

GLENORCHY CITY COUNCIL
ATTACHMENTS
MONDAY, 2 OCTOBER 2017



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GOVERNANCE

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23 August 2017

Mr Simon Scott
Acting Director, Corporate Governance
Glenorchy City Council
PO Box 103
GLENORCHY TAS 7010

Dear Mr Scott

Public Interest Disclosure Act 2002 – Procedures

Thank you for forwarding your draft *Public Interest Disclosure Act 2002* procedures for approval, which were received on 23 August 2017.

My officer discussed with Mr Craig Anderson the need for the public interest disclosure officer details to be included at page 13, be that either a person's name or position title. I understand steps are being taken to address this matter. The guidance note on page 12 was also going to be deleted. You might also like to consider including after the details of other complaint processes at page 2 and 3 a comment to the effect that those processes do not provide the protections afforded under the *Public Interest Disclosures Act 2002*.

I draw your attention to the fact that an error has been found in 15.2 of the Model Procedures. Please amend 'Protected Interest Disclosure Officer' to 'Public Interest Disclosure Officer'.

Subject to the above amendments being made, I approve the procedures. Please insert today's date as the date of approval in the approval and review section at the end of the procedures.

Please note that as required by s60(3) of the *Public Interest Disclosure Act 2002*, you must submit the procedures to the Ombudsman at least once in each three year period following this approval.

Thank you also for your advice as to the action being taken to inform contractors of their right to make disclosures to the Ombudsman and the Integrity Commission. The steps outlined appear to be appropriate to ensure contractors are receiving sufficient information, or know where to find further information, in the event that they need to exercise their right to make a disclosure.

Yours sincerely

Richard Connock
OMBUDSMAN



Public Interest Disclosures Act 2002

Model PID Procedures Manual

DRAFT

Tasmanian Ombudsman Revised Edition: June 2017 (with amendments)

Adopted by Council Item XX (XX XXX 2017) as per Council Minutes

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I Statement of Support

The Glenorchy City Council (Council) is committed to the aims and objectives of the *Public Interest Disclosures Act 2002* (the Act). It does not tolerate improper conduct by its employees, officers or members, or the taking of detrimental action against those who come forward to disclose such conduct.

The Council recognises the value of transparency and accountability in its administrative and management practices, and supports the making of disclosures that reveal the type of conduct to which the Act is directed.

The Council will take all reasonable steps to protect people who make such a disclosure from any detrimental action in reprisal for making the disclosure, and to protect their welfare. It will also afford natural justice to all parties involved in the investigation of a disclosure.

2 Purpose of these procedures

These procedures establish a system for reporting disclosures of improper conduct or detrimental action by members, officers or employees of the Council. The procedures are also intended to assist its members, officers and employees to understand the way in which the Act operates and needs to be administered.

The system created by these procedures provides for such disclosures to be made to the General Manager (the Principal Officer) or to a delegated Public Interest Disclosure Officer. Disclosures may be made by people who are 'public officers' with the Council. People who are or have been 'contractors' with Council for the supply of goods or services can make disclosures to the Ombudsman or Integrity Commission. The meaning of public officers and contractors is explained later in this document.

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, and to use existing grievance procedures within the organisation where appropriate.

Of note, Council has a range of other avenues for investigating complaints (including but not limited to):

- with respect to complaints about a council, Alderman, General Manager or council employee for non-compliance or offences under the *Local Government Act 1993* (LG Act) and related legislation, the Director of Local Government has the power to assess such complaints and undertake an investigation if appropriate. General information about making such complaints to the Local Government Division may be found on the Division's website (see [General Information Sheet for Making a Complaint](#))
- with respect to complaints about Aldermanic conduct, the local government code of conduct framework is prescribed under Part 3, Division 3A (Code of

conduct, complaints and complaint resolution) of the LG Act. Council has an Aldermanic Code of Conduct which sets out the standard of behaviour that aldermen are required to meet when carrying out their roles and functions. Code of Conduct complaints are required to be lodged with the General Manager in the first instance in the approved form (see Council's [Aldermanic Code of Conduct \(4 July 2016\)](#)), and

- Council has a [Code of Conduct](#) which applies to anyone who is employed by or works at Council including employees, volunteers, contractors, sub-contractors and consultants. This Code provides a practical set of guiding principles to help individuals make decisions in their day to day work, whatever they do and wherever they do it. The Code is supported by a number of more detailed policies that form part of the GCC Conduct and Ethics Policy Framework.

The abovementioned other avenues for investigating complaints do not provide the protections afforded under the Act (see [12 – Protection](#)).

The procedures have been prepared in accordance with Guidelines and Standards published by the Ombudsman under s 38(1)(c) of the Act. These Guidelines and Standards can be seen on the Ombudsman's website at www.ombudsman.tas.gov.au.

3 The purpose of the Act

The Act commenced operation on 1 January 2004. It was substantially amended by the *Public Interest Disclosures Amendment Act 2009*, following a major review of the Act, and these procedures reflect those amendments. The amendments took effect on 1 October 2010.

The purposes of the Act are contained in its long title. These are:

- to encourage and facilitate disclosures of improper conduct by public officers and public bodies;
- to protect persons making those disclosures, and others, from detrimental action;
- to provide for the matters disclosed to be properly investigated and dealt with; and
- to provide all parties involved in the disclosures with natural justice.

The public interest is served by providing an avenue for persons to report improper conduct and be protected for doing so.

