



# PROTECTED DISCLOSURE PROCEDURE

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## 1. Purpose

The purpose of this procedure is to document the system for receiving, assessing and reporting **disclosures of improper conduct** or **detrimental action** by East Gippsland Shire Council or its employees. It details the standards and processes East Gippsland Shire Council will abide by in protecting those making disclosures and those who are the subject of a disclosure. A flowchart summarising the process to be followed when a disclosure of improper conduct is made is provided as **Attachment 1**.

## 2. Policy Context

The *Protected Disclosure Act 2012* (the Act) was introduced by the Victorian Government and commenced operation on 10 February 2013. The intent of the Act is to encourage and facilitate the making of disclosures of improper conduct by public officers and public bodies.

The Act provides protection from detrimental action to any person affected by a protected disclosure; including the **discloser** (the person making the disclosure, sometimes referred to as the 'whistleblower'), **co-operators** (e.g. assisting witnesses) and persons who are the subject of an investigation.

These principles and measures are incorporated in the East Gippsland Shire Council's *Protected Disclosure Policy*.

## 3. Policy Statement

In accord with its *Protected Disclosure Policy*, East Gippsland Shire 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.

East Gippsland Shire Council does not tolerate improper conduct by its Councillors, employees, contractors or volunteers, nor the taking of reprisals against those who come forward to disclose such conduct.

East Gippsland Shire Council will take all reasonable steps to protect people who make such disclosures from any detrimental action in reprisal for making the disclosure. It will also protect the welfare and confidentiality of the person(s) who are the subject of the disclosure.

All Councillors and employees of East Gippsland Shire Council have an important role to play in supporting those who have made a disclosure. They must protect discloser confidentiality and refrain from actual or perceived victimisation or harassment of those who disclose alleged improper conduct.

## 4. Scope

This procedure applies to all Councillors and Council staff, contractors and volunteers. The procedure is available to the public via the Council's website and at all Service Centres and Outreach Centres.

## 5. Flowchart

Refer to **Attachment 1** for a flowchart summarising the process to be followed when a disclosure of improper conduct is made, as detailed in section 6 below.



## 6. Procedure

### 6.1 Who can make a protected disclosure and about whom?

Any person or group of people (not a company), including East Gippsland Shire Council employees or Councillors, may make a protected disclosure regarding suspected improper conduct or detrimental action taken by East Gippsland Shire Council, its employees, contractors or volunteers.

Employees are encouraged to report known or suspected incidences of such conduct in accordance with these procedures. Where they are unsure about whether what they know amounts to improper conduct, or whether protected disclosure is the appropriate avenue for reporting, employees should utilise the quick checklist at **Attachment 2** and are encouraged to informally discuss their concerns, in confidence, with the Protected Disclosure Officers listed at 6.3.

Disclosures can only be made about public bodies (such as East Gippsland Shire Council) or public officers (such as Council employees or Councillors), or about conduct of a person that adversely affects the honest performance of an official function by a public body or public officer (such as contractors or volunteers).

- Disclosures about East Gippsland Shire Council its officers, contractors or volunteers may be made to the Chief Executive Officer (CEO), **Protected Disclosure Coordinator (PDC)** or to the nominated **Protected Disclosure Officer (PDO)**.
- Disclosures regarding Councillor conduct must be made to the **Independent Broad-based Anti-corruption Commission (IBAC)**<sup>1</sup>.

If you request another person to make the disclosure on your behalf, only the person making the disclosure will be covered by the full protections of the Act. You will have limited protections regarding your confidentiality and any detrimental actions taken against you in reprisal for the disclosure you initiated.

### 6.2 What can a protected disclosure be made about?

A protected disclosure may be made about information or actions which you *reasonably believe* display or tend to exhibit:

- Improper conduct (including corrupt conduct) of public bodies or public officers; or
- Detrimental action taken by public bodies or public officers in reprisal against a person for making a protected disclosure.

The information you provide must be a 'revelation' – IBAC considers that a complaint or allegation that is already in the public domain will not usually be considered a 'protected disclosure'.

#### **Examples of improper conduct**

- To avoid closure of a town's major business, an environmental health officer ignores or conceals evidence of illegal dumping of waste.
- Failure by Community Laws Officer to require a permit for an A-frame advertising sign on a public footpath as a result of the officer's relationship with the operator
- Parking Officer ignores a particular vehicle on the basis of a personal relationship with the vehicle's owner

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<sup>1</sup> Although the definitions in the *Independent Broad-based Anti-corruption Commission Act 2011* deem Councillors Public Officers, section 16 of the Act states disclosures relating to Councillors "must be made to the IBAC or the Ombudsman".



