

PUBLIC INTEREST DISCLOSURES

Policy Statement

The Hobart City Council is committed to the aims and objectives of the *Public Interest Disclosures Act 2002* (the Act). The Council does not tolerate improper conduct by its employees, officers or members, nor the taking of reprisals against those who come forward to disclose such conduct.

The Hobart City 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.

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

Application

This policy and the associated procedures apply to all Hobart City Council employees, and contractors to the Council.

References

Public Interest Disclosures Act 2002.

Responsibility

The Manager Human Resources is responsible for the implementation and maintenance of this policy and the associated procedures.

Specific responsibilities with respect to this policy and the associated procedures are set out as appropriate in this document.

Objects of the Act

The *Public Interest Disclosures Act 2002* commenced operation on 1 January 2004. The purpose 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 to persons who make disclosures in accordance with the Act, and establishes a system for the matters disclosed to be investigated and rectifying action to be taken.

Definitions of Key Terms

Three key concepts in the reporting system are improper conduct, corrupt conduct and detrimental action. Definitions of these terms are set out below.

1. Improper conduct

A disclosure may be made about improper conduct by a public body or public official. Improper conduct means conduct that is corrupt, a substantial mismanagement of public resources, or conduct involving substantial risk to public health or safety or to the environment. The conduct must be serious enough to constitute, if proved, a criminal offence or reasonable grounds for dismissal.

Examples

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

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

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

See 2 below for specific examples of corrupt conduct.

2. Corrupt conduct

Corrupt conduct means:

- Conduct of any person (whether or not a public official) that adversely affects the honest performance of a public officer's or public body's functions;
- The performance of a public officer's functions dishonestly or with inappropriate partiality;
- Conduct of a public officer, former public officer or a public body that amounts to a breach of public trust;
- Conduct by a public officer, former public officer or a public body that amounts to the misuse of information or material acquired in the course of the performance of their official functions; or
- A conspiracy or attempt to engage in the above conduct.

Examples

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

A public officer sells confidential information.

3. Detrimental action

The Act makes it an offence for a person to take detrimental action against a person in reprisal for a protected disclosure (s.19). Detrimental action includes:

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

Examples

A public body refuses a deserved promotion of a person who makes a disclosure.

A public body demotes, transfers, isolates in the workplace or changes the duties of a discloser due to the making of a disclosure.

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

A public body discriminates against the discloser or his or her family and associates in subsequent applications for jobs, permits or tenders.

Procedures in respect of Public Interest Disclosures

The procedures set out following are based upon the model procedures developed by the State Ombudsman for State Service agencies and other public bodies.

The procedures in respect of public interest disclosures cover the following:

1. Purpose of these Procedures
2. Reporting System
3. Roles & Responsibilities
4. Confidentiality
5. Receiving & Assessing Reported Disclosures
6. Investigations (Part 7)
7. Managing the Welfare of the Discloser
8. Management of the Person about whom a Disclosure has been made
9. Statistics

1. Purpose of these Procedures

These procedures establish a system for reporting disclosures of improper conduct or detrimental action by the Hobart City Council or its employees. The system enables such disclosures to be made to the Protected Disclosure Coordinator or to one of the nominated Protected Disclosure Officers. Disclosures may be made by employees or by contractors or former contractors who have or had a contract with the Hobart City Council for the supply of goods or services.

These procedures are designed to complement normal communication channels between supervisors and employees. Employees are encouraged to continue to raise appropriate matters at any time with their supervisors. As an alternative, employees may make a disclosure of improper conduct or detrimental action under the Act in accordance with these procedures.