4 How the Act works

Briefly, the Act works in this way:

- it gives certain people – ‘public officers’ and ‘contractors’ – the right to make a disclosure about ‘improper conduct’ or ‘detrimental action’ to certain integrity agencies, other persons and bodies (Part 2 of the Act, particularly s 6);¹
- it provides certain statutory protections for protected disclosures (Part 3);
- it dictates how the recipient of the disclosure is to deal with it (Parts 4 to 8);
- it treats the Ombudsman as the oversight agency in relation to the operation of the Act, including the default investigator, monitor of investigations by public bodies, and setter of standards under the Act;
- where the disclosure is handled by the Ombudsman or a public body, it requires a preliminary determination as to whether the protected disclosure is a ‘public interest disclosure’ (ss 30 and 33). In other words a disclosure which, in the case of decision-making by the Ombudsman, meets the requirements of s 30(2), or, in the case of decision-making by the public body, meets the requirements of s 33(2);
- subject to exceptions, it requires investigation by the Ombudsman or public body of any protected disclosure which is found to be a public interest disclosure (ss 39 and 63);
- it requires such investigation to be conducted as soon as practicable (ss 39A and 77A);
- it controls the manner in which a disclosure is investigated, and provides powers in this respect;
- in the case of investigation by the Ombudsman, it gives the Ombudsman the power to recommend that action be taken in light of the investigation (s 56); and
- in the case of an investigation by a public body which results in a finding that the alleged conduct occurred, it obliges the public body to take action to prevent that conduct from continuing or recurring, and to take action to remedy any harm or loss which may have arisen (s 75).

A flow chart, which depicts the way in which a public body should deal with a disclosure made to it under the Act, is at Attachment I to this document. It is important to note that a person does not have to expressly reference the Act when

¹ Note that s 7A of the Act permits a person to whom a disclosure may be made under Part 2 of the Act to treat a person who is not a public officer or contractor as a contractor for the purposes of the Act, if they consider that it would be in the public interest to do so. A disclosure by a contractor is not necessarily protected if made to a public body, so referral should be made to the Ombudsman or the Integrity Commission.

making a disclosure in order to be eligible for protection, if all the requirements in the Act are otherwise met.

5 Comparison with the Integrity Commission Act

The Act and the *Integrity Commission Act 2009* (IC Act) work very differently.

Perhaps the most important difference is that the IC Act does not contain any provisions which protect a person who makes a complaint under that Act from detrimental action by way of reprisal. The provision of such protection is a key feature of the Act.

Other important differences are:

- the fact that anyone can make a complaint under the IC Act, whereas the right to make a disclosure under the Act is given only to a current public officer and a contractor;
- in the types of conduct to which the Act applies;² - the fact that a disclosure may be made under the Act about proposed conduct, whereas the IC Act only concerns past conduct;
- the fact that a disclosure under the Act may be oral, whereas a complaint under the IC Act must be in writing; and
- the different processes which each Act applies to a matter brought forward under it.

A person who is trying to decide which Act to proceed under should consider seeking legal advice on what is the best course for them to take.

It is possible for a disclosure which is made under the Act to be dealt with under the IC Act – see Part 4A of the Act.

² The Act concerns 'improper conduct', which embraces 'corrupt conduct'. The IC Act concerns 'misconduct' only and it is unclear as to the extent to which corrupt conduct would be able to be investigated. The definitions of these expressions used in the two Acts do not align.

6 Key terms

6.1 The right to make a disclosure

The right to make a disclosure under the Act is given by s 6 of the Act. That states:

6. *Disclosures about improper conduct or detrimental action*
 - (1) *A public officer who believes that another public officer or a public body –*
 - (a) *has engaged, is engaging or proposes to engage in improper conduct in their capacity as a public officer or public body; or*
 - (b) *has taken, is taking or proposes to take detrimental action in contravention of section 19 –**may disclose that improper conduct or detrimental action in accordance with this Part.*
 - (2) *A contractor who believes that the public body with which the contractor has entered into a contract –*
 - (a) *has engaged, is engaging or proposes to engage in improper conduct in its capacity as a public body; or*
 - (b) *has taken, is taking or proposes to take detrimental action in contravention of section 19 –**may disclose that improper conduct or detrimental action in accordance with this Part.*

As can be seen from the emphasis given to certain expressions in this version of s 6, the specific meanings given to a number of expressions are key to its operation. These are:

- 'public officer'
- 'public body'
- 'contractor'
- 'improper conduct'
- 'detrimental action'

Because of the way that the expression 'improper conduct' is defined in s 3 of the Act, a further expression is also very important. This is the expression 'corrupt conduct'.

Each of these expressions is now explained.

6.2 'Public officer' and 'public body'

These expressions are defined in ss 3 and 4 of the Act, in this way:

3. Interpretation

'public body' means a public body referred to in section 4;

'public officer' means a public officer referred to in section 4;

4. Public bodies and officers

(1) *Subject to subsection (3), the following bodies and authorities are public bodies for the purposes of this Act:*

- (a) *the Parliament of Tasmania;*
- (b) *a State Service Agency;*
- (c) *the Police Service;*
- (d) *a council;*
- (e) *a Government Business Enterprise;*
- (f) *a State-owned Company;*
- (g) *a council-owned company;*
- (h) *a body or authority, whether incorporated or not, whose members or a majority of whose members are appointed by the Governor or a Minister;*
- (i) *any other prescribed body or authority, whether incorporated or not –*
 - (i) *to which any money is paid by way of appropriation from the Public Account; or*
 - (ii) *over which the Government or a Minister exercises control.*

(2) *Subject to subsection (3), the following persons are public officers for the purposes of this Act:*

- (a) *a Member of Parliament;*
- (b) *a councillor;*
- (c) *a member, officer or employee of a public body;*
- (d) *a member of the governing body of a public body;*

- (e) *an employee of a council;*
 - (f) *any person performing functions under the Parliamentary Privilege Act 1898;*
 - (g) *a person employed in an office of a Minister, Parliamentary Secretary or other Member of Parliament whether in accordance with the State Service Act 2000, Parliamentary Privilege Act 1898 or otherwise;*
 - (h) *any person performing functions under the Governor of Tasmania Act 1982;*
 - (i) *a person appointed to an office by the Governor or a Minister under an Act*
- (3) *The following bodies are not public bodies for the purposes of this Act:*
 - (a) *a court;*
 - (b) *a tribunal;*
 - (c) *the Tasmanian Industrial Commission;*
 - (d) *the Integrity Commission;*
 - (e) *any other prescribed body.*
- (4) *The following persons are not public officers for the purposes of this Act:*
 - (a) *the Governor of Tasmania;*
 - (b) *a judge of the Supreme Court;*
 - (c) *the Associate Judge of the Supreme Court;*
 - (d) *a magistrate of the Magistrates Court;*
 - (e) *the Director of Public Prosecutions;*
 - (f) *any other prescribed person.*

The Council is a 'public body', as so defined.

