



Procedures

Disclosures under the *Protected Disclosure Act 2012*

City of Greater Dandenong –
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Requests for further information in relation to Protected Disclosures can be made to the Director Corporate Services or the Manager People and Procurement on telephone 8571 5100

PROCEDURES – DISCLOSURES UNDER THE PROTECTED DISCLOSURE ACT 2012

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1 STATEMENT OF SUPPORT TO DISCLOSERS

The City of Greater Dandenong is committed to the aims and objectives of the *Protected Disclosure Act 2012* and *Regulations 2013* (the PD Act). It does not tolerate improper conduct by the organisation, its officers, employees, staff or Councillors, nor does it tolerate the taking of reprisals against those who come forward to disclose such conduct.

The City of Greater Dandenong recognises the value of transparency and accountability in its administrative and management practices and supports the making of disclosures that reveal improper conduct.

The City of Greater Dandenong 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 or body who is the subject of the disclosure.

2 PURPOSE OF THESE PROCEDURES

These procedures have been established under section 58 of the PD Act and in accordance with the Independent Broad-based Anti-Corruption Commission (IBAC) guidelines for making and handling protected disclosures. They are a resource for disclosers and potential disclosers who want to find out how to make a disclosure and receive the protections available under the PD Act and how the discloser and their disclosure may be managed and handled respectively by Council.

These procedures form an essential part of Council's commitment to the aims and objectives of the PD Act. The City of Greater Dandenong does not tolerate improper conduct by the organisation, its employees, staff, officers or Councillors, nor does it tolerate the taking of reprisals against those who come forward to disclose such conduct.

The City of Greater Dandenong recognises the value of transparency and accountability in its administrative and management practices, and supports the making of disclosures that reveal improper conduct or the taking of detrimental action in reprisal against persons who come forward to report such conduct.

Disclosures may be made by any individual, whether an employee of Council or a member of the public.

These procedures do not diminish the effectiveness or operation of Council's existing Dispute Resolution Processes. Employees, staff, officers and Councillors are encouraged to raise appropriate matters at any time with their supervisors or managers/directors respectively. Similarly, individuals and members of the public are likewise encouraged to raise any matters of concern with the organisation directly through Council's Dispute Resolution Process, details of which can be obtained at www.greaterdandenong.com.

3 DEFINITION OF KEY TERMS

The two key concepts in the reporting system for protected disclosures are improper conduct and detrimental action.

3.1 Improper Conduct

A disclosure may be made about improper conduct by a public body or public official. **Improper conduct** means corrupt or specified conduct.

Corrupt Conduct

Corrupt conduct is any conduct:

- that adversely affects that honest performance of a public body's or public officer's functions or
- that involves dishonest performance of a public body's or public officer's functions or
- by a public body or public officer that knowingly breaches public trust or
- by a public body or public officer which **misuses** information or materials acquired in the course of their performance or
- which constitutes a conspiracy or an attempt to engage in a conspiracy.

Specified Conduct

Specified conduct is any one of the above mentioned types of conduct or any conduct that:

- involves the substantial **mismanagement** of public resources or
- is a substantial risk to public health or safety or
- is a risk to the environment or
- would constitute a criminal offence or
- would constitute reasonable ground for dismissing or terminating the employment of the officer engaged in that conduct.

3.2 Detrimental Action

Under the PD Act, detrimental action may not be taken against a discloser in reprisal for a protected disclosure. In addition, detrimental action may not be taken against other persons in relation to a protected disclosure made under the PD Act. **Detrimental action** is outlined in section 3 of the PD Act and includes any action causing injury, loss or damage, intimidation, harassment or any adverse treatment in relation to a person's employment, career, trade or profession.

A person need not have actually taken any action but can have threatened to do so or incited someone else to do so. Detrimental action can also be taken against any other person other than the discloser.

The person taking the action must be of the belief that the discloser has made, or intends to make, a disclosure or that another person has cooperated, or intends to cooperate with an investigation of a disclosure.

The reasons for a person taking action in reprisal must be a substantial reason or it will not be considered as detrimental action. A discloser who believes, on reasonable grounds, that they have suffered from detrimental action must provide supporting, factual information to substantiate their claim.

3.3 Other Terms

The following outlines other terms used within this document:

Term	Meaning
assessable disclosure	any disclosure either made directly to IBAC or the VI or if received by Council and which is required to be notified to IBAC for assessment.
Council	the organisation of the City of Greater Dandenong.
detrimental action	any action causing injury, loss or damage, any action seen as intimidation or harassment or any discrimination, disadvantage or adverse treatment shown toward a person's employment, career, profession, trade or business, including the taking of disciplinary action.
discloser	a person who (purports to) make a complaint, allegation or disclosure (however described) under the PD Act.
disclosure	Any complaint, concern, matter, allegation or disclosure (however described) purported to be made in accordance with the PD Act.
IBAC	Independent Broad-based Anti-corruption Commission.
IBAC Act	the <i>Independent Broad-based Anti-corruption Commission Act 2011</i>
improper conduct	any corrupt conduct or conduct that would constitute a criminal offence or reasonable grounds for dismissal. This includes specified conduct as outlined in the PD Act. The conduct or action being disclosed may have taken place, is still occurring or is believed will occur or be engaged in.
Investigative(ing) entity	IBAC, the Chief Commissioner of Police, the Victorian Ombudsman or the Victorian Local Government Inspectorate.
protected disclosure	any disclosure made in accordance with Part 2 of the PD Act.
protected disclosure complaint	a disclosure which has been determined and assessed by IBAC to be a protected disclosure in accordance with Part 2 of the PD Act.
public body	primarily any public service body established under the <i>Public Administration Act 2004</i> or any Council established under the <i>Local Government Act 1989</i> or a body performing a public function on behalf of the State.
public officers	includes, but is not limited to, any Local Government Councillors and Council employees.
PD Act	<i>Protected Disclosure Act 2012</i> and <i>Protected Disclosure Regulations 2013</i> if they apply
VI	Victorian Inspectorate
VO	Victorian Ombudsman

4 THE PROTECTED DISCLOSURE ACT 2012

The *Protected Disclosure Act 2012* commenced operation on 10 February 2013 and repealed the existing *Whistleblowers Act 2001*. The purpose of the PD Act is to encourage and facilitate the making of disclosures of improper conduct by public officers and public bodies.

