBAC Act provides a maximum penalty of 120 penalty units or 12 months imprisonment or both. The Ombudsman Act gives the Ombudsman (and the Director of Public Prosecutions) power to institute proceedings for such an offence.



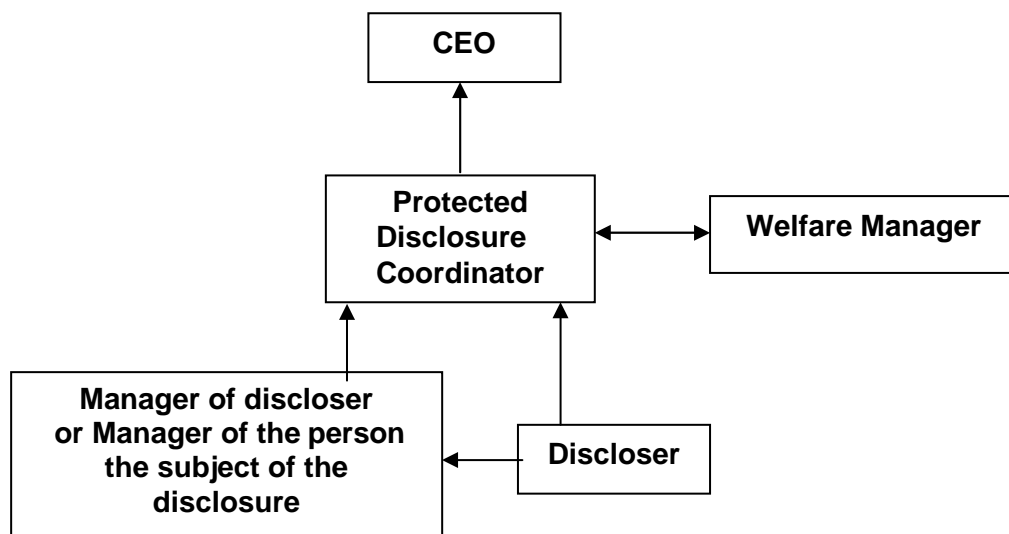
- D. It is an offence for a person to knowingly provide false information under the IBAC Act and the Ombudsman Act with the intention that it be acted on as a disclosure. The IBAC Act provides a maximum penalty of 120 penalty units or 12 months imprisonment or both. The Ombudsman Act gives the Ombudsman (and the Director of Public Prosecutions) power to institute proceedings for such an offence.

### 13 Review

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

### 14 Reporting Structure

Council's Reporting Structure for the purposes of the *Protected Disclosure Act 2012*



## Flow chart