2. Reporting System

2.1 To the Ombudsman

A disclosure about improper conduct or detrimental action by the Hobart City Council or its employees, may be made directly to the Ombudsman:

The Ombudsman

99 Bathurst Street

Hobart Tasmania 7000

Internet: www.justice.tas.gov.au/ombudsman

Email: ombudsman@justice.tas.gov.au

Telephone: 6233 6217 or toll free 1800 001 170

2.2 To Contact Persons within the Hobart City Council

Disclosures of improper conduct or detrimental action by employees of the Hobart City Council may be made to the following officers:

- The General Manager
- The Protected Disclosure Coordinator:
 - The Director Executive Management will act as the Protected Disclosure Coordinator under this policy. The name and contact details for Protected Disclosure Coordinator will be published by notice and on the Human Resource Unit intranet site.
- A Protected Disclosure Officer:
 - Protected Disclosure Officers will be appointed under this policy. The names and contact details for Protected Disclosure Officers will be published by notice and on the Human Resource Unit intranet site.

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

Where a person is contemplating making a disclosure and is concerned about approaching the Protected Disclosure Coordinator or a Protected Disclosure Officer in the workplace, he or she can call the relevant officer and request a meeting in a discreet location away from the workplace.

2.3 *Alternate Contact Persons*

The following table sets out alternate persons to whom disclosures may be made.

Person/Body who is the subject of the disclosure	Person/Body to whom the disclosure must be made
Member, officer or employee of a public body (other than the police force)	That public body, or State Service Commissioner (if applicable); or The Ombudsman
Public body	The Ombudsman
Member of the police force	The Commissioner of Police
The Commissioner of Police	The Ombudsman
Member of Parliament (Legislative Council)	President of the Legislative Council
Member of Parliament (House of Assembly)	Speaker of the House of Assembly
Councillor	The Ombudsman

3. Roles and Responsibilities

3.1 *Employees*

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

All employees of the Hobart City Council have an important role to play in supporting those who have made a legitimate disclosure. They must refrain from any activity that is, or could be perceived to be, detrimental action against a person who makes a disclosure.

Furthermore, they should protect and maintain the confidentiality of a person they know or suspect to have made a disclosure.

3.2 *Protected Disclosure Officers*

Protected Disclosure Officers will:

- 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;
- 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;
- Impartially assess the allegation and determine whether it is a disclosure made in accordance with Part 2 of the Act (that is, ‘a protected disclosure’);
- 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.

3.3 Protected Disclosure Coordinator

The Protected Disclosure Coordinator has a central ‘clearinghouse’ role in the internal reporting system. He or she will:

- Receive all disclosures forwarded from the Protected Disclosure Officers;
- Receive all phone calls, emails and letters from employees or contractors seeking to make a disclosure;
- Impartially assess each disclosure to determine whether it is a public interest disclosure;
- Be responsible for carrying out, or appointing an Investigator to carry out, an investigation of the public interest disclosure;
- Be responsible for carrying out, or appointing an Investigator to carry out, an investigation referred to the public body by the Ombudsman;
- Be responsible for overseeing and coordinating an investigation where an Investigator has been appointed;
- Appoint a Welfare Manager to support the discloser and to protect him or her from any reprisals;
- Advise the discloser of the progress of an investigation into the disclosed matter;
- Establish and manage a confidential filing system;
- Collate and publish statistics on disclosures made;

- Take all necessary steps to ensure the identity of the discloser and the identity of the person who is the subject of the disclosure are kept confidential;
- Notify the Ombudsman as required; and
- Liaise with the General Manager in respect of reported public interest disclosures.

3.4 Investigator

Where the Hobart City Council has determined the matter is a public interest disclosure, or where the Ombudsman has referred a matter to the Hobart City Council for investigation, the Investigator will be responsible for carrying out an internal investigation into a disclosure. An Investigator may be a person from within an organisation or a consultant engaged for that purpose.

3.5 Welfare Officer

The Welfare Officer is responsible for looking after the general welfare of the discloser. The Welfare Officer will:

- Examine the immediate welfare and protection needs of a person who has made a disclosure and seek to foster a supportive work environment;
- Advise the discloser of the legislative and administrative protections available to him or her;
- Listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making disclosure; and
- Ensure the expectations of the discloser are realistic.

4. Confidentiality

The Hobart City Council will take all reasonable steps to protect the identity of the discloser. Maintaining confidentiality is crucial in ensuring reprisals are not made against a discloser.