Further, any member, officer or employee of Council is a 'public officer', as so defined.

Note that the right which s 6 of the Act gives to a public officer to make a disclosure must be exercised whilst the person is still a public officer. It is not a requirement

that a public officer refer to the Act, or even have knowledge that the Act exists, to make a disclosure which may be protected under the Act.

6.3 'Contractor'

This expression is defined in s 3 of the Act, in this way:

3. Interpretation

'contractor' means –

- (a) *a person who at any time has entered into a contract with a public body for the supply of goods or services to, or on behalf of, the public body; or*
- (b) *an employee of the contractor; or*
- (c) *a subcontractor engaged by the contractor to fulfil all or part of a contract with a public body for the supply of goods or services to, or on behalf of, the public body;*

This definition has the effect that a person may exercise the right given to a contractor by s 6 of the Act even though the contract which they held with the public body is now over. Note that contractors cannot make a protected disclosure to a public body and should be referred to the Ombudsman or Integrity Commission.

6.4 'Improper conduct' and 'corrupt conduct'

These expressions are also defined in s 3 of the Act, in this way:

3. Interpretation

'improper conduct' means –

- (a) *conduct that constitutes an illegal or unlawful activity; or*
- (b) *corrupt conduct; or*
- (c) *conduct that constitutes maladministration; or*
- (d) *conduct that constitutes professional misconduct; or*
- (e) *conduct that constitutes a waste of public resources; or*
- (f) *conduct that constitutes a danger to public health or safety or to both public health and safety; or*
- (g) *conduct that constitutes a danger to the environment; or*
- (h) *misconduct, including breaches of applicable codes of conduct; or*

- (i) *conduct that constitutes detrimental action against a person who makes a public interest disclosure under this Act –*

that is serious or significant as determined in accordance with guidelines issued by the Ombudsman;

Note that paragraph (b) leads to another definition in s 3, being that of 'corrupt conduct' –

'corrupt conduct' means –

- (a) *conduct of a person (whether or not a public officer) that adversely affects, or could adversely affect, either directly or indirectly, the honest performance of a public officer's or public body's functions; or*
- (b) *conduct of a public officer that amounts to the performance of any of his or her functions as a public officer dishonestly or with inappropriate partiality; or*
- (c) *conduct of a public officer, a former public officer or a public body that amounts to a breach of public trust; or*
- (d) *conduct of a public officer, a 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 functions as such (whether for the benefit of that person or body or otherwise); or*
- (e) *a conspiracy or attempt to engage in conduct referred to in paragraph (a), (b), (c) or (d);*

Note that, for the right of disclosure under s 6 to apply, the improper conduct (including corrupt conduct) must be serious or significant as determined in accordance with guidelines issued by the Ombudsman. The guidelines can be accessed at www.ombudsman.tas.gov.au.

Examples of 'corrupt conduct'

- A public officer takes a bribe in exchange for the discharge of a public duty;
- a public officer favours unmeritorious applications for jobs or permits by friends and relatives; and
- a public officer sells confidential information.

Examples of other types of 'improper conduct'

- 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; and

- a building inspector tolerates poor practices and structural defects in the work of a leading local builder, giving rise to a risk to public health or safety.

6.5 Detrimental action

This expression is defined in s 3 of the Act, in this way:

'detrimental action' includes –

- (a) action causing injury, loss or damage; and*
- (b) Intimidation or harassment; and*
- (c) discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action; and*
- (d) threats of detrimental action;*

Note that the right to make a disclosure in relation to detrimental action under s 6 relates to detrimental action taken in contravention of s 19 of the Act. Section 19 is in these terms:

19. Protection from reprisal

- (1) A person must not take detrimental action against a person in reprisal for a protected disclosure.*

Penalty:

Fine not exceeding 240 penalty units or imprisonment for a term not exceeding 2 years, or both.

- (2) A person takes detrimental action in reprisal for a protected disclosure if –*
 - (a) the person takes or threatens to take the action because –*
 - (i) a person has made, or intends to make, a protected disclosure; or*
 - (ii) the person believes that a person has made or intends to make the protected disclosure; or*
 - (b) the person incites or permits another person to take or threaten to take the action for either of those reasons.*
- (3) In determining whether a person takes detrimental action in reprisal, it is irrelevant whether or not a reason referred to in subsection (2) is the only or dominant reason as long as it is a substantial reason.*

The effect of s 19 is that reprisal must have been a substantial reason behind the detrimental action taken, though other reasons may exist.

Examples of detrimental action are:

- refusal of a deserved promotion;
- demotion, transfer, isolation in the workplace or changing a person's duties to their disadvantage;
- threats, abuse or other forms of harassment directly or indirectly against the discloser, his or her family or friends; and
- discrimination against the discloser or his or her family and associates in applications for jobs, permits or tenders.