- A council employee approves a colleague's corporate expense account for payment even though it appears to have unjustified or non-work related expenditure items listed.

#### ***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 unworthy applications for jobs or permits by friends and relatives.
- A council officer sells confidential information, or uses confidential information for personal gain.
- A council officer colludes to share profits with tender recipients and conceals the overvaluation of tenders

#### ***Examples of detrimental action***

- A deserved promotion of a person who has made a disclosure is refused.
- A discloser is demoted, transferred, isolated in the workplace or has their duties changed due to the making of a disclosure.
- A Councillor or employee of Council threatens, abuses or carries out other forms of harassment directly or indirectly against the discloser, and/or his or her family or friends.
- Any Council employee discriminates against the discloser and/or his or her family and associates in subsequent applications for jobs, permits or contracted works.

### **6.3 How can a protected disclosure be made?**

You must make the protected disclosure in private, and you may make a protected disclosure either using your name or anonymously:

- in writing via post, email or courier;
- in person;
- by telephone or by leaving a voicemail message; or
- by any other form of electronic communication, e.g. text message.

You may not make a protected disclosure via facsimile (fax).

If you do not identify yourself the investigation may be impeded, and you will not receive notification of the outcomes.

Please ensure that written disclosures are clearly marked "PRIVATE AND CONFIDENTIAL" and addressed to the Protected Disclosure Coordinator.

An initial contact for disclosures of corrupt conduct, improper conduct or detrimental action by East Gippsland Shire Council or its employees, may be made to any of the following officers:

- Protected Disclosure Coordinator (PDC)  
Governance and Compliance Coordinator  
PO Box 1618  
BAIRNSDALE VIC 3875  
Phone: 03 5153 9500  
Email: [whistleblowers2@egipps.vic.gov.au](mailto:whistleblowers2@egipps.vic.gov.au)



- Protected Disclosure Officer (PDO)  
Director Corporate  
PO Box 1618  
BAIRNSDALE VIC 3875  
Phone: 03 5153 9500  
Email: [whistleblowers3@egipps.vic.gov.au](mailto:whistleblowers3@egipps.vic.gov.au)
- Chief Executive Officer (CEO)  
PO Box 1618  
BAIRNSDALE VIC 3875  
Phone: 03 5153 9500  
Email: [whistleblowers1@egipps.vic.gov.au](mailto:whistleblowers1@egipps.vic.gov.au)

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

Where a person is contemplating making a disclosure and is concerned about approaching the PDC or PDO in the workplace or during work hours, they may contact the PDC and request a meeting in a discreet location away from the workplace.

The PDC will discreetly acknowledge receipt of the information provided by the discloser. All records of conversations and correspondence will be securely maintained by the PDC in a confidential file throughout the assessment process.

The key responsibilities of these respective roles are described in the Roles and Responsibilities section.

#### **6.4 What happens after a protected disclosure is made?**

The following outlines the process undertaken by the PDC during the assessment of a protected disclosure allegation made about East Gippsland Shire Council or its employees.

Disclosures made to IBAC will be handled according to the procedures of the individual organisations.

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

East Gippsland Shire Council can only deal with disclosures that concern East Gippsland Shire Council, its employees, contractors and volunteers.

Alternatively, you may make the disclosure regarding improper conduct, corrupt conduct or detrimental action by East Gippsland Shire Council or its employees, directly to IBAC.

Concerns regarding Councillors must be made to IBAC.

IBAC  
Level 1 North Tower  
459 Collins Street  
Melbourne VIC 3000  
Postal: GPO Box 24234 MELBOURNE VIC 3001  
Website: [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)  
Telephone: 1300 735 135



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

Not all disclosures will be determined to be protected disclosures, and the procedural response by East Gippsland Shire Council (or IBAC) will vary accordingly. Where a disclosure has been received by the PDO or by the PDC, he or she will assess within two business days whether the disclosure is a protected disclosure (as per Part 2 of the Act).

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

- Did a natural person or group of people (that is, an individual person(s) rather than a corporation) make the disclosure? AND
- Does the disclosure relate to conduct of East Gippsland Shire Council or an officer acting in their official capacity, or a contractor or volunteer? AND
- Does the disclosed information show or tend to show there is improper conduct or detrimental action taken against a person in reprisal for making a protected disclosure? OR
- Does the discloser believe on reasonable grounds that the information shows or tends to show there is improper conduct or detrimental action?

In assessing improper conduct or detrimental action the PDC must consider the seriousness of the conduct in terms of consequences – not just whether the conduct constitutes or involves a particular type of conduct.