The Act 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 in breach of s.23 of the Act constitutes an offence that is punishable by a maximum fine of 60 penalty units (\$6000) or six months imprisonment or both.

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 Hobart City Council will ensure all files, whether paper or electronic, are kept securely and can only be accessed by the Protected Disclosure Coordinator, Protected Disclosure Officer, the Investigator or Welfare Officer (in relation to welfare matters). All printed material will be kept in files that are clearly marked as a *Public Interest Disclosures Act* matter, and warn of the criminal penalties that apply to any unauthorised divulging information concerning a protected disclosure. All materials relevant to an investigation, such as tapes from interviews, will also be stored securely with the files.

The Hobart City Council will not email documents relevant to a disclosed matter and will ensure all phone calls and meetings are conducted in private.

5. Receiving and Assessing Disclosures (Part 2 of the Act)

5.1 Has the disclosure been made in accordance with Part 2 of the Act?

Where a disclosure has been received by a Protected Disclosure Officer or by the Protected Disclosure Coordinator, he or she will assess whether the disclosure has been made in accordance with Part 2 of the Act and is, therefore, a protected disclosure.

5.1.1 Has the disclosure been made to the appropriate person?

For the disclosure to be responded to by the Hobart City Council, it must concern an employee, member or officer of the Council. If the disclosure concerns an employee, officer or member of another public body, the person who has made the disclosure must be advised of the correct person or body to whom the disclosure should be directed. (See the table in 2.3).

5.1.2 Does the disclosure contain the essential elements of a protected disclosure?

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

- Did a public officer or contractor make the disclosure?
- Does the disclosure relate to conduct of a public body or public officer acting in their official capacity?

- Is the alleged conduct either improper conduct or detrimental action taken against a person in reprisal for making a protected disclosure?
- Does the person making a disclosure have reasonable grounds for believing the alleged conduct has occurred?

Where a disclosure is assessed to be a protected disclosure, it is referred to the Protected Disclosure Coordinator. The Protected Disclosure Coordinator will determine whether the disclosure is a public interest disclosure.

Where a disclosure is assessed not to be a protected disclosure, the matter does not need to be dealt with under the Act. The Protected Disclosure Officer will decide how the matter should be responded to in consultation with the Protected Disclosure Coordinator.

5.2 Is the disclosure a public interest disclosure? (s.33 of the Act)

Where the Protected Disclosure Officer or Coordinator has received a disclosure that has been assessed to be a protected disclosure, the Protected Disclosure Coordinator will determine whether the disclosure amounts to a public interest disclosure. This assessment will be made within 45 days of the receipt of the disclosure.

In reaching a conclusion as to whether a protected disclosure is a public interest disclosure, the Protected Disclosure Coordinator will consider whether the disclosure shows, or tends to show, that the public officer to whom the disclosure relates:

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

Where the Protected Disclosure Coordinator concludes that the disclosure amounts to a public interest disclosure (s.34 of the Act), he or she will:

- Notify the person who made the disclosure of that conclusion; and
- Notify the Ombudsman; and
- Proceed to investigate the disclosed matter (see 6 - Investigations below).

Where the Protected Disclosure Coordinator concludes that the disclosure is not a public interest disclosure (s.35 of the Act), he or she will:

- Notify the person who made the disclosure of that conclusion; and

- Advise that person that he or she may request the public body to refer the disclosure to the Ombudsman for a formal determination as to whether the disclosure is a public interest disclosure, and that this request must be made within 28 days of the notification.

In either case, the Protected Disclosure Coordinator will make the notification within 14 days of the conclusion being reached by the public body. Notification to the discloser is not necessary where the disclosure has been made anonymously.

5.3 Referral of criminal conduct to the police

It is possible that before or during an investigation facts are uncovered that reveal a potential criminal offence. If this happens, the Hobart City Council will not commence, or will suspend, the investigation and will seek the advice of the Ombudsman as to the future of the matter. Under section 41 of the Act, the Ombudsman has the power to refer a disclosed matter to the Commissioner of Police for investigation.