7 The reporting system

7.1 To whom a disclosure may be made – general principles

For the protections in the Act to apply, a disclosure must be made to the right person or body. Section 7 of the Act deals with this subject, and the following table summarises its effect:

Officer or public body to which the disclosure relates	Person to whom the disclosure may be made
a member, officer or employee of a public body other than the Police Service or a State Service Agency	that public body; or the Integrity Commission; or the Ombudsman
a member, officer or employee of a public body that is a State Service Agency	that State Service Agency; or the Integrity Commission; or the Ombudsman
the principal officer of a public body or State Service Agency	the Ombudsman; or the Integrity Commission
a member of the Police Service, other than the Commissioner of Police	the Commissioner of Police
the Commissioner of Police	the Ombudsman
a member of the Legislative Council	the President of the Legislative Council
a member of the House of Assembly	the Speaker of the House
a councillor, within the meaning of the	the Ombudsman

Officer or public body to which the disclosure relates	Person to whom the disclosure may be made
<i>Local Government Act 1993</i>	
a person employed under the provisions of the <i>Parliamentary Privilege Act 1898</i>	the Ombudsman; or the Integrity Commission
the Auditor-General	the chairman of the Public Accounts Committee
the Ombudsman	the Joint Standing Committee on Integrity
a person employed in an office of a Minister, Parliamentary Secretary or other Member of Parliament	the Ombudsman
in any other case, including if the disclosure is about a public body as opposed to an individual public officer	the Ombudsman; or the Integrity Commission

Hence, disclosures which relate to improper conduct or detrimental action by a member, officer or employee of Council must be made as explained in [parts 7.2 to 7.6](#). A contractor, or a member of the public under s7A of the Act, can only make a disclosure about a public body, so they must make it to the Ombudsman or the Integrity Commission.

7.2 Disclosure to persons within the Council

Disclosures of improper conduct or detrimental action by a member, officer or employee of Council may be made to the following officers:

- the General Manager – who is the ‘Principal Officer’ of the public body, within the terms of the Act; and
- the Public Interest Disclosure Officer (pid@gcc.tas.gov.au).

Each person who holds or acts in any of the following positions within Council has been appointed by the Principal Officer to act as a Public Interest Disclosure Officer, and holds a delegation which enables them to receive public interest disclosures under the Act.

Where a person is contemplating making a disclosure and is concerned about approaching the Principal Officer or a Public Interest 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.

It is not a requirement that the person contemplating making a disclosure refers to the Act, or is aware of the Act, to make a valid disclosure.

A disclosure about the Principal Officer or Council should be immediately referred to the Ombudsman or the Integrity Commission.

7.3 Disclosure to the Ombudsman

A disclosure about improper conduct or detrimental action by Council or any of its members, officers or employees may also be made directly to the Ombudsman. The contact details for the Ombudsman are:

The Ombudsman
GPO Box 960
HOBART TAS 7001

or at

Level 6, 86 Collins Street
HOBART TAS 7000

Website: www.ombudsman.tas.gov.au
Email: ombudsman@ombudsman.tas.gov.au
Phone: 1800 001 170 (Freecall, though charges for mobile phones may apply)

7.4 Disclosure to the Integrity Commission

A disclosure about improper conduct or detrimental action by Council or any of its members, officers or employees may also be made directly to the Integrity Commission. The contact details for the Integrity Commission are:

Tasmanian Integrity Commission
GPO Box 822
HOBART TAS 7001

or at

Level 2
Surrey House
199 Macquarie Street
HOBART TAS 7000

Website: www.integrity.tas.gov.au
Email: integritycommission@integrity.tas.gov.au
Phone: 1300 720 289

7.5 To which entity should a disclosure be made?

As can be seen from [part 7.1](#) of these procedures, there are some situations in which a disclosure may only be made to a single entity. For instance, if the disclosure is about a councillor in a local council, it must be made to the Ombudsman. Where

there is a choice of entities, those choices will include the Ombudsman and the Integrity Commission. Either of those entities will be able to give advice on the most suitable entity to receive the disclosure, but the Ombudsman has overall responsibility for the administration of the Act.

The considerations which might sensibly bear on the choice of entity to which the disclosure is made include:

- the nature of the normal functions (and therefore the skills and experience) of the different entities which might be chosen;
- the desirability of independent investigation of the disclosure – which might, for instance, lead away from making the disclosure to the public body; and
- the seriousness or otherwise of the disclosure.

Note that if the disclosure is about Council it can only be made to the Ombudsman or the Integrity Commission. Given the normal functions of the Integrity Commission focus on individual misconduct it is recommended that the Ombudsman be contacted in the first instance.

8 Roles and responsibilities

This part explains the roles and responsibilities of individuals within Council under the Act.

8.1 Members, officers and employees

Members, officers and employees of Council are encouraged to report known or suspected incidences of improper conduct or detrimental action under the Act, in accordance with these procedures.

All members, officers and employees of the 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, victimisation or harassment of 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.

8.2 Principal Officer

The Principal Officer has primary responsibility for ensuring that the provisions of the Act are implemented by the public body. Section 62A of the Act provides that the Principal Officer has responsibility for:

- preparing procedures for approval by the Ombudsman;
- receiving public interest disclosures and ensuring they are dealt with in accordance with the Act;

- ensuring the protection of witnesses;
- ensuring the application of natural justice in the public body's procedures;
- ensuring the promotion of the importance of public interest disclosures and general education about the Act to all staff, and ensuring easy access to information about the Act and the public body's procedures, and
- providing access to confidential employee assistance programs and appropriately trained internal support staff for those involved in the process.

The Principal Officer may delegate many of his or her functions to a Public Interest Disclosure Officer.

8.3 Public Interest Disclosure Officer

A Public Interest Disclosure Officer is appointed by the Principal Officer under s 62A(2) of the Act, and holds a delegation from the Principal Officer which enables him or her to exercise the statutory powers and functions given to the Principal Officer by the Act which are listed in their instrument of delegation.

These procedures frequently give responsibilities or functions to a Public Interest Disclosure Officer. Not all of these are referable to specific statutory powers or functions bestowed on the Principal Officer by the Act, and so some of them represent things which the Public Interest Disclosure Officer is expected to do on a purely administrative basis.