The discloser must believe on reasonable grounds that there is improper conduct, they must hold a **reasonable belief**: the belief must be probable, the information must be reliable, and the discloser must be credible.<sup>2</sup>

While East Gippsland Shire Council may gather information necessary to assess protected disclosure status, including issues of seriousness and reasonable belief, it must stop short of actively investigating the allegations made in the disclosure, this being the role of IBAC.

Where a disclosure is assessed to be a 'protected disclosure', the CEO will notify the disclosure to IBAC for investigation no later than 28 days after the disclosure is made, in accordance with section 21 of the Act. However, the aim will always be to notify IBAC as soon as practicable after the CEO has been notified of the positive assessment, as is required in the case of notifications of suspected corrupt conduct (see below).

Where a disclosure has been referred to IBAC, the discloser will also be advised that it is an offence under section 74 of the Act to reveal that the disclosure is now under investigation by IBAC. East Gippsland Shire Council may also provide IBAC with any additional information obtained during the assessment process.

Where a disclosure is assessed **not** to be a 'protected disclosure', the matter does not need to be dealt with under the Act and can be considered under other internal complaint handling processes. The PDO will determine how the matter should be managed in consultation with the PDC and the CEO.

In either case, the PDC will notify their decision to the discloser. Notification to the discloser is not necessary where the disclosure has been made anonymously.

Where a disclosure has not been referred to IBAC, as it has been assessed not to be a 'protected disclosure' or the disclosure was dismissed, the discloser may independently refer the matter directly to IBAC.

It should be noted that the provisions for protection of the identity of the discloser under Part 6 of the Act still apply whether or not the disclosure is determined to be 'protected' or not. This includes protection from any detrimental action taken in reprisal for making the disclosure.

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<sup>2</sup> Guidelines for making and handling protected disclosures – Oct 2016 p 20-21





The person making the disclosure will not be:

- subject to any civil or criminal liability or administrative action (including disciplinary action) for making the disclosure;
- committing an offence against the *Constitution Act 1975* or any other Act that imposes obligations of confidentiality or any other restriction by the disclosure of information;
- breaching any other obligation (rule, oath, law or practice) requiring them to maintain confidentiality or otherwise restrict confidentiality; or
- held liable for defamation in relation to information included in a protected disclosure.

It should be noted that a discloser is not protected if they commit an offence under sections 72 or 73 of the Act, i.e., if they knowingly provide false or misleading information intending this information to be acted upon as a protected disclosure, or falsely claim that a matter is the subject of a protected disclosure.

Where there are exceptional circumstances, for example the immediate safety of persons or assets, it may be necessary to notify Victoria Police for immediate action or intervention, prior to the formal conclusion of the assessment. The identity of the discloser would not be revealed during the notification of such cases.

### **6.7 Notifying protected disclosures in the case of suspected corrupt conduct**

Recent amendments to section 57A of the *Independent Broad-based Anti-corruption Commission Act 2011* (the IBAC Act) mean that from 2 December 2016 it is mandatory for the CEO to notify IBAC of any matter he or she suspects on reasonable grounds to involve corrupt conduct occurring or having occurred. Notifications of suspected corrupt conduct<sup>3</sup> must be made as soon as practicable after the CEO has formed a reasonable suspicion that corrupt conduct may have occurred or may be occurring.

The amendment therefore introduces separate criteria for assessment and notification timeframe for corrupt conduct. IBAC have confirmed that when receiving a potential disclosure East Gippsland Shire Council should first deal with the matter in accordance with the Protected Disclosure Act. If the matter is not notified to IBAC as a protected disclosure it should consider whether the CEO may be required to notify the matter to IBAC under section 57 of the IBAC Act.

### **6.8 Assessment by IBAC**

Once East Gippsland Shire Council notifies the disclosure to IBAC, IBAC must evaluate within a reasonable time whether or not the disclosure is a 'protected disclosure'.

IBAC may seek additional information from East Gippsland Shire Council or the discloser to assist during this process.

If IBAC decide that a 'protected disclosure' exists, then it must either:

- *Dismiss* the disclosure;
- *Investigate* the disclosure; or
- *Refer* the disclosure to another body for investigation, such as Victoria Police or the Victorian Ombudsman.

IBAC will afford natural justice to the person who is the subject of the disclosure.

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<sup>3</sup> 'Suspected corrupt conduct', or where the CEO suspects on reasonable grounds corrupt conduct is occurring, means there is a real possibility that corrupt conduct is, or may be, involved. There needs to be more than idle speculation. Proof is not necessary. It is not required that an individual or individuals be identified: a reasonable suspicion of corrupt conduct may still occur, and such matters should still be notified.



