


COUNCIL POLICY

Public Interest Disclosures	Adopted By Council:	30/10/13	
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		26/03/20	
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	*(may be subject to legislative changes)		
	Document No:	CP0025	
	Directorate:	Corporate & Community Services	
Responsible Officer:	General Manager, Corporate & Community Services		

CONTEXT

The Victorian Government has updated the Protected Disclosures Act 2012, and renamed it the Public Interest Disclosures Act 2012 (the Act). This Act applies to all public bodies, including councils.

PURPOSE

The purpose of the Act is to -

- a) encourage and facilitate disclosures of—
 - I. improper conduct by public officers, public bodies and other persons; and
 - II. detrimental action taken in reprisal for a person making a disclosure under this Act; and
- b) provide protection for—
 - I. persons who make those disclosures; and
 - II. persons who may suffer detrimental action in reprisal for those disclosures; and
- ba) to ensure that those disclosures are properly assessed and, where necessary, investigated;
- c) provide for the confidentiality of the content of those disclosures and the identity of persons who make those disclosures.

DEFINITIONS

Public Interest

- Disclosure** (1) means a disclosure by a natural person of –
- (a) information that shows or tends to show -
 - (i) a person, public officer or public body has engaged in improper conduct; or
 - (ii) a public officer or public body has taken, is taking or proposes to take detrimental action against a person in contravention of the section 45 of the Act.
 - (b) information that the person reasonably believes shows or tends to show –
 - (i) a person, public officer or public body has engaged, is engaging or proposes to engage improper conduct; or
 - (ii) a public officer or public body has taken, is taking or proposes to take detrimental action against a person in contravention of section 45 of the Act.

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

Improper Conduct

- (1) **improper conduct** means—
- (a) corrupt conduct; or
 - (b) conduct of a public officer or public body engaged in by the public officer or public body in their capacity as a public officer or a public body that constitutes—
 - (i) a criminal offence; or
 - (ii) serious professional misconduct; or
 - (iii) dishonest performance of public functions; or
 - (iv) an intentional or reckless breach of public trust; or
 - (v) an intentional or reckless misuse of information or material acquired in the course of the performance of the functions of the public officer or public body; or
 - (vi) a substantial mismanagement of public resources; or
 - (vii) a substantial risk to the health or safety of one or more persons; or
 - (viii) a substantial risk to the environment; or
 - (c) conduct of any person that—
 - (i) adversely affects the honest performance by a public officer or public body of their functions as a public officer or public body; or
 - (ii) is 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 results in the person, or an associate of the person, obtaining—
 - (A) a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument; or
 - (B) an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument; or
 - (C) a financial benefit or real or personal property; or
 - (D) any other direct or indirect monetary or proprietary gain—
that the person or associate would not have otherwise obtained; or
 - (d) conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referred to in paragraph (a), (b) or (c).
- (2) Despite subsection (1), conduct that is trivial does not constitute improper conduct for the purposes of the Public Interest Disclosures Act.
- (2A) For the purposes of section 4(1)(c)(ii), the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body may be adversely affected notwithstanding that the public officer or public body does not engage in any corrupt conduct or other misconduct in performing or exercising those functions or powers.
- (2B) For the purposes of section 4(1)(c)(ii), an **associate** of a first person is—
- (a) a person or entity who has an agreement, arrangement or understanding with the first person or holds any relevant financial interest in any business of the first person;
 - (b) if the first person is a natural person, a person who is a relative of the first person;
 - (c) if the first person is a body corporate—
 - (i) an entity of whom the first person is an associate within the meaning of section 11 of the Corporations Act; or
 - (ii) an employee or officer of a related body corporate within the meaning of the Corporations Act to the first person.
- (2C) For the purposes of subsection (2B)—
- relative** means—
- (a) the spouse or domestic partner of the first person;
 - (b) a parent, son, daughter, brother, sister, aunt, uncle, grandparent, cousin, nephew or niece of the first person;

(c) a step-father, step-mother, legal guardian, step-son, step-daughter, step-brother, step-sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law of the first person;

(d) a parent, son, daughter, brother, sister, aunt, uncle, grandparent, cousin, nephew or niece of the spouse or domestic partner of the first person;

(e) a step-father, step-mother, legal guardian, step-son, step-daughter, step-brother, step-sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law of the spouse or domestic partner of the first person;

relevant financial interest includes any share in the capital of a business of the first person or any entitlement to receive any income or payment from a business of the first person.