If the Ombudsman is satisfied that the disclosed matter should be referred to Tasmania Police, the Council will request the Ombudsman to take over the investigation for the purpose of referring it to the Commissioner of Police.

An early referral may avoid interference with the evidentiary trail. Referral through the Ombudsman also will avoid any question of a breach of confidentiality under s.23 of the Act. Once a disclosure is referred to the Commissioner through the Ombudsman, the investigation under the *Public Interest Disclosures Act* process ceases.

In some instances, depending on the nature of the evidence and the seriousness of the alleged offence, the Ombudsman may decide, after consultation with the Commissioner of Police, that the disclosed matter will not be referred to the police for investigation. If this occurs, the Council will continue with its investigation under the Act.

6. Investigations (Part 7 of the Act)

6.1 Introduction

The Hobart City Council will investigate every disclosure referred to it for investigation by the Ombudsman under s.42 of the Act.

Unless the matters set out in 6.2 below apply, or the matter has been referred to the Commissioner of Police in accordance with 5.3 above, the Council will investigate every disclosure that it receives and determines is a public interest disclosure under s.33 of the Act.

The Protected Disclosure Coordinator will appoint an Investigator to carry out the investigation.

The objectives of an investigation will be:

- To collate information relating to the allegation as quickly as possible. This may involve taking steps to protect or preserve documents, materials and equipment;
- To consider the information collected and to draw conclusions objectively and impartially;
- To maintain procedural fairness in the treatment of witnesses and the person who is the subject of the disclosure; and
- To make recommendations arising from the conclusions drawn concerning remedial or other appropriate action.

6.2 *Matters that do not have to be investigated (s.64 of the Act)*

The Hobart City Council may, in certain circumstances decide not to investigate a disclosed matter. These are –

- (a) if in its opinion the disclosure is trivial, vexatious, misconceived or lacking in substance; or
- (b) if the subject matter of the disclosure has already been adequately dealt with by the Ombudsman or a public body, statutory authority, Commonwealth statutory authority, commission, court or tribunal; or
- (c) if the person making the disclosure has commenced proceedings in a commission, court or tribunal in relation to the same matter, and that commission, court or tribunal has power to order remedies similar to those available under this Act; or
- (d) if the person making the disclosure had knowledge for more than 12 months of the disclosed matter before making the disclosure and failed to give a satisfactory explanation for the delay in making the disclosure.

Where the Protected Disclosure Coordinator decides not to investigate a disclosed matter for a reason set out in s.64 of the Act, he or she will, within 14 days:

- Notify the person who made the disclosure of that decision, and the reasons for the decision; and
- Advise the person that he or she may request the public body to refer the disclosure to the Ombudsman for a determination as to whether the disclosed matter is to be investigated and this request must be made within 28 days of the notification.

If the person does request a referral to the Ombudsman, the Council will immediately refer the matter to the Ombudsman.

6.3 Terms of reference

Before commencing an investigation, the Protected Disclosure Coordinator will draw up terms of reference and obtain authorisation for those terms by the General Manager. The terms of reference will set a date by which the investigation report is to be concluded, and will describe the resources available to the Investigator to complete the investigation within the time set. The Protected Disclosure Coordinator may approve, if reasonable, an extension of time requested by the Investigator. The terms of reference will require the Investigator to make regular reports to the Protected Disclosure Coordinator who, in turn, is to keep the Ombudsman informed of general progress.

6.4 Investigation plan

The Investigator will prepare an investigation plan for approval by the Protected Disclosure Coordinator. The plan will list the issues to be substantiated and describe the avenue of inquiry. It will address the following issues:

- What is being alleged?
- What are the possible findings or offences?
- What are the facts in issue?
- How is the inquiry to be conducted?
- What resources are required?

At the commencement of the investigation, the discloser should be:

- Notified by the Investigator that he or she has been appointed to conduct the investigation;
- Asked to clarify any matters; and
- Asked to provide any additional material he or she might have.