IBAC will notify East Gippsland Shire Council and the discloser in writing (if not made anonymously) within a reasonable time of:

- its determination and reasoning;
- the protections which are available to the discloser under Part 6 of the Act; and
- the rights and obligations of the discloser under the Act.

Where IBAC determines that the disclosure is not a 'protected disclosure' and as such will not be investigated by IBAC, it must advise the discloser of this decision in writing, within a reasonable time. IBAC may also advise the discloser and East Gippsland Shire Council that the Council may be able to deal with the disclosure outside of the Act through administrative processes.

### **6.9 Keeping the discloser informed**

The PDC will ensure the discloser is kept informed of action taken in relation to his or her disclosure, and the timeframes that apply. All communication with the discloser will be in plain English.

### **6.10 Welfare Management**

East Gippsland Shire Council has obligations to provide for a safe, non-discriminatory work environment under the *Occupational Health and Safety Act 2004*, *Charter of Human Rights and Responsibilities Act 2006*, *Equal Opportunity Act 2010*, *Public Administration Act 2004* and the *Local Government Act 1989*.

East Gippsland Shire Council is committed to the protection of disclosers and co-operators against detrimental action taken in reprisal for the making of protected disclosures. The PDC is responsible for ensuring disclosers and co-operators are protected from direct and indirect detrimental action, and that the culture of the workplace is supportive of protected disclosures being made.

In determining whether or not to recommend to the CEO that he appoint a **welfare manager** the PDC will take into account all relevant circumstances, as well as consider the following:

1. Whether there "are any real risks of detrimental action against the person(s) involved, taking into account their particular circumstances"<sup>4</sup>; and
2. Whether or not the disclosure has proceeded, or is likely to proceed to an investigation; and
3. Whether East Gippsland Shire Council has the power to protect the person(s) involved from suffering repercussions.

That said, the *Guidelines for protected disclosure welfare management* emphasise that if the answer to question 1 is Yes then appointment of a dedicated welfare manager is "probably appropriate" (p9).

The PDC will provide contact information for the East Gippsland Shire Council Employee Assistance Program and the CEO will appoint an internal welfare manager and consider the appointment of an external welfare professional.

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<sup>4</sup> Guidelines for protected disclosure welfare management, IBAC, 2016 p9





The Welfare Manager is to be appointed by the Chief Executive Officer and will usually be:

Manager Organisational Development  
or  
Human Resources Coordinator  
PO Box 1618  
BAIRNSDALE VIC 3875  
Phone: 03 5153 9500

The key responsibilities of the Welfare Manager are described in section 7 Roles and Responsibilities.

### **6.11 Occurrence of detrimental action**

If a discloser or co-operator report an incident of harassment, discrimination or adverse treatment that would amount to detrimental action taken in reprisal for the making of the disclosure, the welfare manager will:

- record details of the incident;
- advise the discloser of his or her rights under the Act; and
- advise the PDC of the detrimental action.

Two essential elements must be present to substantiate detrimental action: whether in fact there is 'detrimental action' present, as defined by the Act; and whether the action has been taken in reprisal for making the disclosure.

Refer to section 6.2 for examples of the types of detrimental actions prohibited by the Act.

A discloser who is subjected to detrimental action for making a protected disclosure may also take civil action against the offending person, and/or East Gippsland Shire Council (if the offender has taken the detrimental action during their employment with the Council) and seek damages or apply for an injunction order to the Supreme Court.

The taking of detrimental action in reprisal for the making of a disclosure is an offence against the Act as well as grounds for making a further disclosure.

### **6.12 Disclosers implicated in improper conduct**

Where a person who makes a disclosure is implicated in misconduct, the disclosure will be assessed and the discloser protected from reprisals in accordance with the Act and these procedures. The discloser will be protected from any civil or criminal liability for *making* the disclosure by the Act. However, they will not be protected from their own improper conduct or actions, and may remain liable for their role in the disclosed matter.

East Gippsland Shire Council acknowledges that the act of disclosing improper conduct should not shield the discloser from the reasonable consequences flowing from any involvement in improper conduct.

The Chief Executive Officer will make the final decision on the advice of the PDC 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 by IBAC.



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

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

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

### **6.13 Management of persons against whom a disclosure has been made**

East Gippsland Shire Council recognises that employees against whom disclosures are made must also be supported during the handling and assessment of disclosures.

East Gippsland Shire Council will take all reasonable steps to ensure the confidentiality of the person who is the subject of the disclosure during the assessment process.

Where assessments do not substantiate a 'protected disclosure', the fact that the assessment has been carried out, the results of the referral, and the identity of the person who is the subject of the disclosure will remain confidential.

