



# Public Interest Disclosures Procedure

*Established under s58 of the Public Interest Disclosures Act 2012*

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Review Date: February 2024

## DOCUMENT CONTROL

Responsible GM	Tim Ellis	
Division	Regional City Strategy & Transition	
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PID Coordinator	09 March 2023	Annual review
Executive Team	23 February 2022	Annual review
PID Coordinator	15 December 2020	Annual review
Executive Team	12 November 2019	Updated to reflect legislative changes
Chief Executive Officer	26 July 2016	Updated
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## 1. Purpose

Latrobe City Council is required to establish and publish procedures under s 58 of the *Public Interest Disclosures Act 2012* (the Act) and in accordance with the Guidelines of the Independent Broad-based Anti-corruption Commission (IBAC) published under s 57 of the Act. The Council is required to ensure these procedures are readily available to members of the public as well as internally to all Councillors, employees, and staff of the Council.

Latrobe City Council is committed to the aims and objectives of the Act in that it does not tolerate improper conduct by the organisation, its employees, officers, members, or Councillors, or the taking of reprisals against those who come forward to disclose such conduct. The making of public interest disclosures is valued by the organisation and the right of any individual to make a public interest disclosure is taken seriously.

Latrobe City Council recognises the value of transparency and accountability in its administrative and management practices. The Council supports the making of public interest 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 Council is committed to the elimination of all forms of fraud and to creating an ethical environment and culture that discourages and prevents fraud.

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

These procedures complement the existing communication channels between supervisors and employees whereby employees are encouraged in the first instance to continue to raise appropriate matters at any time with their supervisors.

Latrobe City Council will ensure that appropriate training is provided at all levels of the organisation to raise awareness of how a public interest disclosure may be made, and to take all reasonable steps to ensure staff, employees and Councillors are familiar with the Council's public interest disclosures procedures and any relevant codes of conduct or related policies.

## 2. Scope

This is a resource for disclosers and potential disclosers, whether an internal Council member, employee or staff member or a member of the public. Essentially it provides information for any individual who wants to find out how to make a public interest disclosure, receive the protections available under the Act, and how the discloser and their disclosure may be managed and handled by the Council.

These procedures cover:

- how disclosures may be made to the Council;
- how the Council manages the receipt of public interest disclosures;
- how the Council assesses public interest disclosures it is able to receive under the Act;
- notifications the Council is required to make about public interest disclosures;
- how the Council protects certain people, including from detrimental action being taken against them in reprisal for making a public interest disclosure, namely:
  - public interest disclosers;
  - persons who are the subject of public interest disclosures and public interest complaints; and
  - other persons connected to public interest disclosures, such as witnesses or persons cooperating with an investigation.

These procedures establish a system for reporting disclosures of improper conduct or detrimental action by Latrobe City Council or its employees. They enable such disclosures (by employees or members of the public) to be made to the Public Interest Disclosures Coordinator or other appropriate person.

A list of definitions are provided at Attachment A.

## 3. Authorities & Responsibilities

Employees are encouraged to report known or suspected incidents of improper conduct or detrimental action in accordance with this procedure. Reports can be made directly to the Public Interest Disclosures Coordinator the Chief Executive Officer or if the employee prefers and applies, to the employee's Manager.

Managers will immediately report disclosures to the Public Interest Disclosures Coordinator.

Public Interest disclosures that relate to Councillor conduct must be made directly to IBAC or the Victorian Ombudsman, the contact details for which are provided at 5.1 below.

The Public Interest Disclosures Coordinator 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 disclosures made orally or in writing from internal or external sources;
- Commit to writing any disclosures 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 public interest disclosure');
- Be responsible for ensuring that the Council carries out its responsibilities under the Act and the Guidelines;
- Liaise with IBAC in regard to the Act;
- Take all necessary steps to ensure the information disclosed, including the identity of the discloser and any persons involved, is secured and remains private and confidential;
- Be responsible for overseeing and coordinating an investigation where the matter is not considered to be a public interest disclosure;
- Refer the person making the disclosure to the Welfare Officer if required, to support the person making the disclosure and to protect them from any reprisals;
- Establish and manage a confidential filing system;
- Collate and publish statistics on disclosures made; and
- Liaise with the Chief Executive Officer.