Such disclosures may be made about any of the public officers or bodies as defined in section 3 of the PD Act and section 6 of the IBAC Act. They include:

- Government Departments
- Statutory authorities
- Municipal councils
- Government-appointed boards and committees
- Government owned companies
- Universities and TAFEs
- Public hospitals
- State-funded residential care services
- Employees, staff and members of public bodies of the above
- Councillors
- Members of Parliament
- Judicial officers
- Police and protected service officers
- Teachers
- Public servants.

The PD Act provides certain protections to persons affected by protected disclosures, including the discloser, a witness or a person who is the subject of an investigation. It establishes a system for the matters disclosed to be considered and assessed by IBAC and further dealt with pursuant to IBAC's investigative and other powers and functions in accordance with the *IBAC Act 2011* and the *Protected Disclosures Act 2013*.

A protected disclosure cannot be made about a public interest monitor, the VI or officers of the VI or the conduct or actions of a court.

5 THE REPORTING SYSTEM

This section should be read in conjunction with:

- section 6 Roles and Responsibilities
- section 7 Confidentiality
- section 9 Receiving and Assessing Disclosures.

Disclosures may be made about improper or detrimental action by Council, its employees, staff, officers and Councillors. The conduct or action being disclosed about may be one which has taken place, is still occurring or is believed intended to be taken or engaged in.

A disclosure may only be made by a natural person, not a company or an organisation. This does not preclude a group of individuals making a joint disclosure at the one time. Disclosures may be made:

- **Verbally** – A person can make a verbal disclosure in person, by phone, leaving a voicemail message or by any other form of electronic communication that does not require writing. The disclosure must be made in private. The discloser must reasonably believe that only the following people are present or able to listen to the conversation:
 - Discloser
 - A lawyer representing the discloser
 - One or more people to whom a disclosure can be made under the PD Act.

Council must ensure that the person receiving the disclosure makes notes at the time to record the disclosure. The conversation can be recorded with the discloser's permission or after prior warning that the conversation will be recorded.

- **In writing** – A written disclosure can only be provided to Council by:
 - Personal delivery to Council's office at 397 Springvale Road, Springvale 3172 (after March 2014 this address will change to 225 Lonsdale Street, Dandenong 3175) or
 - Mail delivery to Council's head office at PO Box 200, Dandenong 3175 or
 - Email to the official email address of the person nominated as the Protected Disclosure Officer.

Disclosures cannot be made by fax.

- **Anonymously** – a discloser need not identify themselves to the organisation to make a disclosure to that organisation under the PD Act. An anonymous disclosure can be made by using an unverifiable email address, through anonymous phone calls or in a face-to-face conversation or meeting where the person refuses to identify themselves.

Disclosures do not have to, and may not be able to, identify the person or body complained about.

Disclosures about improper conduct or detrimental action by Councillors must be made directly to IBAC or the VO. They cannot be made to Council.

Disclosures about improper conduct or detrimental action by the City of Greater Dandenong or its employees, staff or officers may be made directly to the organisation (Council) **or** to IBAC or the VO.

The PD Act sets out the different procedures for making disclosures in relation to Council and its employees, staff, officers and Councillors. For detailed information about these procedures, see section 8 of this document.

The City of Greater Dandenong will:

- ensure these procedures, including detailed information about how disclosures may be made and by whom, are accessible on its website and available internally and externally to employees and any member of the public.
- ensure its senior executive staff are involved in, and retain oversight of the reporting system.
- ensure its reporting system is centralised and accessible only by appropriately authorised officers, allowing the flow of information to be tightly controlled to ensure confidentiality and minimise risks of reprisal being taken against disclosers.
- ensure its reporting system protects the confidentiality of information received or obtained in connection with a protected disclosure in accordance with the PD Act.
- ensure its reporting system protects the identity of persons connected with a protected disclosure in accordance with the PD Act.
- ensure conflicts of interest are minimised by excluding line managers from the assessment of any disclosures.
- keep the matters relating to a disclosure distinct from the welfare management of the person making a disclosure.
- immediately notify IBAC of any disclosure received about the CEO of Council.

6 ROLES AND RESPONSIBILITIES

6.1 Council Officers, Employees, Staff and Councillors

Employees and Councillors are encouraged to raise matters concerning any employee, staff, officer or Councillor of the City of Greater Dandenong. In particular, employees and Councillors are encouraged to report known or suspected incidences of improper conduct or detrimental action in accordance with these procedures, whether such conduct or action has taken place, is suspected to take place or is still occurring.

All employees and Councillors of the City of Greater Dandenong have an important role to play in supporting those who have made a legitimate disclosure in accordance with the PD Act, particularly if they are a party involved in the disclosure. Anyone who is a party involved in a disclosure must refrain from any activity that is, or could be perceived to be, victimisation or harassment of a person who makes a disclosure. This includes protecting and maintaining the confidentiality of a person they know, or suspect, to have made a disclosure.

6.2 Direct and Indirect Supervisors and Managers

Employees who wish to make a protected disclosure may make that disclosure to their direct or indirect supervisor or manager.

If a person wishes to make a protected disclosure about an employee of Council, that person may make the disclosure to that employee's direct or indirect supervisor or manager.

The supervisor or manager receiving the disclosure will:

- immediately bring the matter to the attention of a Protected Disclosure Officer for further action in accordance with the PD Act.
- commit to writing down any disclosures made verbally.
- take all necessary steps to ensure the information disclosed, including the identity of the discloser, and any person involved, is secured and remains confidential.
- offer to remain a support person for the discloser in dealing with the Protected Disclosure Officer.