East Gippsland Shire Council will give its full support to a person who is the subject of a disclosure where the allegations contained in a disclosure are clearly wrong or unsubstantiated. If the matter has been publicly disclosed, the Chief Executive Officer will consider any request by that person to issue a statement of support setting out that the allegations were clearly wrong or unsubstantiated.

It is possible that the person who is the subject of a protected disclosure may never even know about the disclosure, especially if it is not determined to be a protected disclosure or the investigating authority decides to dismiss the disclosure.

If or when it is deemed necessary, the PDC will provide support, advice and contact information for the East Gippsland Shire Council Employee Assistance Program and/or recommend to the CEO that an internal welfare manager be appointed, and/or consider the appointment of an external welfare professional to assist the employee against whom a disclosure has been made.

### **6.14 Confidentiality**

East Gippsland Shire Council will take all reasonable steps to protect the identity of the discloser, co-operator and/or the person who is the subject of a disclosure. Maintaining confidentiality is crucial in ensuring reprisals are not made.

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

A public officer is given specific protections under the Act to provide information to other public officers or to IBAC in dealing with a disclosure they have received.



When a public officer acts in good faith and in accordance with the Act, Regulations and IBAC's Guidelines, the public officer does not commit an offence under laws imposing a duty to maintain confidentiality or restricting the disclosure of information.

The circumstances in which a person may disclose information obtained about a protected disclosure include:

- where exercising the functions of the public body under the Act;
- when making a report or recommendation under the Act;
- when publishing statistics in the annual report of a public body; and
- in criminal proceedings for certain offences in the Act.

However, the Act prohibits the inclusion of particulars in any report or recommendation that is likely to lead to the identification of the discloser. The Act also prohibits the identification of the person who is the subject of the disclosure in any particulars included in an annual report. The PDC will ensure all files, whether paper or electronic, are kept secure and can only be accessed by the PDC, PDO, the investigating authority or welfare manager (in relation to welfare matters).

All electronic files produced will be imported into East Gippsland Shire Council's approved electronic document and records management system, given a confidential classification to restrict access. All materials relevant to an investigation will also be stored securely with the disclosure files.

East Gippsland Shire Council will not email documents, without encryption and password protection, relevant to a protected disclosure matter and will ensure all phone calls and meetings are conducted in private.

### **6.15 Collating and publishing statistics**

The PDC will ensure that confidential records are kept to enable accurate reporting by IBAC as required by the Act.

The following details will be collected:

- The number and types of assessable disclosures made directly to IBAC;
- The nature of the disclosure;
- The number and types of disclosures notified to IBAC;
- The number and types of assessments made to IBAC to determine if it is a protected disclosure;
- The number and types of protected disclosures investigated, referred or dismissed by IBAC; and
- Any recommendations made by IBAC under the Act.

Council will include in its annual report information about how to access the procedures established by Council under Part 9 of the Act and the number of disclosures notified to IBAC under s.21(2) during the financial year. The report will not include any information that may identify the discloser.

### **6.16 Training for East Gippsland Shire Council staff**

East Gippsland Shire Council will:

- ensure that staff and Councillors have access to a copy of these procedures in hard or soft copy;
- incorporate into its induction procedures, training about the Council's general obligations under the Act and the rights and obligations of all staff and Councillors;



- deliver periodic refresher courses for existing staff and Councillors about their rights and obligations under the Act;
- at least annually, all employees will be reminded by the CEO that it is an offence for a person to take detrimental action in reprisal for a protected disclosure; and that taking detrimental action in breach of this provision can also be grounds for making a new disclosure under the Act and can result in an investigation by IBAC;
- provide additional training and assistance to:
  - complaint handling staff to ensure that any complaints received will be dealt with consistently and in accordance with the Act as required;
  - any staff with functions and duties under the *Freedom of Information Act 1982* (Fol Act) or with responsibilities for information management, to ensure that no protected information is disclosed under the Act and there is appropriate liaising with the staff of IBAC or other investigative agencies where required in response to a request for access under the Fol Act; and
- will ensure that the public are informed of the *Protected Disclosure Act 2012* by publishing this procedure and the *Protected Disclosure Policy* on the Council's website and provide assistance to members of the public when requested.

East Gippsland Shire Council will ensure officers appointed to handle protected disclosures and all other employees are aware of the following offences under the Act:

1. 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 two years' imprisonment or both.
2. 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 60 penalty units or six months' imprisonment or both.
3. Disclosing that a disclosure has been *notified to*, or has been *assessed* as being a protected disclosure by IBAC under the Act. The Act provides a maximum penalty of 60 penalty units or six months' imprisonment or both.
4. For a person to knowingly provide false information under the Act with the intention that it is acted on as a disclosed matter or relating to a protected disclosure. The Act provides a maximum penalty of 240 penalty units or two years' imprisonment or both.