The Welfare Officer is responsible for looking after the general welfare of the person making a public interest disclosure. The Welfare Officer will:

- Examine the immediate welfare and protection needs of a person making a public interest disclosure and seek to foster a supportive work environment;

- Advise the person making a public interest disclosure of the legislative and administrative protection's available to them;
- Listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making the disclosure;
- Keep a thorough record of all aspects of the case management of the person making a public interest disclosure, including all contact and follow up action; and
- Take steps to assist the person making a public interest disclosure in having realistic expectations.

## 4. Confidentiality

Maintaining confidentiality in relation to public interest disclosures matters is crucial, in particular to ensure reprisals are not made against a discloser. The following applies:

- Council will take all reasonable steps to protect the identity of the person making a public interest disclosure, maintaining confidentiality is crucial in ensuring reprisals are not made against the person making a public interest disclosure.
- All files pertaining to a reported incident, (whether paper or electronic), shall be secured and only be accessed by the Public Interest Disclosures Coordinator/Officer or CEO if the disclosure has been made to the CEO, IBAC, an IBAC appointed investigator, or the 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 public interest disclosure.
- All materials relevant to an investigation, such as tapes from interviews, will also be stored securely with the Public Interest Disclosures files.
- Persons who make public interest disclosures must not reveal to any other person who is not the Public Interest Disclosures Coordinator/Officer, IBAC investigator or investigator appointed under these procedures, the Welfare Officer, or the CEO the content of the public interest disclosure unless the content of the public interest disclosure is in the public domain through no fault of the person making the public interest disclosure.

## 5. Disclosures Procedure Instructions

This Procedure provides instructions on the reporting and processing of disclosures of improper conduct or detrimental action by the Council or its employees. It further establishes a system for investigation of disclosures and protection of any person who makes a disclosure within the terms of the *Public Interest Disclosures Act 2012*.

## 5.1 How to report

Disclosures of improper conduct or detrimental action by Latrobe City Council or its employees, should be made to the Public Interest Disclosures Coordinator the CEO or to IBAC. All correspondence, phone calls and emails from internal or external persons making a public interest disclosure will be referred to the Public Interest Disclosures Coordinator. A flow chart of the process detailed in this procedure is provided at Attachment B.

The current details for the relevant officers are provided below. The details may change from time to time. The details of the position incumbents below may therefore be updated to reflect updated contact details.

<p><b>Public Interest Disclosures Coordinator</b></p> <p><i>Manager Governance - Hanna Steevens</i></p> <p>0417 793 348</p> <p><a href="mailto:Hanna.Steevens@latrobe.vic.gov.au">Hanna.Steevens@latrobe.vic.gov.au</a></p>							
<p><b>Public Interest Disclosures Officers</b></p> <table border="0"> <tr> <td><i>Rebecca Obersby - Council Solicitor</i></td> <td><i>Sam Amaira - Manager People and Culture</i></td> </tr> <tr> <td>5128 6108 or 0429 461 979</td> <td>0419359233</td> </tr> <tr> <td><a href="mailto:Rebecca.Obersby@latrobe.vic.gov.au">Rebecca.Obersby@latrobe.vic.gov.au</a></td> <td><a href="mailto:Sam.Amaira@latrobe.vic.gov.au">Sam.Amaira@latrobe.vic.gov.au</a></td> </tr> </table>		<i>Rebecca Obersby - Council Solicitor</i>	<i>Sam Amaira - Manager People and Culture</i>	5128 6108 or 0429 461 979	0419359233	<a href="mailto:Rebecca.Obersby@latrobe.vic.gov.au">Rebecca.Obersby@latrobe.vic.gov.au</a>	<a href="mailto:Sam.Amaira@latrobe.vic.gov.au">Sam.Amaira@latrobe.vic.gov.au</a>
<i>Rebecca Obersby - Council Solicitor</i>	<i>Sam Amaira - Manager People and Culture</i>						
5128 6108 or 0429 461 979	0419359233						
<a href="mailto:Rebecca.Obersby@latrobe.vic.gov.au">Rebecca.Obersby@latrobe.vic.gov.au</a>	<a href="mailto:Sam.Amaira@latrobe.vic.gov.au">Sam.Amaira@latrobe.vic.gov.au</a>						
<p><b>Chief Executive Officer</b></p> <p>5128 5413 <a href="mailto:Steven.Piasente@latrobe.vic.gov.au">Steven.Piasente@latrobe.vic.gov.au</a></p>							
<p><b>Dedicated email contact</b></p> <p><a href="mailto:disclosure@latrobe.vic.gov.au">disclosure@latrobe.vic.gov.au</a></p>							
<p><b>Written Correspondence</b></p> <p><b>Marked and 'Private and Confidential – Attention Public Interest Disclosure Coordinator'</b></p> <p>PO Box 264 Morwell VIC 3840</p>							