Subject to the terms of their delegation, the responsibilities of a Public Interest Disclosure Officer generally include:

- acting as 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;
- making arrangements for a disclosure to be made privately and discreetly and, if necessary, away from the workplace;
- receiving any disclosure made orally or in writing (from internal and external disclosers);
- recording in writing the details of any disclosure which is made orally;
- impartially assessing the allegation and determining whether it is a disclosure made in accordance with Part 2 of the Act (that is, 'a protected disclosure');
- impartially assessing under s 33 of the Act whether a disclosure is a 'public interest disclosure'; and

- taking all necessary steps to ensure that the identity of the discloser and the identity of the person who is the subject of the disclosure are kept confidential.

8.4 Investigator

Where the Council has determined that a disclosure is a public interest disclosure, or where the Ombudsman has referred a disclosed matter to Council for investigation, the Principal Officer will appoint an investigator to investigate the matter in accordance with the Act. An investigator may be a person from within the public body or a consultant engaged for that purpose.

8.5 Welfare manager

The welfare manager will be appointed by the Principal Officer or by a Public Interest Disclosure Officer, and is responsible for looking after the general welfare of the discloser. The welfare manager 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;³
- listen and respond to any concerns of harassment, intimidation, victimisation or other detrimental action which may be occurring in reprisal for making the disclosure; and
- so far as is practicable, protect the identity of the discloser in the course of carrying out these responsibilities.

A welfare manager may be a person from within the public body or a consultant engaged for that purpose.

9 Confidentiality

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

All reasonable care should also be taken to protect the privacy of witnesses and of the person against whom the disclosure has been made.

³ See [part 12](#) below for details of the legislative protections.

Section 23 of 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 this section constitutes an offence that is punishable by a maximum fine of 60 penalty units or six months imprisonment, or both.

The circumstances in which a person may disclose information obtained about a protected disclosure include:

- where exercising their functions or 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 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 made in accordance with Part 9 of the Act.

It may be necessary to consider disclosing information where:

- it is essential, having regard to the principles of natural justice, that the identifying information be disclosed to the person who is the subject of the disclosure; or
- the investigating body believes that the disclosure of the identifying information is necessary for the matter to be effectively investigated.

In both circumstances, the person who made the disclosure should be informed as to this step.

The Council will ensure that all relevant files, whether paper or electronic, are kept securely and can only be accessed by the Principal Officer, Public Interest Disclosure Officer/s, the investigator, and (in relation to welfare matters only) the welfare manager.

All printed material will be kept in files that are clearly marked as confidential, and all materials relevant to an investigation, such as tapes from interviews, will also be stored securely with the files.

Care should also be taken to ensure that all relevant phone calls and meetings are conducted in private.

Section 90 exempts documents from release under the *Right to Information Act 2009* to the extent that they contain information regarding a disclosure, or information

that is likely to lead to the identification of the person who made the disclosure or the person who is the subject of the disclosure.

10 Publishing statistics

Section 86 of the Act requires Council to include in its annual report:

- the number and types of disclosures made to the Council during the year, and the number of disclosures determined to be a public interest disclosure;
- 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.

11 Preliminary issues

11.1 What should the recipient of the disclosure do upon receipt of the disclosure?

If the disclosure is oral, the recipient should make a file note as soon as possible, which records the time when the disclosure was made, the circumstances under which it was made and, so far as is possible, the exact words used by the discloser. The recipient should also ask the discloser to put the disclosure in writing as soon as possible.

Unless the recipient is the Principal Officer (or the disclosure is about the Principal Officer), the recipient should immediately inform the Principal Officer of the disclosure, and should provide the Principal Officer with a copy of the disclosure, or record of the disclosure, and of any accompanying documents.

If the disclosure is from a contractor, a member of the public or about the Principal Officer or Council, it should be immediately referred to the Ombudsman or the Integrity Commission.

A file should be created for the disclosure, marked clearly as being a *Public Interest Disclosures Act 2002* matter – see [part 9](#) of these procedures (Confidentiality).

11.2 Assessing the disclosure – is it a protected disclosure?

The protections provided by the Act to disclosers (contained in Part 4 of the Act) only apply where the disclosure made is a 'protected disclosure'. This is defined in s14 as a disclosure made in accordance with Part 2 of the Act.

As soon as practicable after the receipt of a disclosure, the disclosure should therefore be assessed by the Principal Officer or a Public Interest Disclosure Officer to determine whether it has been made in accordance with Part 2 of the Act. The following questions need to be asked in carrying out this assessment:

- has the disclosure been made by a public officer or contractor? (See [parts 6.2](#) and [6.3](#) above.);
- does the disclosure concern improper conduct or detrimental action? (See [parts 6.4](#) and [6.5](#) above.)
- did the alleged conduct or action occur more than 3 years before the commencement of the Act – i.e. on or after 1 January 2001? (See s 10 of the Act.); and
- has the disclosure been made to the appropriate person? (See [part 7.1](#) above.)

As required by s 6 of the Act (see [part 6.1](#) above), one of the preconditions to a disclosure being a protected disclosure, and therefore attracting the protections in Part 3 of the Act, is that it is made by a public officer or a contractor. Note that disclosure by contractors must be made to the Ombudsman or Integrity Commission.

Note that an anonymous disclosure may be accepted if the person receiving it is satisfied that the disclosure is being made by a public officer or contractor (see s 8 of the Act). If the person is satisfied that an anonymous disclosure is from a contractor it should be referred to the Ombudsman.

The person who carries out the assessment should inform the discloser as soon as practicable of their conclusion as to whether the disclosure is a protected disclosure, and of their reasons for coming to that conclusion. This should be done in writing. If the disclosure has been assessed as being a protected disclosure, the discloser should be given a copy of Part 3 of the Act, which details the protections which the Act provides. These protections should be explained to the discloser if necessary. The discloser should also be informed of the process which will now be followed with respect to the disclosure.