## 7. Roles and Responsibilities

Relevant officer	Roles and responsibilities
<b>CEO</b>	<p>The CEO may receive disclosures regarding suspected improper conduct or detrimental action.</p> <p>Where a disclosure is assessed to be a 'protected disclosure', the CEO will notify the disclosure to IBAC for investigation no later than 28 days after the disclosure is made. However, the aim will always be to notify IBAC 'as soon as practicable' after the CEO has been notified of the positive assessment, as is required in the case of notifications of suspected corrupt conduct.</p> <p>The CEO will appoint a welfare manager where he or she believes this is appropriate. Having considered the advice of the PDC and the Disciplinary Process Policy, the CEO will decide whether any disciplinary action will be taken against a discloser</p>



	<p>implicated in improper conduct, taking into account detrimental action considerations, and will advise the discloser of the action to be taken and the reasons why this action is not a detrimental action.</p>
<b>Discloser</b>	<p>The discloser must ensure that the disclosure is made in accordance with the Act. The discloser must not reveal that an assessment is being undertaken by East Gippsland Shire Council. The discloser must not reveal that an investigation is being carried out by IBAC.</p> <p>The discloser must not provide false or misleading information or falsely claim that a matter is the subject of a protected disclosure.</p>
<b>Employees</b>	<p>Employees are encouraged to report known or suspected incidences of improper conduct or detrimental action in accordance with these procedures.</p> <p>All employees of East Gippsland Shire Council have an important role to play in supporting those who have made a legitimate disclosure and co-operators. They must refrain from any activity that is, or could be perceived to be, victimisation or harassment of a person who makes a disclosure. Furthermore, they should protect and maintain the confidentiality of person(s) they know or suspect to have made a disclosure or be the subject of a disclosure.</p>
<b>Protected Disclosure Coordinator</b>	<p>The Protected Disclosure Coordinator has a central 'clearing house' role in the internal reporting system. He or she will:</p> <ul style="list-style-type: none"> <li>• receive all disclosures forwarded from the PDOs;</li> <li>• receive all phone calls, emails and letters from members of the public or employees seeking to make a disclosure;</li> <li>• impartially assess each disclosure to determine whether it is a disclosure made in accordance with Part 2 of the Act (that is, 'a protected disclosure');</li> <li>• refer all protected disclosures to IBAC;</li> <li>• assist IBAC where required;</li> <li>• ensure all disclosers and co-operators are protected from direct and indirect detrimental action, and that the culture of the workplace is supportive of protected disclosures being made, this may necessitate the appointment of a welfare manager</li> <li>• assess whether it is necessary to appoint a welfare manager to support the discloser and/or any co-operators to protect them from any reprisals;</li> <li>• if necessary, provide support, advice and contact information for the East Gippsland Shire Council Employee Assistance Program and/or appoint an internal welfare manager, and consider the appointment of an external welfare professional to assist the employee against whom a disclosure has been made</li> <li>• advise the discloser of the progress of the assessment into the disclosed matter;</li> <li>• establish and manage a confidential filing system;</li> <li>• collate and publish statistics on disclosures made;</li> <li>• 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;</li> <li>• liaise with the Chief Executive Officer, including advising about the appointment of a welfare officer and any cases where disclosers have been implicated in improper conduct; and</li> <li>• clearly documenting the reasons for any disciplinary action,</li> </ul> <p>At East Gippsland Shire Council this role is fulfilled by the Governance and Compliance Coordinator</p>
<b>Protected Disclosure Officer (PDO)</b>	<p>Protected Disclosure Officers will:</p> <ul style="list-style-type: none"> <li>• be a contact point for general advice about the operation of the Act for any person wishing to make a disclosure about improper conduct or detrimental action;</li> </ul>



- make arrangements for a disclosure to be made privately and discreetly and if necessary, away from the workplace;
- receive any disclosure made orally or in writing (from internal and external disclosers);
- commit to writing any disclosure made orally;
- 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
- forward all disclosures and supporting evidence to the Protected Disclosure Coordinator.

At East Gippsland Shire Council this role is fulfilled by the Director Corporate.

#### **Welfare Manager**

The welfare manager is responsible for looking after the general welfare of the discloser and, if considered appropriate by the CEO, the person who is the subject of the disclosure.