The Investigator will be sensitive to the discloser's possible fear of reprisals and will be aware of the statutory protections provided to the discloser.

6.5 *Natural justice*

The principles of natural justice will be followed in any investigation of a public interest disclosure. The principles of natural justice concern procedural fairness and ensure a fair decision is reached by an objective decision maker. Maintaining procedural fairness protects the rights of individuals and enhances public confidence in the process.

The Hobart City Council will have regard to the following issues in ensuring procedural fairness:

- The person who is the subject of the disclosure is entitled to know the allegations made against him or her and must be given the right to respond. (This does not mean the person must be advised of the allegation as soon as the disclosure is received or the investigation has commenced);
- If the Investigator is contemplating making a report adverse to the interests of any person, that person should be given the opportunity to put forward further material that may influence the outcome of the report and that person's defence should be fairly set out in the report;
- All relevant parties to a matter should be heard and all submissions should be considered;
- A decision should not be made until all reasonable inquiries have been made;
- The Investigator or any decision maker should not have a personal or direct interest in the matter being investigated;
- All proceedings must be carried out fairly and without bias. Care should be taken to exclude perceived bias from the process; and
- The Investigator must be impartial in assessing the credibility of the disclosers and any witnesses. Where appropriate, conclusions as to credibility should be included in the investigation report.

6.6 *Conduct of the investigation*

The Investigator will make contemporaneous notes of all discussions and phone calls, and all interviews with witnesses will be taped. All information gathered in an investigation will be stored securely. Interviews will be conducted in private and the Investigator will take all reasonable steps to protect the identity of the discloser. Where disclosure of the identity of the person cannot be avoided, due to the nature of the allegations, the Investigator will warn the discloser and his or her Welfare Officer of this probability.

It is in the discretion of the Investigator to allow any witness to have legal or other representation or support during an interview. If a witness has a special need for legal representation or support, permission should be granted.

6.7 Referral of an investigation to the Ombudsman (s.68 of the Act)

The Protected Disclosure Coordinator will make a decision regarding the referral of an investigation to the Ombudsman where, on the advice of the Investigator:

- The investigation is being obstructed by, for example, the non-cooperation of key witnesses.

If the investigation has revealed conduct that may constitute a criminal offence, the Ombudsman will be consulted as to whether the investigation should be referred to the Ombudsman.

6.8 Reporting requirements (s.74 of the Act)

The Protected Disclosure Coordinator will ensure the discloser is kept regularly informed concerning the handling of a protected disclosure and an investigation.

The Protected Disclosure Coordinator will report to the Ombudsman about the progress of an investigation.

Where the Ombudsman or the discloser requests information about the progress of an investigation, that information will be provided within 28 days of the date of the request. However, the information does not have to be given to the discloser if it has already been given to the person, or the giving of the information would endanger the safety of another or may prejudice the conduct of the investigation.

6.9 Action taken after an investigation (Part 7 Division 4 of the Act)

6.9.1 Investigator's final report

At the conclusion of the investigation, the Investigator will submit a written report of his or her findings to the Protected Disclosure Coordinator. The report will contain:

- The allegation/s;
- An account of all relevant information received and, if the investigator has rejected evidence as being unreliable, the reasons for this opinion being formed;
- The conclusions reached and the basis for them; and
- Any recommendations arising from the conclusions.

Where the Investigator has found that the conduct disclosed by the discloser has occurred, recommendations made by the Investigator will include:

- The steps that need to be taken by the Hobart City Council to prevent the conduct from continuing or occurring in the future; and
- Any action that should be taken by the Hobart City Council to remedy any harm or loss arising from the conduct.

The steps to be taken may include bringing disciplinary proceedings against the person responsible for the conduct, and referring the matter to an appropriate authority for further consideration. For example, if the investigation has revealed conduct that may constitute a criminal offence, such matters should be referred to Tasmania Police.