6.3 Protected Disclosure Officer

The City of Greater Dandenong has three Protected Disclosure Officers. These officers:

- can receive disclosures made internally by any employees or externally from any member of the public. For internal employees and staff, they will provide a confidential avenue of advice about the PD Act where the discloser wishes to raise a concern about their colleagues, direct supervisor or manager.
- serve as a central contact point for general confidential advice about the operation of the PD Act for any person wishing to make a disclosure.
- will, under the guidance of the Protected Disclosure Coordinator, determine whether a disclosure should be notified to IBAC under section 21 of the PD Act.

Council's Protected Disclosure Officers will:

- make arrangements for a disclosure to be made privately and discreetly and, if necessary, away from the workplace.
- receive any disclosure made verbally or in writing from internal or external sources.
- commit to writing any disclosures made verbally.
- forward all disclosures and supporting evidence to the Protected Disclosure Coordinator for further action in accordance with the PD Act.

- take all necessary steps to ensure the information disclosed, including the identity of the discloser and any persons involved, is secured and remains confidential
- impartially assess the allegation under the guidance of the Protected Disclosure Coordinator, and consider whether it is a disclosure required to be notified to IBAC for assessment under section 21 of the PD Act.
- offer to remain a support person for the discloser in dealing with the Protected Disclosure Coordinator

The Protected Disclosure Officers appointed by the City of Greater Dandenong and their contact details are as follows:

- Anthony Camillo, Manager People and Procurement, Tel 8571 5218 or email anthony.camillo@cgd.vic.gov.au
- Lisa Roberts, Manager Governance & Commercial Property, Tel 8571 5216 or email lisa.roberts@cgd.vic.gov.au
- Matt Coughlan, Team Leader Risk Management & OHS, Tel 8571 5177 or email matthew.coughlan@cgd.vic.gov.au

From time to time, it may be necessary to appoint other or additional Protected Disclosure Officers. Council will take all reasonable steps to publicise the contact details of these officers as widely as possible.

6.4 Protected Disclosure Coordinator

The City of Greater Dandenong's Protected Disclosure Coordinator has a central role in the internal reporting system and maintains oversight of the system. The Protected Disclosure Coordinator:

- is contactable by external and internal persons making disclosures and has the authority to make enquiries within the organisation.
- will receive all disclosures forwarded from Council's Protected Disclosure Officers.
- is the contact point for general advice about the operation of the PD Act and for integrity agencies such as IBAC and the VO.
- is responsible for ensuring that the organisation carries out its responsibilities under the PD Act and any guidelines issued by IBAC.
- is Council's chief liaison with IBAC in relation to the PD Act.
- is responsible for coordinating Council's reporting system.
- will take all necessary steps to ensure information is received or obtained in connection with a disclosure, including the identities of the discloser and the person(s) about whom the disclosure relate(s), are kept confidential and secure at all times.
- is required to consider each disclosure impartially to determine whether it should be notified to IBAC for assessment under the PD Act.
- is responsible for arranging any necessary and appropriate welfare support for the discloser including appointing a Welfare Manger to support the discloser and to protect them from any reprisals.
- will advise the discloser appropriately and in accordance with the PD Act, the stage at which the disclosure is at.
- will establish and manage a confidential filing system
- will collate statistics on disclosures made.
- will liaise with the CEO of the City of Greater Dandenong.

The Protected Disclosure Coordinator appointed by the City of Greater Dandenong is:

- Mick Jaensch, Director Corporate Services, Tel 8571 5256 or email mick.jaensch@cgd.vic.gov.au

6.5 Welfare Manager

Council has also appointed a Welfare Manager who is responsible for looking after the general welfare of a discloser of a protected disclosure. The Welfare Manager will:

- examine the immediate welfare and protection needs of a discloser who has made a disclosure and seek to foster a supportive work environment.
- assess the risks of any detrimental actions being taken in reprisal of a disclosure and actively monitor a discloser's workplace.
- advise the discloser of the legislative and administrative protections available to them and inform them of any outcomes in relation to any investigations.
- manage the impact of an investigation on a discloser.
- listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making a disclosure.
- manage the expectations of a discloser.
- maintain the confidentiality of a discloser and the subject matter.
- keep contemporaneous records of all aspects of the case management of a discloser.

The Welfare Manager appointed by the City of Greater Dandenong is:

- Karyn Mackew, Team Leader Organisation Development, Tel 8571 5228 or email Karen.mackew@cgd.vic.gov.au

7 CONFIDENTIALITY

7.1 General Obligation of Confidentiality

The City of Greater Dandenong will take all reasonable steps to protect the identity of a discloser and the matters disclosed. Council understands that maintaining confidentiality in relation to protected disclosure matters is crucial to ensure that reprisals are not made against a discloser.

The obligations of confidentiality extend to any person receiving a disclosure or making a disclosure. It is in the interests of a discloser to ensure that they do not discuss any related matters other than with authorised officers within Council, officers of IBAC or any other persons authorised by law.

7.2 Ensuring Confidentiality

The City of Greater Dandenong will ensure all files and information in relation to disclosures are kept electronically secure and confidential. Only the Protected Disclosure Coordinator and Protected Disclosure Officers involved in a particular matter will be able to access files. Where necessary, a Welfare Manager may be able to gain access, where appropriate, in relation to discloser welfare matters. The Welfare Manager will be allocated a separate folder to store any information relevant to a discloser and this will only be accessible by the Welfare Manager and the Protected Disclosure Coordinator.

The Welfare Manager will not divulge any details relating to the disclosed matter to any other person other than the Protected Disclosure Coordinator or an investigator appropriately authorised under the PD Act or the *IBAC Act 2011*. All meetings between the relevant persons including Protected Disclosure Officers, the Welfare Manager and disclosers will be conducted discreetly to protect the confidentiality of the person making a protected disclosure.