A copy of the assessment should also be given to the Principal Officer without delay, where the person who carried out the assessment is not the Principal Officer.

If the disclosure is considered to be a protected disclosure, the Principal Officer or a Public Interest Disclosure Officer should immediately appoint a welfare manager to protect the interests of the discloser, and ensure that the discloser is advised of the name and contact details of that person (see [parts 8.5](#) and [15.1](#)).

Section 7A of the Act provides that a person to whom a disclosure may be made under Part 2 of the Act may, if the person considers that it would be in the public interest to do so, treat any other person who is not a public officer or a contractor as a contractor for the purposes of the Act. Only the Ombudsman or the Integrity Commission can accept disclosures from contractors, so the person will need to be advised to contact either of those bodies. If the Public Interest Disclosure Officer considers this is applicable, they should seek advice from the Ombudsman.

11.3 Should the disclosure be referred to another body?

11.3.1 Referral to the Ombudsman

The Council may refer a public interest disclosure to the Ombudsman if it believes that it is not able to complete the investigation satisfactorily (see s 68 of the Act). The Act does not provide for other relevant circumstances in which a public body may refer a protected disclosure to the Ombudsman before commencing an investigation, but an alternative way of achieving the same result would be for the public body to encourage the discloser to make their disclosure direct to the Ombudsman, such that there is no need for the public body to continue to investigate the matter.

11.3.2 Referral to the Integrity Commission

The Council may refer a protected disclosure to the Integrity Commission where it considers that the disclosure relates to misconduct as defined in s 4(1) of the IC Act.

The Council must notify the discloser of the referral within a reasonable time (unless the disclosure was made anonymously) under s 29D.

The Integrity Commission may deal with the disclosure under the IC Act, or it may refer the disclosure to the Ombudsman or a public body, as the case may require, for action by the Ombudsman or public body in accordance with the Act.

Matters which would bear on a decision as to whether a protected disclosure should be referred to the Integrity Commission are:

- the relevance of the disclosure to the normal functions of the Commission;
- the desirability of independent investigation by the Commission of the subject matter of the disclosure; and
- the views of the discloser as to whether referral should occur.

11.3.3 Referral of criminal conduct to the Police

It is possible that, before or during an investigation, facts are uncovered that reveal the possibility of a criminal offence. If this happens, the Council will not commence, or will suspend, the investigation and will consult with 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 should consider whether the disclosure should be referred to the Ombudsman under s 68 of the Act.

Early referral of the matter may avoid interference with the evidentiary trail. Referral to the police through the Ombudsman will also avoid any question of a breach of confidentiality under s 23 of the Act. Once a disclosure is referred to the Commissioner of Police through the Ombudsman, the investigation under the Act ceases. However, there may still be administrative or operational issues which have been identified during the disclosure process or investigation that should be dealt with under other internal processes of the Council. The Principal Officer, or the Public Interest Disclosure Officer acting in consultation with the Principal Officer, will decide how the matter should be dealt with.

11.4 Further assessment - Is the disclosure a public interest disclosure?

Where the Principal Officer or Public Interest Disclosure Officer has received a disclosure that has been assessed to be a protected disclosure, the Principal Officer or Public Interest Disclosure Officer must make a determination under s 33 of the Act as to whether the disclosure is a public interest disclosure. This assessment must be made within 45 days of the receipt of the disclosure.

For a disclosure to be a public interest disclosure, the public body must be satisfied that 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.

A disclosure must be more than a mere allegation without substantiation. A disclosure must include an indication of the existence of evidence that, if substantiated, would show or tend to show that the alleged conduct occurred.

Where the Principal Officer or Public Interest Disclosure Officer concludes that the disclosure amounts to a public interest disclosure, he or she must –

- advise the Principal Officer (if not the person receiving the disclosure);
- notify the Ombudsman within 14 days of the decision;

- notify the person making the disclosure within 14 days of the decision (unless it is an anonymous disclosure); and
- proceed to investigate the disclosed matter - see [part 12](#) (Investigations) below - see s 34.

If the Principal Officer or Public Interest Disclosure Officer concludes that the disclosure is not a public interest disclosure, he or she must -

- advise the Principal Officer (if not the person receiving the disclosure);
- notify the Ombudsman within 14 days of the decision; and
- notify the person making the disclosure within 14 days of the decision (unless it is an anonymous disclosure) – see s 35.

The Ombudsman must then review this decision under s 35(2).

If, on review of the matter, the Ombudsman decides that the disclosure is not a public interest disclosure, the matter does not need to be dealt with under the Act. The Principal Officer, or the Public Interest Disclosure Officer in consultation with the Principal Officer, will then decide how the disclosure should be dealt with.

If the Ombudsman determines the disclosure is not a public interest disclosure, but could be a complaint under the *Ombudsman Act 1978* the Ombudsman must notify the discloser of his or her right to have the disclosure dealt with as a complaint under the *Ombudsman Act* if he or she wishes.

If the Ombudsman determines that the disclosure is in fact a public interest disclosure, the matter may be referred back to the public body under s 42 for investigation under the Act or the Ombudsman will deal with the disclosed matter.

12 Protection

12.1 When does protection commence?

Where the Council receives a disclosure which complies with the requirements of Part 2 of the Act, the disclosure immediately attracts the protections set out in Part 3 of the Act. This is so whether or not the disclosure is factually correct (although one of the requirements of Part 2, as found in s 6, is that the discloser honestly believes that the alleged improper conduct or detrimental action in fact occurred).

The protection also extends to a person who intends to make a disclosure.

Note that, as provided in s 9, a disclosure can still be made where the discloser cannot identify the person or body to whom or to which the disclosure relates.