The welfare manager will:

- examine the immediate welfare and protection needs of a person who has made a disclosure (and co-operators where relevant) and, where the discloser is an employee, and while maintaining the confidentiality of all concerned, seek to foster a supportive work environment;
- advise the discloser (and co-operators as relevant) of the legislative and administrative protections available to him or her and keep them informed of the actions being taken;
- hear and respond to any concerns of harassment, intimidation or victimisation in reprisal for making disclosure;
- advise the PDC of any allegations of detrimental action;
- keep a constantly updated confidential record of all aspects of the case management of the discloser (and co-operators as relevant), including all contact and follow-up action; and
- ensure the expectations of the discloser are realistic.

The Welfare Manager is to be appointed by the Chief Executive Officer and will usually be:

Manager Organisational Development  
or  
Human Resources Coordinator  
PO Box 1618  
BAIRNSDALE VIC 3875

## **8. References and Supporting Documents**

### **Applicable Legislation:**

*Charter of Human Rights and Responsibilities Act 2006*

*Equal Opportunity Act 2010*

*Freedom of Information Act 1982*

*Health Records Act 2001*

*Independent Broad-based Anti-corruption Commission Act 2011*

*Integrity and Accountability Legislation Amendment (A Stronger System) Bill 2015*

*Local Government Act 1989*





Occupational Health and Safety Act 2004  
 Privacy and Data Protection Act 2014  
 Privacy Act 1988 (Commonwealth)  
 Protected Disclosure Act 2012  
 Public Administration Act 2004

**Applicable Policy and Procedure:**

*Anti-bullying and Harassment Policy*  
*Bullying and Harassment Resolution Procedure*  
*Disciplinary Process Policy*  
*Fraud and Corruption Control Policy*  
*Protected Disclosure Policy*  
*Workplace Health and Safety Policy*

**Supporting Documents:**

[IBAC Guidelines for making and handling protected disclosures – October 2016](#)  
[IBAC Guidelines for protected disclosure welfare management – October 2016](#)  
[IBAC Protected disclosure procedures: a checklist for entities receiving disclosures – May 2014](#)  
[IBAC Directions for making mandatory notifications of suspected corruption – November 2016](#)

**9. Definitions**

Word/Term	Definition
<b>Co-operator</b>	A person who has co-operated or intends to co-operate with an investigation of a protected disclosure complaint, e.g., a witness
<b>Corrupt conduct</b>	<p>As defined by section 4 of the <i>Independent Broad-based Anti-corruption Commission Act 2011</i>, corrupt conduct means conduct:</p> <ul style="list-style-type: none"> <li>(a) of any person that adversely affects the honest performance by a public officer or public body of his or her or its functions as a public officer or public body; or</li> <li>(b) of a public officer or public body that constitutes or involves the dishonest performance of his or her or its functions as a public officer or public body; or</li> <li>(c) of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust; or</li> <li>(d) of a public officer or a public body that involves the misuse of information or material acquired in the course of the performance of his or her or its functions as a public officer or public body, whether or not for the benefit of the public officer or public body or any other person; or</li> <li>(da) of a person (the <b>first person</b>) intended to adversely affect the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body and result in the first person or an associate of the first person obtaining—             <ul style="list-style-type: none"> <li>(i) a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument; or</li> <li>(ii) an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument; or</li> </ul> </li> </ul>



	<p>(iii) a financial benefit or real or personal property; or</p> <p>(iv) any other direct or indirect monetary or proprietary gain— that they would not have otherwise obtained; or</p> <p>(e) that could constitute a conspiracy or an attempt to engage in any conduct referred to in paragraph (a), (b), (c), (d) or (da) — being conduct that would, if the facts were found proved beyond reasonable doubt at a trial, constitute a ‘relevant offence’, i.e., either an indictable offence, or under common law pervert or attempt to pervert the course of justice or involve bribery of an official. (Refer to section 6.2 for examples)</p>
<b>Detrimental action</b>	<p>Section 3 of the Act makes it a criminal offence, with considerable penalties, for a person to take, or threaten to take, detrimental action against an individual in reprisal for making a protected disclosure. Detrimental action includes:</p> <p>(a) action causing injury, loss or damage;</p> <p>(b) intimidation or harassment; and</p> <p>(c) discrimination, disadvantage or adverse treatment in relation to a person’s employment, career, profession, trade or business, including the taking of disciplinary action. (Refer to section 6.2 for examples)</p>
<b>Discloser</b>	Person making allegation of improper conduct.
<b>Disclosure</b>	Any suspicion, complaint, concern, matter, allegation or disclosure (however described) claimed to be made in accordance with Part 2 of the Act
<b>Independent Broad-based Anti-corruption Commission (IBAC)</b>	<p>The Commission was established under the <i>Independent Broad-based Anti-corruption Commission Act 2011</i> to expose and prevent public sector corruption and police misconduct.</p> <p>Website: <a href="http://www.ibac.vic.gov.au/">http://www.ibac.vic.gov.au/</a></p>
<b>Improper Conduct</b>	<p>As defined by section 4 of the Act, improper conduct speaks to ‘public trust’, which provides for the ‘honesty and integrity’ of our public officers in the delivery of services to the community. Note that improper conduct encompasses corrupt conduct:</p> <p>(1) <i>Improper conduct</i> means:</p> <p>(a) corrupt conduct; or</p> <p>(b) conduct specified in subsection (2) that is not corrupt conduct but that, if proved, would constitute—</p> <p>(i) a criminal offence; or</p> <p>(ii) reasonable grounds for dismissing or dispensing with, or otherwise terminating, the services of the officer who was, or is, engaged in that conduct.</p> <p>(2) For the purposes of subsection (1)(b), <i>specified conduct</i> is conduct—</p> <p>(a) of any person that adversely affects the honest performance by a public officer or public body of his or her or its functions as a public officer or public body; or</p> <p>(b) of a public officer or public body that constitutes or involves the dishonest performance of his or her or its functions as a public officer or public body; or</p> <p>(c) of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust; or</p> <p>(d) of a public officer or public body that involves the misuse of information or material acquired in the course of the performance of his or her or its functions as a public officer or public body, whether or not for the benefit of the public officer or public body or any other person; or</p> <p>(e) that could constitute a conspiracy or an attempt to engage in any conduct</p>