All electronic files will be assigned specific password protection and backup files will be kept appropriately on a secured server. All other materials in connection with a protected disclosure will also be stored securely within the protected disclosure file.

The City of Greater Dandenong will not use unsecured email or general faxes to transit documents in connection with a disclosure and will ensure all telephone calls and meetings in connection with disclosures are conducted privately and in the strictest of confidence. Any hard copy documents related to a disclosure will be scanned electronically and entered into the secure electronic system. They will not be delivered anywhere by internal mail and where possible will be delivered in person by authorised officers.

Note that the *Freedom of Information Act 1982* (FOI Act) provides a general right of access to any person seeking documents in the possession of Council. The Protected Disclosures Act 2012 however, provides that certain information related to protected disclosures contained in documents in the possession of Council are exempt from the application of the FOI Act. This includes any information:

- relating to a disclosure made in accordance with the PD Act and
- relating to a disclosure notified to IBAC by Council under section 21 of the PD Act for assessment and
- that is likely to lead to the identification of a discloser.

The City of Greater Dandenong will:

- ensure that all staff, employees, officers and Councillors have access to a copy of these procedures.
- incorporate into its induction process some training about Council's general obligations under the PD Act and the rights and obligations of all employees, staff, officers and Councillors.
- introduce periodic refresher courses for existing staff, employees and Councillors about their rights and obligations under the PD Act.

- provide additional training and assistance to:
 - its complaint handling staff to ensure that any complaints received will be dealt with consistently and in accordance with the PD Act when required.
 - any staff with functions and duties under the FOI Act or with responsibilities for information management, to ensure that no prohibited information is disclosed under the PD Act and to ensure there is appropriate liaison between staff of IBAC or any other investigating entity where required in response to a request for access under the FOI Act.
 - all staff and employees dealing with customers to ensure any potential disclosures received from an external source can be handled appropriately in accordance with the PD Act and these procedures.

7.3 Limited Exceptions Permitted by the PD Act

The PD Act makes it a crime to disclose information connected with a disclosure made in accordance with the PD Act. Limited exceptions to the prohibition on disclosure are specified by the PD Act, include circumstances such as:

- where disclosure is required by Council (or one of its officers) under the PD Act.
- by an investigating entity under the *IBAC Act 2011*.
- in accordance with a direction or authorisation given by the investigating entity that is investigating the disclosure.
- for the purpose of taking lawful action in relation to the conduct that is the subject of an assessable disclosure including a disciplinary process or action.
- where IBAC or the Victorian Inspectorate has determined that the assessable disclosure is not a protected disclosure and the discloser or Council subsequently discloses the information.
- when an investigating entity has published a report to Parliament, in accordance with its confidentiality obligations.
- for the purpose of obtaining legal advice in relation to matters specified in the PD Act.
- in order to enable compliance with the PD Act:
 - where a person does not have a sufficient knowledge of the English language, to obtain a translation from an interpreter.
 - where a person is under 18 years of age, to a parent or guardian of a person.
 - where a person is suffering a disability and is not able to understand, to an independent person.
- in disciplinary actions or legal proceedings for certain offence under the PD Act or other specified Acts.

It is important to note that the PD Act prohibits the inclusion of any details, in any report or recommendation, that are likely to lead to the identification of a discloser. The PD Act also prohibits the identification of a person who is the subject of a disclosure in any particulars included in an annual report or any reports to Parliament.

7.4 Penalties Apply for Breach of Confidentiality

The penalties for breaching the confidentiality required by the PD Act include imprisonment, financial payments or both, and are more fully described in section 11 of these procedures.

8 RECEIVING AND ASSESSING DISCLOSURES

8.1 Making Disclosures in Accordance with the PD Act

The City of Greater Dandenong can only deal with disclosures which concern Council, its employees and officers. If the disclosure concerns another public body or employees, members, officers or staff of that other public body, Council will take reasonable steps to direct the discloser to the other body which is able to receive a disclosure about that person or body under the PD Act (see also table below). Note that this may not be possible if, for example, the allegation received is made from an anonymous source and the source has not provided any contact details to Council.

If a person does not wish their allegation or complaint to be treated as a disclosure made under Part 2 of the PD Act, the person must, at the time of making the disclosure, expressly state in writing that the disclosure is not a disclosure for the purposes of the PD Act.

Unless such an express statement has been made, upon receiving a disclosure (whether directly or indirectly), Council's Protected Disclosure Coordinator will determine whether the disclosure has been made in accordance with Part 2 of the PD Act. Part 2 of the PD Act sets out how disclosures must be made in order to be a protected disclosure under the PD Act.

One of the requirements in Part 2 is that the disclosure has been made to a body authorised under the PD Act to receive the disclosure. As set out earlier, in section 5 of these procedures, disclosures about this Council and its employees and staff may be made to this Council, IBAC, or the VO. Disclosures about Councillors of this Council must be made to IBAC or to VO, and may not be made to the Council.

Different procedures apply to the receiving body as detailed below.

Making a Disclosure to Council

A disclosure to Council may be made verbally or in writing.

A verbal disclosure to the Council must be made in private and may be made:

- in person
- by telephone to an appropriate Council officer as prescribed by the PD Act or
- by some other form of non-written electronic communication.

A verbal disclosure must be made to one of the following persons:

- the CEO of Council or
- one of the Protected Disclosure Officers identified in section 6.3 of these procedures or
- the Protected Disclosure Coordinator identified in section 6.4 of these procedures or
- to the direct or indirect manager of the discloser, if the discloser is an employee of Council or
- to the direct or indirect manager of the person to whom the disclosure relates, if that person is an employee of Council.

A written disclosure to Council must be:

- delivered personally to the office of the Council at 397 Springvale Road, Springvale (after March 2014 this changes to 225 Lonsdale Street, Dandenong 3175) or
- sent by post addressed to Council at PO Box 200, Dandenong 3175 or
- sent by email to Council's official email address at council@cgd.vic.gov.au or

- sent by direct email to the direct or indirect supervisor or manager of the discloser, if the discloser is an employee of the Council or
- sent by direct email to the direct or indirect supervisor or manager of the person to whom the disclosure relates, where that person is an employee of Council or
- one of the Protected Disclosure Officers identified in section 6.3 of these procedures or
- the Protected Disclosure Coordinator specified in section 6.4 of these procedures.