Disclosures of improper conduct or detrimental action by a Councillor must be made to:

<p><b>Independent Broad-based Anti-corruption Commission (IBAC)</b></p> <p>Telephone IBAC on 1300 735 135</p> <p>Visit IBAC's website: <a href="http://www.ibac.vic.gov.au/reporting-corruption/how-to-make-a-complaint">www.ibac.vic.gov.au/reporting-corruption/how-to-make-a-complaint</a></p> <p><b>Victorian Ombudsman</b></p> <p>Telephone the Ombudsman's office on 03 9613 6222.</p> <p>Email: <a href="mailto:ombudvic@ombudsman.vic.gov.au">ombudvic@ombudsman.vic.gov.au</a></p>
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A disclosure must be made in accordance with Part 2 of the Act. Disclosures may:

- only be made by a natural person (or a group of individuals making joint disclosures), disclosures cannot be made by a company or an organisation;
- be made anonymously;
- be made even where the discloser is unable to identify precisely the individual or the organisation to which the disclosure relates; and
- also be a complaint, notification or disclosure (however described) made under another law.

Note: Anonymous disclosures may create difficulties for the council in being able to communicate with the discloser, and some of the notification requirements imposed on the council in relation to disclosures will not apply in relation to an anonymously made disclosure. In addition, it may impede the Council's ability to properly assess whether the complaint or allegation is a public interest disclosure for the purposes of the Act. The conduct or action being disclosed about may be one which has taken place, is still occurring, or is believed is intended to be taken or engaged in.

## 5.2 Receiving and assessing disclosures

Where the Public Interest Disclosures Coordinator has received a disclosure, s/he will assess whether the disclosure has been made in accordance with Part 2 of the Act and is, therefore, a public interest disclosure.

The Public Interest Disclosures will respond to complaints about an employee 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.

To be a public interest disclosure, a disclosure must satisfy the following criteria:

- Did a natural person (that is, an individual person rather than a corporation) 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 or proposed to be taken against a person in reprisal for making a public interest disclosure?
- Does:
  - the disclosure show or tend to show that improper conduct or detrimental action has occurred or will occur? OR
  - the person making a disclosure have reasonable grounds for believing the alleged conduct has occurred or will occur?

The Public Interest Disclosures Coordinator will determine whether the disclosure is a public interest disclosure. Where a disclosure is assessed not to be a public interest disclosure, the matter does not need to be dealt with under the Act. If that is the case, the Public Interest Disclosures Coordinator will then decide how the matter



should be responded to in line with existing Council policies and procedures, such as the staff's Code of Conduct.

If the disclosure is not considered to be a public interest disclosure, the Public Interest Disclosures Coordinator will notify the person who made the disclosure and advise that the disclosure:

- has been determined to not be a 'public interest disclosure';
- has not been referred to the IBAC; and
- where the person has either indicated to Council; or it otherwise appears to Council that the person wishes to receive the protections that apply to a public interest disclosure, then the protections available to persons making disclosures will still apply.