	<p>referred to in paragraph (a), (b), (c) or (d); or  (f) of a public officer or public body in his or her capacity as a public officer or its capacity as a public body that—</p> <ul style="list-style-type: none"> <li>(i) involves substantial mismanagement of public resources; or</li> <li>(ii) involves substantial risk to public health or safety; or</li> <li>(iii) involves substantial risk to the environment.</li> </ul> <p>If proven, specified conduct constitutes a criminal offence or is so serious as to provide reasonable grounds for dismissal.  (Refer to section 6.2 for examples of improper conduct)</p>
<b>Protected Disclosure Coordinator (PDC)</b>	<p>Recommended first point of contact for any enquiries and assessing any disclosures to determine if a protected disclosure has been made. At East Gippsland Shire Council this role is fulfilled by the Governance and Compliance Coordinator.</p>
<b>Protected Disclosure Officers (PDO)</b>	<p>Designated council officers who will provide general advice regarding the operation of the Act for any person wishing to make a disclosure concerning improper conduct or detrimental action by a Councillor or council staff-member. At East Gippsland Shire Council this role is fulfilled by the Director Corporate and the Governance and Compliance Coordinator. The PDC role in this case may also fulfil the duties of the PDO.</p>
<b>Reasonable Belief</b>	<p>“Reasonable belief does not have to be based on actual proof of improper conduct or detrimental action – but there must be some information supporting the belief. That is, the belief must be probable.</p> <p>The grounds for the reasonable belief can leave something to surmise or conjecture, but the belief must be more than just a reasonable suspicion.</p> <p>Simply stating that improper conduct or detrimental action is occurring, without providing any supporting information would not be a sufficient basis for having a reasonable belief.”</p> <p>The reliability of the information should also be considered as should the credibility of the discloser or those having provided the discloser with the disclosure information. <i>Guidelines for making and handling protected disclosures – Oct 2016 p 20-21</i></p>
<b>Welfare Manager</b>	<p>Responsible for looking after the general welfare of the discloser or person under investigation. This responsibility will normally be assigned by the CEO to the Human Resources Coordinator or Manager Organisation Development</p>



## 10. Revision History and Review

This procedure will be reviewed by Director Corporate every two years, or sooner in the case of significant legislative change or where shifts in the strategic or operational circumstances of East Gippsland Shire Council merit.

This procedure may be amended by Council Officers to give effect to minor administrative changes or legislative variations on an as needs basis.

Version Control	Date Effective	Approved by	ECM Document Reference	Summary of changes
1				Updating Whistleblowers Procedures approved 22/02/2002
2	05/06/2013	Leadership Group		Modification of Whistleblowers Policy into separate policy and procedure documents, and recognition of new protected disclosure regime.
3	02/07/2013	Policy - Council Procedures - Director Corporate		Modification of Policy into separate policy and procedure documents, and recognition of new Protected Disclosure Act and regime.
4	31/10/2014	Director Corporate		Administrative update to procedures and policy made ECM 5942698
5	June 2015	Director Corporate		Administrative update to include IBAC and Audit Committee recommendations. ECM 6369810
6	05/09/17	Director Corporate	7307177	Two-year review. Inclusion of mandatory notification requirements. Significant changes to content, structure and format to improve readability and clarity.