The report will be accompanied by:

- The transcript or other record of any oral evidence taken, including tape recordings; and
- All documents, statements or other exhibits received by the officer and accepted as evidence during the course of the investigation.

Where the Investigator's report is to include an adverse comment against any person, that person will be given the opportunity to respond and his or her defence will be fairly included in the report.

The report will not disclose particulars likely to lead to the identification of the discloser.

6.9.2 Action to be taken ss.75 and 76 of the Act

If the Protected Disclosure Coordinator is satisfied that the investigation has found that the disclosed conduct has occurred, he or she will recommend to the General Manager the action that must be taken to prevent the conduct from continuing or occurring in the future. The Protected Disclosure Coordinator may also recommend that action be taken to remedy any harm or loss arising from the conduct.

The Protected Disclosure Coordinator will provide a written report to the Hobart City Council, the Ombudsman and the discloser setting out the findings of the investigation and any remedial steps taken.

Where the investigation concludes that the disclosed conduct did not occur, the Protected Disclosure Coordinator will report these findings to the Ombudsman and to the discloser.

7. Managing the Welfare of the Discloser

7.1 *Commitment to protecting disclosers*

The Hobart City Council is committed to the protection of genuine disclosers against detrimental action taken in reprisal for the making of protected disclosures. The Protected Disclosure Coordinator is responsible for ensuring disclosers are protected from direct and indirect detrimental action, and that the culture of the workplace is supportive of protected disclosures being made.

The Protected Disclosure Coordinator will appoint a Welfare Officer to all persons who have made a protected disclosure. The Welfare Officer will:

- Examine the immediate welfare and protection needs of a person who has made a disclosure and, where the discloser is an employee, seek to foster a supportive work environment;
- Advise the discloser of the legislative and administrative protections available to him or her;
- Listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making disclosure;
- Keep a contemporaneous record of all aspects of the case management of the discloser including all contact and follow-up action; and
- Ensure the expectations of the discloser are realistic.

All employees will be advised that it is an offence for a person to take detrimental action in reprisal for a protected disclosure (s.19 of the Act). The maximum penalty is a fine of 240 penalty units (\$24,000) or two years imprisonment or both. The taking of detrimental action in breach of this provision can also be grounds for making a disclosure under the Act and can result in an investigation.

Detrimental action includes:

- Causing injury, loss or damage;
- Intimidation or harassment; and
- Discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business (including the taking of disciplinary action);
- Threats of detrimental action.

7.2 Keeping the discloser informed

The Protected Disclosure Coordinator will ensure the discloser is kept informed of action taken in relation to his or her disclosure, and the time frames that apply. The discloser will be informed of the objectives of an investigation, the findings of an investigation, and the steps taken by the Hobart City Council to address any improper conduct that has been found to have occurred. The discloser will be given reasons for decisions made by the Council in relation to a protected disclosure. All communication with the discloser will be in plain English.

7.3 Occurrence of 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 the disclosure, the Welfare Officer will:

- Record details of the incident;
- Advise the discloser of his or her rights under the Act; and
- Advise the Protected Disclosure Coordinator or General Manager of the detrimental action.

The taking of detrimental action in reprisal for the making of a disclosure can be an offence against the Act as well as grounds for making a further disclosure. Where such detrimental action is reported, the Protected Disclosure Coordinator will assess the report as a new disclosure under the Act. Where the Protected Disclosure Coordinator is satisfied that the disclosure is a public interest disclosure, it must be further investigated by the Council.

7.4 Disclosers implicated in improper conduct (s.18 of the Act)

Where a person who makes a disclosure is implicated in misconduct, the Hobart City Council will handle the disclosure and protect the discloser from reprisals in accordance with the Act, the Ombudsman's guidelines and these procedures. The Council acknowledges that the act of disclosing should not shield disclosers from the reasonable consequences flowing from any involvement in improper conduct. Section 18 of the Act specifically provides that a person's liability for his or her own conduct is not affected by the person's disclosure of that conduct under the Act. However, in some circumstances, an admission may be a mitigating factor when considering disciplinary or other action.