For a written disclosure, Council recommends that the discloser ensures the disclosure is provided personally or by post to the official address of Council and that the disclosure is sealed in an envelope clearly marked with one or more of the following:

- Confidential - Protected Disclosure
- Confidential - for the personal attention of the CEO
- Confidential - for attention of the Protected Disclosure Coordinator
- Confidential - for attention of the Protected Disclosure Officer

In relation to a disclosure being emailed to the official email address of Council, Council recommends that the discloser inserts in the subject line of the email one of the labels set out above.

Making a Disclosure to IBAC

A verbal disclosure to IBAC must be made in private and may be made:

- in person or
- by telephone, to 1300 735 135 or
- by some other form of non-written electronic communication.

The verbal disclosure must be made to one of the following persons:

- the Commissioner of IBAC or
- the Deputy Commissioner of IBAC or
- the CEO of IBAC or
- an employee referred to in s 35(1) of the IBAC Act or
- any staff referred to in s 35(2) of the IBAC Act..

A written disclosure to IBAC must be:

- delivered personally to the office of IBAC, Level 1 North Tower, 459 Collins Street, Melbourne, 3001 or
- sent by post addressed to the office of IBAC, GPO Box 24234, Melbourne, 3000 or
- sent by email to IBAC by filling out the email form available at <http://www.ibac.vic.gov.au/contact-us> (under the subheading "Email"), and clicking the button marked "Submit" or
- sent by email to the official email address of a person specified above to whom a verbal disclosure may be made (i.e., the Commissioner, the Deputy Commissioner, the CEO, or employee or staff referred to in s 35 of the IBAC Act) or
- submitted by an online form (if any) identified in the procedures established by IBAC under section 58(4) of the PD Act.

Making Disclosure to Victorian Ombudsman (VO)

A verbal disclosure to VO must be made in private and may be made:

- in person or
- by telephone, to 9613 6222 or toll free to 1800 806 314 or
- by some other form of non-written electronic communication.

The verbal disclosure may be made to an Ombudsman officer.

A written disclosure to VO must be:

- delivered personally to the office of Victorian Ombudsman, Level 9 North Tower, 459 Collins Street, Melbourne 3001 or
- sent by post addressed to the office of VO or
- sent by email to the office of VO at ombudvic@ombudsman.vic.gov.au or
- sent by email to the official email address of any Ombudsman officer or
- submitted by an online form (if any) identified in the procedures established by the Ombudsman under section 58(1) of the PD Act.

Making a Disclosure to the Victorian Inspectorate (VI)

Only a disclosure regarding the improper conduct of a Councillor can be made to the VI.

A verbal disclosure to the VI must be made in private and may be made:

- in person or
- by telephone to 8614 3225 or
- by some other form of non-written electronic communication.

The verbal disclosure must be made to one of the following persons:

- the Inspector appointed under section 18(1) of the Victorian Inspectorate Act 2011 (VI Act) or
- an employee referred to in section 28(1) of the VI Act or
- any staff referred to in section 28(2) of the VI Act.

A written disclosure to the VI must be:

- delivered personally to the office of the VI or
- sent by post addressed to the office of the Victorian Inspectorate, PO Box 617, Collins Street West, Melbourne, 8007 or
- sent by email to the office of the VI at info@vicinspectorate.vic.gov.au or
- sent by email to the official email address of a person specified above to whom an oral disclosure may be made (i.e., the Inspector, employee or staff referred to in s 28 of the VI Act) or
- submitted by an online form (if any) identified in the procedures established by the VI under s 58(1) of the PD Act.

Making a disclosure to the Chief Commissioner of Police

There are no particular Regulations prescribing detailed procedures for making a disclosure to the Chief Commissioner of Police. The standard procedures as set out in section 5 of these procedures still apply where relevant.

Disclosures about Other Public Bodies or Public Officers

Disclosures relating to improper conduct or detrimental action involving other public bodies or officers who are not employees, staff, officers or Councillors of the City of Greater Dandenong may be made to the various bodies as shown below (although the table is not an exhaustive list).

Person or body who is the subject of the disclosure	Person or body to whom the disclosure must be made	Relevant provisions in the PD Act and the PD Regulations where applicable
Employee, agent, deputy or delegate of or a public body, including a public service body and other Councils (unless the body is one of those set out below, in which case the below takes precedence)	That public body or the IBAC in most instances, and possibly also the Ombudsman, Chief Commissioner of Police and the Victorian Inspectorate in limited specified circumstances	Section 13 of the PD Act; regulation 6 in relation to disclosures made to the IBAC, regulation 7 in relation to disclosures made to the Ombudsman, regulation 8 in relation to disclosures made to the Victorian Inspectorate, regulation 9 in relation to disclosures made to a public service body, regulation 10 in relation to disclosures made to Councils.
The Chief Commissioner of Police, the Director of Public Procedures, the Chief Crown Prosecutor, the Solicitor-General, the Governor, the Lieutenant Governor, the Director of Police Integrity, the Electoral Commissioner, a judicial officer, a member of the VCAT who is not a judicial officer; Ministerial officers; Parliamentary advisers, electoral officers	IBAC	Section 14 of the PD Act, regulation 6 of the Regulations
An officer of Victorian Ombudsman or officer of the Victorian Auditor-General's Office	IBAC or the Victorian Inspectorate	Section 15 of the PD Act, regulation 6 in relation to disclosures made to IBAC, regulation 8 in relation to disclosures made to the Victorian Inspectorate
Councillors, the FOI Commissioner, the Privacy Commissioner, the Health Services Commissioner or the Commissioner for Law Enforcement Data Security	IBAC or Victorian Ombudsman	Section 16 of the PD Act, regulation 6 in relation to disclosures made to IBAC, regulation 7 in relation to disclosures made to Victorian Ombudsman
IBAC or an officer of IBAC	Victorian Inspectorate	Section 17 of the PD Act, regulation 8 of the Regulations
A member of police personnel, other than the Chief Commissioner of Police	A prescribed member of police personnel or IBAC	Section 18 of the PD Act, regulation 6 in relation to disclosures made to IBAC, regulation 11 in relation to disclosures made to a prescribed member of police personnel
A member of Parliament or Minister in the Legislative Assembly	Speaker of the Legislative Assembly	Section 19 of the PD Act, regulation 12 of the Regulations
A member of Parliament or Minister in the Legislative Council	President of the Legislative Council	Section 19 of the PD Act, regulation 12 of the Regulations

