

1. PROTECTED DISCLOSURES ACT 2000 - COUNCIL INTERNAL PROCEDURES

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Corporate Plan Output: Legal Advice	

The purpose of this report is to advise the Council of a proposed Internal Procedures Policy in relation to the Protected Disclosures Act 2000.

Earlier this year Parliament enacted the Protected Disclosures Act 2000 which has its origins in the Whistleblower's Protection Bill which was originally introduced into Parliament in 1996. This Bill, in turn, had its origins in relation to events concerning Mr Neil Pugmire and his employer when Mr Pugmire provided information to the media concerning a patient in his employer's care.

The Protected Disclosures Act 2000 comes into force on 1 January 2001 and has as its purpose:

- “...to promote the public interest –*
- (a) by facilitating disclosure and investigation of matters of serious wrongdoing in or by an organisation; and*
 - (b) by protecting employees who, in accordance with this Act, make disclosures of information about serious wrongdoing in or by an organisation.”*

The Act requires that the Council, as a public organisation, must have in place by 1 January, appropriate internal procedures for dealing with information about serious wrongdoing in or by the Council. Those internal procedures must comply with the rules of natural justice, must identify persons in the organisation to whom a disclosure may be made and must also contain other information which is set out in the Act.

The phrase “serious wrongdoing” is at the core of the Act and that is defined as including:

- " ...any serious wrongdoing of any of the following types:*
- (a) an unlawful, corrupt, or irregular use of public funds or public resources; or*
 - (b) an act, omission, or course of conduct that constitutes a serious risk to public health or public safety or the environment; or*
 - (c) an act, omission, or course of conduct that constitutes a serious risk to the maintenance of law, including the prevention, investigation, and detection of offences and the right to a fair trial; or*
 - (d) an act, omission, or course of conduct that constitutes an offence; or*
 - (e) an act, omission, or course of conduct by a public official that is oppressive, improperly discriminatory, or grossly negligent, or that constitutes gross mismanagement,-- whether the wrongdoing occurs before or after the commencement of this Act.”*

In very general terms the Act applies to employees of the Council, former employees, persons seconded to the Council, a person contracted under a contract of services, such as a consultant or contractor.

Attached are the internal procedures which set out the process by which an “employee” may disclose information about serious wrongdoing within the Council. The Council is required to publish widely information to employees about its internal procedures and information about how to use those procedures and this must be republished at regular intervals.

The Act provides that employees who make disclosures about serious wrongdoing in accordance with the procedures established are protected from disciplinary action by the Council. There is also immunity from civil and criminal proceedings for making a protected disclosure. It is intended that the Investigations Commissioner, Mr Don Hampton, will be the person within the Council to whom disclosures of serious wrongdoing are made. The Policy has been discussed with the Human Resources Unit and has also been notified to the Unions which operate within the City Council.

The Committee, in noting that the Act contains a review clause providing for the legislation to be reviewed by Parliament in two years' time, considered that it would be appropriate to review the Council policy at that time.

Notwithstanding the safeguards provided in the legislation and the draft policy, some members of the Committee expressed reservations about appointing a staff member to handle complaints. To meet these concerns the Committee requested the Legal Services Manager to consider including an additional provision in the policy allowing for the appointment of an independent person to act jointly with the designated officer. The Committee also requested the Legal Services Manager to include a provision in the policy giving staff the right to withdraw a complaint.

The Legal Services Manager comments on the requests made by the Committee for two changes to the policy as follows:

With regard to the request to include a provision in section 6 of the Policy giving staff the right to withdraw complaints, upon reflection, I do not believe that that is an appropriate provision to include in the Policy. The Policy deals with allegations of “serious wrongdoing” as set out in section 3 of the Policy. If an allegation is made to the Council of an activity which, for example, is criminal in nature, then I believe it is inappropriate for the Policy to state that the complaint which discloses that information can be withdrawn by the staff member, and at that stage the Council presumably would disregard the nature of the information supplied to it. The Council is a public body and if it comes to the attention of the Council that a criminal act has occurred, then in my view the appropriate step for the Council would be to consider referring the matter to the Police for further investigation.

For these reasons I would advise against including a provision in the Policy that staff can be given the right to withdraw the complaints once disclosure has been made to the Investigations Commissioner.

In a similar manner, other aspects of serious wrongdoing can be serious risk to public health or safety, or the environment. Again, I consider it inappropriate that information disclosure in that type of serious wrongdoing could simply be withdrawn by a particular individual after it has been disclosed to the Council.

I was also asked to consider including additional provisions to allow for the opportunity to appoint an independent person to act jointly with the designated Investigations Commissioner. In terms of the practical implementation of this recommendation, I believe that the Policy can provide that the employee can request that such an independent person investigate jointly with the Investigations Commissioner, but that the actual appointment of a particular independent person could be delegated to the Legal Services Manager and the City Manager jointly.

Clearly, disclosures will involve different issues and there may be situations where it is appropriate to appoint an individual who has experience in relation to the particular issue, rather than appointing the same individual on every occasion. For that reason I would propose that the City Manager and the writer jointly be authorised by the Council in the Policy to determine the independent person to work jointly with the Investigations Commissioner, at the Council’s cost, where this is requested by the person making the disclosure. Section 5.4 of the attached Policy is drafted on this basis.

- Recommendation:**
1. That the attached Policy be adopted as the City Council’s Protected Disclosures Act Policy.
 2. That the Policy be reviewed by the Council immediately following the Parliamentary review in two years’ time.