12.2 What protection does the Act provide?

Part 3 of the Act gives various types of protection to a person who makes a protected disclosure. This part of these procedures only provides a summary of some elements of that Part of the Act.

A person who makes a protected disclosure:

- is not subject to any civil or criminal liability, or to any liability arising by way of administrative process, for making the protected disclosure (s 16);
- does not by doing so commit an offence under a provision of any other Act that imposes a duty to maintain confidentiality, or which imposes any other restriction on the disclosure of information (s 17(1)(a)); and
- does not by doing so breach an obligation by way of oath, or rule of law or practice, or under an agreement, which requires the discloser to maintain confidentiality or otherwise restricts the disclosure of information (s 17(1)(b)).

These last two protections do not apply, however, to a disclosure of information to a person other than the person to whom the protected disclosure was originally made, unless that further disclosure was made in accordance with the Act (see s 17(2) of the Act).

Part 3 also contains various provisions which are intended to protect a discloser from detrimental action by way of reprisal for a protected disclosure. By s 19, the Act makes it an offence to take such detrimental action. By s 20, it creates a liability to pay damages for such detrimental action. And by s 21, it gives a person who believes that detrimental action has been taken against him or her the right to apply to the Supreme Court for an order requiring the person who has taken the detrimental action to remedy that action, or for an injunction.

13 Investigations

13.1 Introduction

The Council must investigate every disclosure referred to it for investigation by the Ombudsman under s 63(b).

Unless the matters set out in 13.2 below apply, or the matter is referred to the Ombudsman, the Council will investigate every disclosure that it receives and determines is a public interest disclosure under s 33 of the Act (see s 63(a) of the Act).

The Principal Officer will appoint an investigator to carry out the investigation. The investigator may be a person from within an organisation or a consultant engaged for that purpose.

The objectives of an investigation are:

- 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; and
- to maintain procedural fairness in the treatment of witnesses and generally to all parties involved in the disclosure.

13.2 Matters that do not have to be investigated

Before embarking on the investigation of a public interest disclosure, the Principal Officer or Public Interest Disclosure Officer must first consider whether the disclosed matter needs to be investigated. Section 64 specifies certain circumstances under which a public body may legitimately decide not to investigate. Those circumstances are if:

- in the opinion of the public body the disclosure is trivial, vexatious, misconceived or lacking in substance;
- 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;
- 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;
- 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;
- the disclosure relates solely to the personal interests of the person making the disclosure;
- the disclosure is based on false or misleading information; or
- the matter which is the subject of the disclosure has already been determined and the additional disclosure does not provide significant or substantial new information.

Any decision not to proceed with an investigation on a ground specified in s 64 must be made by the Principal Officer.

If the Principal Officer determines that the disclosed matter is not to be investigated, notice of this fact must be given within 14 days to both the Ombudsman and (except

in the case of an anonymous disclosure) the person who made the disclosure. Reasons for the decision must accompany the notice.

The Ombudsman is required by s 65(2) to review such a decision. Following the review, the Ombudsman must notify the Council of his or her decision within a reasonable time. If the Ombudsman on review determines that the disclosure should not be investigated, the matter does not need to be dealt with under the Act. The Principal Officer, or the Public Interest Disclosure Officer in consultation with the Principal Officer, will decide how the matter should be dealt with.

If the Ombudsman determines that the disclosure should be investigated, and the matter is not referred to the Ombudsman for a reason specified in s 68, the Council must proceed with the investigation.

13.3 Appointment of investigator and framing of terms of reference

The Principal Officer – not a Public Interest Disclosure Officer - will determine who is to carry out the investigation. As earlier indicated, this may be an officer within the Council or an external consultant.

The investigator will be given formal terms of reference, signed by the Principal Officer.

The terms of reference will specify:

- the matters to be investigated;
- the date by which the investigation is to be concluded; and
- the resources available to the investigator for the purposes of the investigation.

The completion date should be as soon as practicable but, in any event, not more than 6 months from the date of the determination that the disclosure is a public interest disclosure under s 77A(1). If at any stage before or during the investigation it appears that the investigation cannot be completed within 6 months, the Council may apply to the Ombudsman for an extension of up to 6 months in which to complete the investigation under s 77A(2).

The terms of reference should require the investigator to make regular reports to the Principal Officer.

13.4 Investigation plan

The investigator should prepare an investigation plan for approval by the Principal Officer. The plan should list the issues which are to be investigated and describe the steps which the investigator intends to take in investigating each of those issues.

The plan should be updated as necessary during the course of the investigation.

13.5 Natural justice

The principles of natural justice must be carefully observed in the course of the investigation, with respect to all parties involved. These principles are sometimes referred to as 'procedural fairness'.

The principles are a set of procedural standards which need to be met if the right of a person to a fair hearing can be accepted as having been satisfied.

The Council will comply with the following requirements in ensuring that procedural fairness is accorded to all parties involved.

No one is to be involved in the investigation:

- who is known to be biased against any person who is potentially subject to an adverse finding
- who is known to hold any biases which are relevant to the subject-matter of the investigation; or
- in respect of whom there is reasonable ground for apprehending or suspecting bias.⁴

If the investigator is aware of any reason why they may be susceptible to an allegation of bias on the basis of these principles, they should immediately inform the Principal Officer.

Any person who is potentially subject to an adverse finding or comment must be told of:

- the allegations made against them, or which have arisen against them as a result of the investigation;
- all of the information which is adverse to their interests and which is, on an objective basis, credible, relevant and significant to the investigation; and
- the potential findings in view, and their possible consequences.

This must be done before any final conclusions are formed by the investigator.

Each such person must be given a reasonable time to respond to the material which is provided to them.

The investigator must maintain an open mind, and must fairly take into account all representations which such a person may make.

⁴ For apprehended bias, the test is whether a fair minded lay observer, taking into account all relevant circumstances, might reasonably apprehend that the decision-maker might not bring an impartial mind to the resolution of the questions that he or she is required to decide.