8.2 Council Assessment of a Disclosure

When Council receives a disclosure, complaint, report or allegation of improper conduct or detrimental action in relation to Council or its employees, staff or officers, it must determine whether the disclosure may be a protected disclosure by assessing its contents. The discloser does not need to specifically request the protections of the PD Act or refer to it. 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.

The Protected Disclosure Officer or Coordinator receiving the disclosure must make an assessment of the disclosure based on whether it meets all the requirements for a protected disclosure under Part 2 of the PD Act. The disclosure must:

- be made by an individual or group of people and
- be made verbally or in writing and
- be made to the right body and
- be about Council or its employee, staff or officers and
- show, or tend to show there is improper conduct or detrimental action and
- indicate the discloser believes, on reasonable grounds, that the information shows or tends to show there is improper conduct or detrimental action.

If the disclosure does not meet all the above requirements, then it is not a protected disclosure and Council may deal with the matter in accordance with its Dispute Resolution Process.

In considering the disclosure, a Protected Disclosure Officer or Coordinator may need to:

- seek further information or
- conduct a discreet initial enquiry or
- seek (further) evidence from the discloser or
- be satisfied that there is sufficient supporting material to demonstrate that the conduct or actions covered by the PD Act have occurred, are occurring or are likely to occur or
- be satisfied that the discloser appears to have reasonable grounds for believing the alleged conduct has occurred, is occurring or will occur.

The types of the questions that may need to be considered are:

- Is the belief of the discloser based on more than just a mere allegation, conclusion or suspicion?
- To what extent is there a reliance on hearsay or second-hand information for the basis of the discloser's belief?
- How did the discloser come to know about the conduct? Was the discloser directly involved in it? Did someone else tell them about it?
- How detailed is the information? Is there sufficient information to enable an appropriate officer to consider whether there is improper conduct or detrimental action?
- Is the belief supported by facts and circumstances, and objective evidence?
- Would a reasonable person, in possession of the same information as the discloser, hold the same belief?

If the disclosure is about improper conduct that may pose an immediate threat to the health and safety of individuals or property, or it consists of serious criminal conduct, Council may take immediate action while assessing the disclosure.

If the disclosure is considered to fall under Part 2 of the PD Act then the Protected Disclosure Officer(s) or Protected Disclosure Coordinator need to apply protections to the discloser as provided under Part 6 of the PD Act. These protections are detailed in section 9 of this document.

8.3 Considering Notification to IBAC

A decision about whether a disclosure is to be notified to IBAC under section 21 of the PD Act must be made by the Protected Disclosure Coordinator within 28 days of the disclosure being made. Within that period, the Protected Disclosure Coordinator must also ensure the discloser is informed in writing of whether the disclosure is considered to be an assessable disclosure under the PD Act.

If the Disclosure may be a Protected Disclosure

If the Protected Disclosure Coordinator or Officer considers the disclosure may be a protected disclosure under the PD Act, the Protected Disclosure Coordinator must, within 28 days of receiving the disclosure:

- notify IBAC of the disclosure for assessment and
- advise IBAC that Council considers the disclosure may be a protected disclosure
- notify the discloser that:
 - the disclosure has been notified to IBAC for assessment under the PD Act and
 - it is an offence under section 74 of the PD Act to disclose that the disclosure has been notified to IBAC for assessment under the PD Act.

If Disclosure is NOT Considered to be a Protected Disclosure

If the Protected Disclosure Coordinator or Officer determines a disclosure is not a protected disclosure, and the discloser has indicated to Council that he or she wishes to receive the protections that apply to a protected disclosure under the PD Act, the discloser will be notified in writing, within 28 days of receiving the disclosure, that:

- Council considers the disclosure is not a protected disclosure and
- the disclosure has not been notified to IBAC for assessment and
- regardless of whether the disclosure is notified to IBAC for assessment, the protections under Part 6 of the PD Act still apply to the disclosure.

(Protections still apply under Part 6 of the PD Act to a disclosure regardless of whether the disclosure is notified to IBAC or not. Those protections are discussed in further detail in section 10 of these procedures. Notifications to a discloser do not need to be provided by Council in the instance where a disclosure is made anonymously.)

In this instance, where the disclosure is NOT considered to be a protected disclosure, Council may deal with the matter under its Dispute Resolution Process.

9.3 Assessment by IBAC

Once a disclosure has been notified to IBAC, IBAC will determine whether it is a protected disclosure complaint. Such a determination must be made within a reasonable time after the disclosure is notified to IBAC.

IBAC must inform Council of its determination as to whether or not the disclosure is a protected disclosure complaint:

- in writing and
- within a reasonable time after making the determination.

In making this assessment, IBAC may seek additional information from Council or from the discloser if it considers there is insufficient information to make a decision.

If IBAC Determines the Disclosure is a Protected Disclosure Complaint

If IBAC determines the disclosure is a protected disclosure complaint, it must advise the discloser in writing and within a reasonable time after the determination is made, that:

- IBAC has determined that the disclosure is a protected disclosure complaint and, after the determination, whether IBAC has decided to dismiss, investigate or refer the protected disclosure complaint and the reasons for so doing and

- protections and confidentiality apply to a discloser of a protected disclosure complaint under Parts 6 & 7 of the PD Act and
- if IBAC decides to investigate or refer the protected disclosure complaint, it is an offence under section 184 of the IBAC Act to disclose IBAC's action.

