

POLICY NUMBER:	74 (C)
NAME OF POLICY:	PROTECTED DISCLOSURE POLICY
DATE OF NEXT REVIEW:	August 2019
DATE APPROVED:	18 August 2015
RESPONSIBLE OFFICER:	General Manager Corporate Services
REFERENCES:	<i>Protected Disclosure Act 2012</i> <i>Independent Broad-based Anti-corruption Commission Act 2011</i> <i>Local Government Act 1989</i>

### **Best Value Principles**

Hepburn Shire Council has the responsibility to provide its ratepayers with best value, with all services provided by Council meeting the expectations in terms of quality and cost. In providing this, all services need to be accessible, responsive to the needs of the community, considerate of the natural environment and subject to continuous improvement.

To achieve the best over life outcome for Council's expenditures, which meets quality and service expectations, there will be periodic review of services against best on offer in both the public and private sectors.

All Council staff members are responsible for supporting best value principles in their normal day to day actions to ensure services are recognised by the community as delivering best value.

## INTRODUCTION

This policy outlines how Hepburn Shire Council meets its obligations for receiving disclosures under the *Protected Disclosure Act 2012* ('The PD Act').

The PD Act enables people to make disclosures about improper conduct within the public sector without fear of reprisal. The PD Act also provides protection to people who make such disclosures and provides for such matters to be properly investigated. Disclosures may also be made about "detrimental action" taken (or suspected may be taken) in reprisal against a person in connection with a disclosure made about improper conduct.

## SCOPE

This policy applies to all employees and councillors of Hepburn Shire Council and relates to disclosures made by members of the public, Council staff or councillors.

People making a disclosure must believe, on reasonable grounds, that the Council, a Councillor or Council employee has engaged in, or proposes to engage in, improper conduct or detrimental action. The conduct must be serious enough to constitute a criminal offence or reasonable grounds for dismissal.

## POLICY

### 1. Commitment to proper conduct

The Hepburn Shire Council is committed to the aims and objectives of the PD Act. It does not tolerate improper conduct by its employees or Councillors, nor the taking of reprisals against those who come forward to disclose such conduct.

The Hepburn 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.

## 2. Making disclosures of improper conduct or detrimental action

Members of the public (a 'natural person' not a company or organisation) can make a disclosure in relation to any councillor or employee of Hepburn Shire Council, or the Council itself.

Disclosures can be submitted to Council or the Independent Broad-based Anti-corruption Commission (IBAC).

Disclosures can alternatively be made to the Victorian Ombudsman, the Victorian Inspectorate or the Chief Commissioner of Police, if they have power to investigate the matter under Acts other than the PD Act. In most cases, disclosures about Council and its employees should be made to Council or to IBAC.

Disclosures can be made as follows:

About:	How to make disclosure:	Who to:
Council or its employees	Verbally or in writing by email or post (not fax)	<ul style="list-style-type: none"> <li>Protected Disclosure Coordinator</li> <li>Direct or indirect manager of the person to whom the disclosure relates</li> <li>IBAC</li> </ul>
Councillors	Verbally, in writing by email or post (not fax), or online	<ul style="list-style-type: none"> <li>IBAC</li> </ul>

Disclosures by employees of Council can also be made to the direct or indirect manager of the discloser.

Further details on how you can go about making disclosures to Council or to the other bodies are detailed in Council's Protected Disclosure Procedures.

► PROTECTED DISCLOSURE POLICY

Contact details for making disclosures:

Protected Disclosure Coordinator	Mr Grant Schuster, General Manager Corporate Services Phone: (03) 5321 6450 Email: <a href="mailto:gschuster@hepburn.vic.gov.au">gschuster@hepburn.vic.gov.au</a> Postal Address: PO Box 21 Daylesford VIC 3460
Direct and Indirect Managers of Employees	Phone: (03) 5348 2306 Council email address of the manager Postal Address: PO Box 21 Daylesford VIC 3460
IBAC	Phone: 1300 735 135 Website: <a href="http://www.ibac.vic.gov.au">www.ibac.vic.gov.au</a> . Postal Address: GPO Box 24234 Melbourne VIC 3001
Victorian Ombudsman	Phone: (03) 9613 6222 Website: <a href="http://www.ombudsman.vic.gov.au">www.ombudsman.vic.gov.au</a> Email: <a href="mailto:ombudvic@ombudsman.vic.gov.au">ombudvic@ombudsman.vic.gov.au</a> Postal Address: Level 9, North Tower 459 Collins Street Melbourne VIC 3000
Victorian Inspectorate	Phone (03) 8614 3225 Website: <a href="http://www.vicinspectorate.vic.gov.au">www.vicinspectorate.vic.gov.au</a> Email: <a href="mailto:info@vicinspectorate.vic.gov.au">info@vicinspectorate.vic.gov.au</a> Postal Address: PO Box 617 Collins Street West Melbourne VIC 8007

### 3. Protection of people making disclosures

The Hepburn 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 afford natural justice to the person who is the subject of the disclosure.

Taking disciplinary or other action against an employee who has made a protected disclosure invariably creates the perception that it is being taken in reprisal for the disclosure. In all cases where disciplinary or other action is being contemplated, approval must be obtained from the Chief Executive Officer before taking such action. Such requests for approval must clearly demonstrate:

- the fact that an employee has made a protected disclosure is not a substantial reason for their taking of the action against the employee;
- there are good and sufficient grounds that would fully justify action against any other person in the same circumstances; and
- there are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

Maintaining confidentiality in relation to protected disclosure matters is crucial, among other things, in ensuring reprisals are not made against a discloser. It is a criminal offence under the PD Act to disclose information connected with a disclosure made in accordance with the PD Act, including the identity of the discloser or details about the assessment of the disclosure, other than to IBAC. The penalties for breaching confidentiality obligations include financial penalties and imprisonment.