(3) The Public Interest Disclosures Act does not apply to any conduct of any person that can be considered by the Court of Disputed Returns in proceedings in relation to a petition under Part 8 of the **Electoral Act 2002**.

(4) The Public Interest Disclosures Act does not apply to a disclosure relating to any conduct that may constitute a criminal offence in relation to an alleged contravention under section 30 of the **Members of Parliament (Standards) Act 1978** that must be referred by the Presiding Officer to the appropriate law enforcement agency under section 30(3) of that Act.

Corrupt conduct

means conduct

- (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
- (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
- (c) of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust; or
- (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
- (da) of a person (the **first person**) 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—
 - (i) a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument; or
 - (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
 - (iii) a financial benefit or real or personal property; or
 - (iv) any other direct or indirect monetary or proprietary gain— that they would not have otherwise obtained; or
- (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 constitute a relevant offence.

POLICY

1. The Borough of Queenscliffe encourages and facilitates the making of disclosures of improper conduct by public officers and public bodies 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.

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

3. Contact for disclosures from internal or external people of improper conduct or detrimental action by the Borough of Queenscliffe Council or its employees, may be made to any of the following officers:

Public Interest Disclosure Coordinator
General Manager Corporate & Community Services
Borough of Queenscliffe
50 Learmonth Street
QUEENSCLIFFE VIC 3225
Email: protected.disclosure1@queenscliffe.vic.gov.au
Phone: (03) 5258 1377

Chief Executive Officer
Borough of Queenscliffe
50 Learmonth Street
QUEENSCLIFF VIC 3225
Email: protected.disclosure2@queenscliffe.vic.gov.au
Phone: (03) 5258 1377

4. Disclosures may be made in writing, via email, post or delivery to the Council office, and should be clearly marked 'Private and Confidential', or they may be made orally, via telephone or in person. A person does not need to identify themselves to make a disclosure. Anonymous disclosures can be made by using an unverifiable email address or through anonymous phone calls.

5. A disclosure relating to an individual Councillor must be made to the Victorian Ombudsman or to the Independent Broad-based Anti-Corruption Commission (IBAC), refer to contact details below.

Victorian Ombudsman
Level 2, 570 Bourke Street, Melbourne, VIC, 3000
Phone (03) 9613 6222 or 1800 806 314 (regional only)
Website: www.ombudsman.vic.gov.au

IBAC
Level 1, North Tower, 459 Collins Street, Melbourne, VIC 3000
GPO Box 24234, Melbourne, VIC 3001
Phone: 1300 735 135
Fax: (03) 8635 6444
Website: www.ibac.vic.gov.au

6. A confidential investigation will be coordinated by the Public Interest Disclosure Coordinator into any matter divulged to him/her.

7. All disclosures and findings relating to the matter must be reported to IBAC or the Ombudsman, Council and the person making the disclosure.

8. A 'Welfare Manager' will be appointed by the Public Interest Disclosure Coordinator or the Chief Executive Officer to assist any person making a protected disclosure and also any person who is the subject of the protected disclosure.

9. Formal procedures have been developed for the reporting, assessment and investigation of disclosures made under the Act. These procedures facilitate the making of disclosures, their investigation and the protection of any person making a disclosure from reprisals.

TRAINING AND/OR COMMUNICATION

The Public Interest Disclosure Coordinator will undertake regular training to ensure compliance with relevant legislation. Council officers will be communicated of any change to this policy on a continuous basis.

CONTINUOUS IMPROVEMENT

This policy will be reviewed on a continuous basis, but as a minimum every three years from the date of adoption.

OTHER REFERENCES

SOP021 Public Interest Disclosures

Public Interest Disclosures Act 2012

Independent Broad-based Anti-Corruption Act 2011

IBAC's Guidelines for handling public interest disclosures, January 2020

IBAC's Guidelines for public interest disclosure welfare management, January 2020

END