If a disclosure is deemed to be a protected disclosure complaint, then Council is no longer the investigating body but must still provide the protections required under the PD Act, if advised of the identity of the discloser by IBAC. IBAC must deal with a protected disclosure complaint in accordance with the *IBAC Act*. The *IBAC Act* details IBAC's powers and functions, including investigating, dismissing or referring the protected disclosure complaint to another investigative agency to be dealt with.

Once IBAC has determined that a disclosure is a protected disclosure complaint, the discloser cannot withdraw that disclosure. IBAC can however, decide not to investigate a protected disclosure complaint if the discloser requests that it not be investigated.

IBAC may decide not to notify a discloser or entity of the above if it considers that notifying would have adverse consequences as set out in section 59(4) of the IBAC Act.

If IBAC determines the Disclosure is NOT a Protected Disclosure Complaint

If IBAC determines the disclosure is not a protected disclosure complaint, it must advise the discloser in writing and within a reasonable time after the determination is made that:

- IBAC has determined that the disclosure is not a protected disclosure complaint and
- as a consequence of that determination
 - the disclosure will not be investigated as a protected disclosure complaint and
 - that confidentiality provisions under Part 7 of the PD Act no longer apply in relation to the disclosure and
- regardless of whether IBAC has determined that the disclosure is a protected disclosure complaint, the protections under Part 6 still apply to the disclosure.

In addition, if IBAC is of the view that the disclosure, although not a protected disclosure complaint, may be able to be dealt with by another entity, IBAC may advise the discloser that:

- the matter which is the subject of the disclosure may be able to be dealt with by that entity other than as a protected disclosure complaint and
- if the discloser wishes to pursue the matter, to make a complaint directly to that entity.

A disclosure that is deemed NOT to be a protected disclosure complaint by IBAC, and is referred back to Council by IBAC, may be handled by Council under the protected disclosure regime or its Dispute Resolution Process. Protections under part 6 of the PD Act will still apply to the disclosure.

8.4 Investigations by IBAC or VO

If IBAC or the VO are assessing or conducting an investigation of a protected disclosure complaint against Council or its employees, staff, officers or Councillors, they may be in contact with Council to obtain information pertaining to their investigative inquiries. In this instance, Council is able to disclose information about the disclosure without breaching the confidentiality requirements of the PD Act.

If IBAC discloses the identity of a discloser and the contents of a protected disclosure complaint to a Council officer in the course of their investigations, the Council officer is bound by the confidentiality requirements of Part 7 of the PD Act.

Council will also be required to look after the welfare of the discloser and provide protection against possible detrimental action, if advised of the identity of the discloser by IBAC.

9 PREVENTING DETRIMENTAL ACTION

9.1 Commitment to Protecting Disclosers

The City of Greater Dandenong is committed to the protection of genuine disclosers against detrimental action taken in reprisal for the making of disclosures and protected disclosures.

Part 6 of the PD Act sets out the disclosure to IBAC and whether or not IBAC has determined that it is a protected disclosure complaint. The protections apply to a disclosure made under Part 2 of the PD Act from the time at which the disclosure is made to Council. 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. Protections also apply to further information related to a disclosure.

A discloser is not protected if they commit an offence under sections 72 or 73 of the PD Act. These include providing false or misleading information or falsely claiming that a disclosure is a protected disclosure complaint.

An employee of Council who has made a protected disclosure and believes, on reasonable grounds, that detrimental action will be, is being or has been taken against them, may request a transfer of employment.

The Protected Disclosure Coordinator is responsible for ensuring disclosers are protected from direct and indirect detrimental action, and that the culture of the workplace and Council more broadly, is supportive of disclosures and protected disclosures being made.

The Protected Disclosure Coordinator will appoint a Welfare Manager to all disclosers who have made a disclosure which has been notified to IBAC. The Welfare Manager will monitor the needs of the discloser and provide advice and support. In addition to performing the functions described in section 6.5 of these procedures, the Welfare Manager will also keep a contemporaneous record of all aspects of the case management of the person making a disclosure, including all contact and follow-up action.

The protections to disclosers extend to both internal and external sources making a protected disclosure under the PD Act. For internal disclosers, the Welfare Manager will ensure a supportive work environment and respond appropriately to any reports of intimidation or harassment against the discloser. For external disclosers, the Welfare Manager will take reasonable steps to provide appropriate support. The Welfare Manager will discuss reasonable expectations with all disclosers.

A discloser has the right to be protected from:

- any civil or criminal liability or administrative action (including disciplinary action for making the disclosure) and
- the committing of an offence against any Act that imposes obligations of confidentiality and
- breaching any other obligations requiring them to maintain confidentiality and
- being held liable for defamation in relation to information in a protected disclosure.

A discloser is not protected against legitimate management action and will still be held liable for their own conduct.

Furthermore, notwithstanding any of the above, Council is obligated to ensure the health and wellbeing of its employees, staff, officers and Councillors under the *Occupational Health and Safety Act 2004*; and has legislative responsibilities as an organisation under the *Charter of Human Rights and Responsibilities Act 2006* and the *Public Administration Act 2004*.

9.2 Prohibition on Taking Detrimental Action

A person takes detrimental action against another person in reprisal for a protected disclosure if:

- the person takes, or threatens to take, detrimental action against the other person because, or in the belief that:
 - the other person or anyone else has made, or intends to make, the disclosure or
 - the other person or anyone else has cooperated, or intends to cooperate, with an investigation of the disclosure; or
- for either of the reasons above, the person incites or permits someone else to take or threaten to take detrimental action against the other person.