The General Manager 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 persons 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 General Manager 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 Protected Disclosure Coordinator will thoroughly document the process including recording the reasons why the disciplinary or other action is being taken, and the reasons why the action is not in retribution for the making of the disclosure. The Protected Disclosure Coordinator will clearly advise the discloser of the proposed action to be taken, and of any mitigating factors that have been taken into account.

8. Management of the Person about whom a Disclosure has been made

The Hobart City Council recognises that employees against whom disclosures are made must also be supported during the handling and investigation of disclosures. The 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. Where investigations do not substantiate disclosures, the fact that the investigation has been carried out, the results of the investigation, and the identity of the person who is the subject of the disclosure will remain confidential.

The Protected Disclosure Coordinator will ensure the person who is the subject of any disclosure investigated by or on behalf of a public body is:

- Informed as to the substance of the allegations;
- Given the opportunity to answer the allegations before a final decision is made;
- Informed as to the substance of any adverse comment that may be included in any report arising from the investigation; and has
- His or her defence set out fairly in any report.

Where the allegations in a disclosure have been investigated, and the person who is the subject of the disclosure is aware of the allegations or the fact of the investigation, the Protected Disclosure Coordinator will formally advise the person who is the subject of the disclosure of the outcome of the investigation.

The Hobart City 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 General Manager will consider any request by that person to issue a statement of support setting out that the allegations were clearly wrong or unsubstantiated.

9. Forms – reporting, assessment and investigation

The Manager Human Resources will develop and maintain forms appropriate for use in respect of the reporting of disclosures, the assessment of disclosures and the investigation of disclosures.

10. Statistics

The Protected Disclosure Coordinator will establish a secure register to record the information required to be published in the annual report, and to generally keep account of the status of public interest disclosures. The register will be confidential and will not record any information that may identify the discloser. The annual reporting requirements are set out in s.86 of the Act.

The register will contain the following information:

- The number and types of disclosures made to the Hobart City Council during the year;
- The number of disclosures referred to the Ombudsman for determination as to whether they are public interest disclosures;
- The number of disclosures determined by the Council to be public interest disclosures that it investigated during the year;
- The number and types of disclosed matters referred to the Council by the Ombudsman for investigation;
- The number and types of disclosures referred by the Council to the Ombudsman for investigation;
- The number and types of investigations taken over from the Council by the Ombudsman;
- The number and types of disclosed matters that the Council has declined to investigate;
- The number and types of disclosed matters that were substantiated upon investigation and the action taken on completion of the investigation; and
- Any recommendations made by the Ombudsman that relate to the Council.

Criminal Offences

The Hobart City Council will ensure officers appointed to handle protected disclosures and all other employees are aware of the following offences created by the Act:

1. It is an offence for a person to take detrimental action against a person in reprisal for a protected disclosure being made. The Act provides a maximum penalty of a fine of 240 penalty units (\$24,000) or two years imprisonment or both (s.19 of the Act).
2. It is an offence for a person to divulge information obtained as a result of the handling or investigation of a protected disclosure without legislative authority. The Act provides a maximum penalty of 60 penalty units (\$6,000) or six months imprisonment or both (s.23 of the Act).
3. It is an offence for a person to obstruct the Ombudsman in performing his responsibilities under the Act. The Act provides a maximum penalty of 240 penalty units (\$24,000) or two years imprisonment or both (s.54 of the Act).
4. It is an offence for a person to knowingly provide false information under the Act with the intention that it be acted on as a disclosed matter. The Act provides a maximum penalty of 240 penalty units (\$24,000) or two years imprisonment or both (s.87 of the Act).

Review of Policy and Procedures

This policy and the associated procedures will be reviewed in accordance with the requirements of s 62 of the Act to ensure they meet the objectives of the Act and accord with the Ombudsman's guidelines.

Variation of Policy or Procedures

The General Manager reserves the right to review, vary or revoke this policy and/or the associated procedures at any time.



V B ARMSTRONG
GENERAL MANAGER