The Council considers that the protections available under the *Public Interest Disclosures Act 2012* apply to persons making public interest disclosures as there may be circumstances where it is later determined the disclosure should have been referred to the IBAC as a public interest disclosure.

If the disclosure is determined to be a public interest disclosure then the Public Interest Disclosures Coordinator will:

- refer the disclosure to the IBAC within 28 days of receiving the disclosure; and
- notify the person who made the disclosure that it has been referred to the IBAC.

## 5.3 IBAC Investigations

Where the Public Interest Disclosures Coordinator determines that a disclosure is a public interest disclosure pursuant to Part 2 of the Act, the matter is referred to IBAC for investigation. IBAC prioritises its investigations into allegations of serious or systemic public sector corruption or misconduct. For legal and operational reasons, most IBAC investigations are conducted in private and are not commented or reported on publicly until the matter is finalised.

The determination of whether to investigate considers:

- the severity of any alleged harm or potential harm
- the likelihood the alleged conduct will continue if no action is taken
- whether the conduct has the potential to diminish public confidence in the public sector
- whether there are systemic issues of the conduct with broader impacts on the public sector
- the presence of any aggravating circumstances
- whether there is evidence of wilfulness or culpability.

IBAC investigations gather and analyse information to investigate and determine if corrupt conduct or police misconduct has taken place. They may include public or private examinations. The decision to start an investigation does not mean there has been any wrongdoing. Rather the investigation aims to:

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- determine if there is evidence of criminal conduct and potential criminal offences involved
- determine if there is evidence of conduct warranting disciplinary action
- expose strengths and weaknesses in an organisation's processes that could allow corruption to occur.

The duration of investigations depends on the complexity and nature of the allegations. IBAC complete some investigations within weeks, others have taken more than 12 months. Their aim is to complete investigations within 12 months.

IBAC will acknowledge the receipt of a complaint and may also contact the discloser for more information to help them assess the allegations and inform our decision.

Note: If the complaint is made anonymously IBAC will not be able to contact the discloser to discuss the complaint or the proposed response.

IBAC assess each allegation based on:

- the information provided by the discloser
- relevant information available to them connected to the complaint.

IBAC will write to the discloser by letter or email within 60 days to advise the outcome of the complaint.

## 5.4 Internal Investigations

Where the Public Interest Disclosures Coordinator determines that a disclosure is not a public interest disclosure pursuant to Part 2 of the Act, the Public Interest Disclosures Coordinator may carry out an investigation or may appoint an investigator. 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.

The Public Interest Disclosures Coordinator will address the following issues:

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

At the commencement of the investigation, the person making the disclosure should be:

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

The principles of natural justice will be followed in any investigation of a disclosure and 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).
- Confidentiality of the person making the public interest disclosure will be preserved as far as possible.
- 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 person making the disclosure and any witnesses. Where appropriate, conclusions as to credibility should be included in the investigation report.

The investigator will make notes of all discussions and phone calls, and all interviews with witnesses may 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 person making the disclosure.

Where disclosure of the identity of the person making the disclosure cannot be avoided, due to the nature of the allegations, the investigator will warn the person making the disclosure and his or her Welfare Officer of this possibility.

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. In all other cases, permission should not be unreasonably withheld.

## 5.5 Final Report

At the conclusion of the investigation, the Public Interest Disclosures Coordinator will prepare a report for the Chief Executive Officer containing:

- 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 has occurred, report recommendations will include:

- The steps that need to be taken to prevent the conduct from continuing or occurring in the future; and
- Any action that should be taken to remedy any harm or loss arising from the conduct. This action may include bringing disciplinary proceedings against the person responsible for the conduct, and referring the matter to an appropriate authority for further consideration.

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 person making the disclosure.

## 5.6 Action to be taken

If the Public Interest Disclosures Coordinator is satisfied that the investigation has found that the disclosed conduct has occurred, he or she will recommend to the Chief Executive Officer the action that must be taken to prevent the conduct from continuing or occurring in the future.