9.3 Reporting 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 a disclosure, the Welfare Manager will:

- record the details of the incident and
- advise the discloser of his or her rights under the PD Act and
- inform, as soon as possible, the Protected Disclosure Coordinator or the CEO of the detrimental action.

The taking of detrimental action in reprisal for the making of disclosure is an offence under the PD Act as well as grounds for making a further disclosure. Where such detrimental action is reported, the Protected Disclosure officer or Coordinator will assess the report as a new disclosure under the PD Act. Where the Protected Disclosure Coordinator is satisfied that the disclosure is a disclosure required to be notified to IBAC for notification, the disclosure will be notified to IBAC in accordance with the PD Act and the steps outlined in these procedures.

Where the detrimental action is of a serious nature likely to amount to a criminal offence, consideration will be given to reporting the matter to the police or IBAC (if the matter was not already the subject of a disclosure notified to IBAC).

9.4 Penalties for Detrimental Action

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 (see section 11 of these procedures) or two years imprisonment, or both.

The taking of detrimental action in breach of the PD Act can also be grounds for making a disclosure under the PD Act and can result in an investigation by IBAC or another investigative entity authorised under this Act or the *IBAC Act*.

In addition, a discloser of a protected disclosure may:

- take civil action against the person who took detrimental action against the discloser and seek damages and
- take civil action against Council jointly and severally to seek damages if the person who took detrimental action against the discloser took that action in the course of employment with, or while acting as an agent of Council and
- apply for an order or an injunction from the Supreme Court.

9.5 Keeping the Discloser Informed

The Protected Disclosure Coordinator will take all reasonable steps to keep the discloser informed of the progress of the disclosure. Such information may depend on the extent to which the Protected Disclosure Coordinator has been provided information from investigating entities including IBAC. All communications with the discloser will be in plain English and the discloser will be provided with reasons in relation to any decisions made by Council.

10.5 Disclosers Implicated in Improper Conduct or Disciplinary Matters

Where a discloser is implicated in improper conduct, Council will handle the disclosure and protect the discloser from reprisals in accordance with the PD Act, IBAC's guidelines and these procedures. Council acknowledges that the act of disclosing should not shield disclosers from the reasonable consequences flowing from any involvement in their own improper conduct.

The PD Act specifically provides that a person's liability for his or her own conduct is not affected by a person's disclosure of that conduct under the PD Act, and the PD Act provides that the discloser is not subject to criminal or civil liability for making the disclosure. 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 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 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) and
- 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 PD Action is not in retribution for the making of the disclosure. The Protected Disclosure Coordinator will advise the discloser clearly of the proposed action to be taken, and of any mitigating factors that have been taken into account.

In addition, the PD Act permits Council to take management action in relation to a discloser which may amount to detrimental action, only if the fact that the discloser made a protected disclosure is not a substantial reason for the taking of that management action.

10 MANAGEMENT OF THE PERSON(S) AGAINST WHOM THE DISCLOSURE IS MADE

The City of Greater Dandenong recognises that persons against whom disclosures are made must also be supported during the handling and investigation of disclosures. Council will take all reasonable steps to ensure the confidentiality of the person who is the subject of the disclosure during the assessment and investigation process.

As outlined in these procedures, the fact that a disclosure has been made, whether it has been notified to IBAC for assessment, any information received from IBAC or another investigative Council and the identities of persons involved will not be divulged.

A person who is the subject of a disclosure who is made aware of this status may have a Welfare manager appointed by Council or could be referred to Council's EAP (counseling) program for welfare assistance. Alternately, the Protected Disclosure Coordinator will provide support and advice to a person who is the subject of a disclosure, particularly in relation to their rights and obligations under the PD Act, Council's internal reporting system, these procedures, and any other relevant law or code of conduct.

Council will afford natural justice to the subject of a disclosure prior to any decision being made about the allegations. If the matter has been investigated by another investigative entity, then it will be responsible for ensuring consultations with the subject include the provision of natural justice principles.

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. Council will take all reasonable steps to ensure that there are no adverse consequences for this person arising out of the disclosure or its investigation. If the matter has been publicly disclosed or becomes widely known across Council, the CEO will consider any request by that person to issue a statement of support setting out that the allegations were clearly wrong or unsubstantiated.

11 CRIMINAL OFFENCES

All Council staff, employees, officers and Councillors should note that under the PD Act:

1. It is an offence for a person to take detrimental action against a person in reprisal for a protected disclosure being made. Penalty is a fine of 240 penalty units or two years imprisonment or both.
2. It is an offence for a person to divulge information obtained in connection or as a result of the handling or investigation of a protected disclosure without legislative authority. Penalty is a fine of 120 penalty units or 12 months imprisonment or both.
3. It is an offence for a person to disclose that a disclosure has been notified to IBAC for assessment under the PD Act. Penalty is a fine of 120 penalty units or 12 months imprisonment or both.
4. It is an offence for a person to disclose that a disclosure has been assessed by IBAC to be a protected disclosure complaint under the PD Act. Penalty is a fine of 120 penalty units or 12 months imprisonment or both.
5. It is an offence for a person to provide information that the person knows is false or misleading in a particular matter, with the intention that it be acted on as a disclosed matter.
6. It is an offence for a person to falsely claim that a matter is the subject of a protected disclosure.

Note: as at 1 July 2013, one penalty unit is worth \$144.36. This is likely to be indexed every year thereafter on 1 July.

12 COLLATING AND PUBLISHING STATISTICS

The City of Greater Dandenong is required to publish certain statistics about the PD Act in its annual reports. That information relates mainly to how these procedures may be accessed and the number of disclosures notified to IBAC for assessment under section 21 of the PD Act during the financial year.

The Protected Disclosure Coordinator will establish a secure register to record such information, and to generally keep account of the status of disclosures made under the PD Act. The register will be confidential and will not record any information that may identify the discloser.

13 REVIEW

These procedures will be reviewed regularly or upon significant change to the PD Act, the PD Regulations or IBAC's guidelines to ensure their compliance.