Council staff with access to electronic documents as a result of their role (including information technology and records management staff) must not access or forward any documents relating to protected disclosures, or disclose any information to any officer or external party without the approval of the Protected Disclosure Coordinator or Chief Executive Officer. Such access and disclosure must only be done in accordance with the PD Act.

### 4. Notification and assessment of disclosures

When a disclosure is made to Hepburn Shire Council, which it considers might be a protected disclosure under the PD Act, Council will notify IBAC of the assessable disclosure for assessment within 28 days. IBAC will then deal with the disclosure.

IBAC must assess whether, in its view, the disclosure is a protected disclosure complaint. If it is determined to be a protected disclosure complaint, IBAC then determines whether it will dismiss, investigate or refer a matter.

Following its determination, IBAC will inform both Hepburn Shire Council and the person making the disclosure of its decision in writing. The notice to the person who made the disclosure will outline the discloser's rights, protections and responsibilities under the PD Act.

If IBAC determines that a disclosure is a protected disclosure complaint, the disclosure cannot be withdrawn.

## DEFINITIONS

The following terms are referred to in the policy.

Term	Definition
Assessable disclosure	A disclosure that Council considers might be a protected disclosure, and is therefore notified to IBAC to determine if it is a protected disclosure.
Corrupt conduct	<p>Is 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>e) that could constitute a conspiracy or an attempt to engage in any conduct referred to in paragraph (a), (b), (c) or (d)—</li> </ul> <p>being conduct that would, if the facts were found proved beyond reasonable doubt at a trial, constitute a relevant offence under the IBAC Act.</p>
Council	Hepburn Shire Council
Council Staff	Includes permanent and temporary full-time and part-time council employees of Council.

Term	Definition
Detrimental action	<p>Section 3 of the PD Act defines detrimental action by a person as including the following:</p> <ul style="list-style-type: none"> <li>• action causing injury, loss or damage</li> <li>• intimidation or harassment</li> <li>• discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action.</li> </ul> <p>The person need not have actually taken the action, but can just have threatened to do so.</p> <p>The person need not have taken or threatened to take the action against the person themselves, but can have incited someone else to do so.</p> <p>The detrimental action need not be taken against a discloser, but against any person.</p>
Discloser	A person who makes a disclosure of improper conduct or detrimental action in a
Disclosure	<p>Examples of a disclosure relevant to Council made under the PD Act may include:</p> <ul style="list-style-type: none"> <li>• A Council employee or Councillor taking a bribe to grant a permit.</li> <li>• A Council employee or Councillor ignoring or concealing evidence of an illegal activity being conducted in the municipality.</li> <li>• A Council employee or Councillor selling or revealing confidential information to enable someone to gain advantage such as information about a tender.</li> <li>• A substantial mismanagement of public resources</li> <li>• A substantial risk to public health or safety</li> <li>• A substantial risk to the environment</li> </ul>

Term	Definition
IBAC	The Independent Broad-based Anti-corruption Commission - Victoria's first anti-corruption body with responsibility for identifying and preventing serious corrupt conduct across the whole public sector, including members of Parliament, the judiciary and state and local government.
Improper conduct	Is either: <ol style="list-style-type: none"> <li>a) corrupt conduct; or</li> <li>b) specified conduct that is not corrupt conduct but that, if proved, would constitute:               <ol style="list-style-type: none"> <li>i) a criminal offence; or</li> <li>ii) reasonable grounds for terminating an employee or dismissing a Councillor who is engaged in that conduct.</li> </ol> </li> </ol>
Investigating entity	IBAC, the Ombudsman, the Chief Commissioner of Police and the Victorian Inspectorate. Only these entities can investigate a protected disclosure complaint
Protected disclosure	A disclosure made in accordance with Part 2 of the PD Act.
Protected disclosure complaint	A disclosure that has been determined by IBAC under section 26 of the PD Act to be a protected disclosure complaint.
Specified conduct	Is conduct: <ol 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 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> </ol>

Term	Definition
	<ul style="list-style-type: none"> <li>e) that could constitute a conspiracy or an attempt to engage in any conduct referred to in paragraph (a), (b), (c) or (d); or</li> <li>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— <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> </li> </ul>
The IBAC Act	<i>Independent Broad-based Anti-corruption Commission Act 2011</i>
The LG Act	<i>Local Government Act 1989</i>
The PD Act	<i>Protected Disclosure Act 2012</i>

## FURTHER INFORMATION

Further details on how you can go about making disclosures to Council or to the other bodies are detailed in Council's Protected Disclosure Procedures.

Any enquiries about the Protected Disclosure Policy and Procedures should be directed to Council's Protected Disclosure Coordinator:

Mr Grant Schuster General Manager Corporate Services	Phone: (03) 5321 6450 Email: <a href="mailto:gschuster@hepburn.vic.gov.au">gschuster@hepburn.vic.gov.au</a>
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Enquiries to IBAC can be made via:

IBAC	Phone: 1300 735 135 Website: <a href="http://www.ibac.vic.gov.au">www.ibac.vic.gov.au</a> Postal Address: GPO Box 24234 Melbourne VIC 3001
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## IMPLEMENTATION

The policy is available to the public via Council's web site and at its service centres in Daylesford, Creswick and Clunes.

## REVIEW

The Protected Disclosure Policy will be reviewed every four years or sooner if required by legislation or organisational changes.

The officer responsible for the review of this policy is the General Manager Corporate Services.