The Public Interest Disclosures Coordinator may also recommend that action be taken to remedy any harm or loss arising from the conduct.

Where the investigation concludes that the disclosed conduct did not occur, the Public Interest Disclosures Coordinator will report these findings to the Chief Executive Officer and to the person making the disclosure.

## 6. Managing the welfare of the person making the disclosure and person who is the subject of the disclosure.

All employees will be advised that it is an offence for a person to take detrimental action in reprisal for a public interest disclosure. At the date of this Procedure, the maximum penalty is a fine of 240-penalty units or two years imprisonment or both, which may be amended by the Act from time to time. 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.

The Public Interest Disclosures Coordinator or Officer and Welfare Officer shall have regard to guidelines established by the IBAC in managing the interests of the person making the disclosure and the person against whom the disclosure has been made. In best ensuring fairness to the subject of the disclosure in the process, this may include:

- If the person is aware that they are the subject of an investigation, they must be informed of the outcomes
- the person who is the subject of the disclosure, should be given adequate information as to their rights and obligations under the Act, including support such as employee assistance programs during the investigation
- If the allegations are clearly found to be wrong or unsubstantiated, the person who is the subject of the disclosure will be supported by Council.

## 7. Collating and publishing statistics

The Public Interest Disclosures Coordinator will establish a secure register to record the information required to be published in the Latrobe City Council annual report, and to generally keep account of the status of disclosures.

The register will be confidential and will not record any information that may identify the person making the disclosure, or as necessary witnesses and alleged wrongdoers.

## 8. Review

This procedure will be reviewed annually by Public Interest Disclosures Coordinator or when any changes to the governing legislation occurs.

## Attachment A

### DEFINITIONS

#### Corrupt Conduct

Corrupt conduct means conduct:

- a) of any person (whether or not a public official) 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;
- 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;
- c) of a public officer or a public body that constitutes or involves knowingly or recklessly breaching public trust;
- 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 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
- e) that could constitute a conspiracy or an attempt to engage in any conduct referred to in paragraph (a), (b), (c) or (d) above

being conduct that would, if the facts were found proved beyond reasonable doubt at a trial, constitute a relevant offence.

#### Detrimental Action

The Act makes it an offence for a person to take detrimental action against a person in reprisal for a public interest disclosure. 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, careers, profession, trade or business, including the taking of disciplinary action.

#### Improper Conduct

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

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- 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;
    - 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).

Despite anything above, conduct that is trivial does not constitute improper conduct.

## Natural Justice

The procedures for handling and investigating public interest disclosures will be conducted with procedural fairness and without bias. All parties will be given a fair opportunity to present their case. Natural justice ensures a fair decision is reached by an objective decision maker.

## Public Interest Complaint

A public interest disclosure that has been determined by IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee (IOC) to be a public interest complaint.

## Public Interest Disclosure

Disclosure by a natural person of information that shows / tends to show or information that the person reasonably believes shows / tends to show improper conduct or detrimental action.

## Public Interest Disclosures Coordinator

This role is the Manager Governance. Support can be provided by the General Manager, Regional City Strategy and Transition when necessary.

## Public Interest Disclosures Officer

The Public Interest Disclosures Officers will assist the Public Interest Disclosures Coordinator with the receipt of disclosures. These are currently the Council Solicitor and Manager People and Culture.



## Specified Conduct

Specified conduct means corrupt conduct or conduct of a public officer or public body in his or her capacity as a public officer or its capacity as a public body that:

- involves substantial mismanagement of public resources; or
- involves substantial risk to public health or safety; or
- involves substantial risk to the environment.

## Welfare Officer

Manager People and Culture, will appoint an officer to provide welfare and support services to persons who make public interest disclosures and seek assistance. The officer will be trained in all public interest disclosures procedures and will maintain the confidentiality of the person making the disclosure.

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## Attachment B

### PROCESS FLOW CHART