Note that there is no requirement to inform the person who is subject to the disclosure as soon as it is received, or as soon as the investigation has commenced. Note also that the name of the person making the disclosure or any particulars which might identify that person must not be revealed unless necessary, and with the discloser's knowledge.

The final investigation report should be drafted in a way that demonstrates that procedural fairness has been accorded. For instance, it should record and deal with all submissions and evidence which a person has put in their defence.

13.6 Conduct of the investigation

A useful reference in planning and executing the investigation is the publication by the Australian Public Service Commission (albeit produced for a different purpose), *Handling misconduct: A human resource manager's guide* (Second Edition, 2015).⁵

The investigator should make contemporaneous notes of all discussions and phone calls, and consideration should be given to the desirability of audiotaping significant interviews with witnesses

All information gathered in the course of the investigation must be securely stored.

Interviews should be conducted in private, and the investigator should 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 should warn the discloser and his or her welfare manager of this.

13.7 Referral of an investigation to the Ombudsman

Under s 68 of the Act, a public body may refer the investigation of a disclosed matter to the Ombudsman where the public body considers that its own investigation is being obstructed or that it is otherwise not within the capacity of the public body to complete the investigation.

Any decision as to whether the investigation should be referred to the Ombudsman will be taken by the Principal Officer.

See also [part 11.3.3](#), concerning referral of an investigation to the Ombudsman, with a view to referral by the Ombudsman to the Commissioner of Police of suspected criminal conduct.

⁵ Available online at <http://www.apsc.gov.au/publications-and-media/current-publications/handling-misconduct-a-human-resource-managers-guide-2015/part-i-framework-for-handling-misconduct> (current as at June 2017).

13.8 Provision of information about the investigation

The Principal Officer or the Public Interest Disclosure Officer must ensure that the discloser is kept regularly informed concerning the handling of a protected disclosure and an investigation.

The Principal Officer must report to the Ombudsman about the progress of an investigation.

Section 74 of the Act requires a public body, at the request of the Ombudsman or the person who made the disclosure, to give the Ombudsman or that person reasonable information about the investigation. The information must be given within 28 days of the request.

However, as provided in s 74(3), such 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.

14 Action taken after an investigation

14.1 Investigator's final report

At the conclusion of the investigation, the investigator must submit a written report of his or her findings to the Principal Officer. The report should contain:

- the allegation/s;
- a description of the manner in which the investigation was conducted, with sufficient detail to demonstrate that procedural fairness was observed;
- an account of all relevant information received;
- details of the evidence and submissions supplied by any person against whom an adverse finding is made, and the evaluation of that material by the investigator; and
- the findings made and conclusions reached, and the basis for them.

Note in particular that the report should not include any comment adverse to any person unless that person has been given an opportunity to be heard in the matter and their defence is fairly set out in the report (see [part 13.5](#) of these procedures).

With a view to potential action by the public body under s 75 of the Act, if the investigator has found that conduct disclosed by the discloser has occurred, the investigator may wish to include recommendations as to:

- any steps that need to be taken by the Council to prevent the conduct from continuing or occurring in the future; and
- any action that should be taken by the Council to remedy any harm or loss arising from that 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, consideration should be given to whether the matter should be referred to Tasmania Police, unless this has previously occurred.

The report must 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.

The report must not disclose particulars likely to lead to the identification of the discloser under s 23(2).

14.2 Action to be taken

If the Principal Officer is satisfied that the conduct which was the subject of the investigation has occurred, he or she must consider the recommendations in the investigator's report and decide upon the steps which are to be taken to prevent the conduct from continuing or occurring in the future under s 75(1)(a). Again taking into consideration any recommendations in the investigator's report, the Principal Officer must also consider whether any action should be taken to remedy any harm or loss arising from the conduct under s 75(1)(b).

Where the Public Interest Disclosure Officer is responsible for the progress of the investigation and is satisfied that the disclosed conduct has occurred, he or she will recommend to the Principal Officer the action that must be taken.

The Principal Officer will provide a written report to the Council and the Ombudsman, setting out the findings of the investigation and any remedial steps taken.

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

As required by s 77 of the Act, the Principal Officer will also inform the discloser of the findings of the investigation, and of any steps taken under s 75 as a result of the findings made.

15 Managing the welfare of the discloser

15.1 Commitment to protecting disclosers

The Council is committed to the protection of genuine disclosers against detrimental action taken in reprisal for the making of protected disclosures. The Principal Officer is responsible for ensuring that disclosers and witnesses are protected from detrimental action, and that the culture of the workplace is supportive of protected disclosures being made.

The Principal Officer or the Public Interest Disclosure Officer must appoint a welfare manager to support all persons who have made a protected disclosure. See [part 8.5](#) for the responsibilities of a welfare manager.

The welfare manager must also provide advice about what the discloser should do if they believe that a colleague/s or a relative/s is being subjected to detrimental action. The advice will include what level of information it is necessary for them to provide.

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). The maximum penalty is a fine of 240 penalty units 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.

See [part 6.5](#) for further details as to what constitutes detrimental action.

A discloser who believes that they are being subjected to detrimental action should report it to the Principal Officer or a Public Interest Disclosure Officer. If they believe that the reprisal is not being effectively dealt with by the Council, they may report the matter to the Ombudsman. A report of detrimental action may qualify as a protected disclosure under the Act.

15.2 Keeping the discloser informed

The Principal Officer or the Public Interest Disclosure Officer must ensure that the discloser is kept informed of action taken in relation to his or her disclosure, and the time frames that apply. The discloser must be informed of the objectives of any investigation that takes place, the findings of the investigation, and the steps taken by the Council to address any improper conduct that has been found to have occurred. The discloser must be given reasons for all decisions made by the Council in relation to a disclosure. All communication with the discloser must be in plain English.

15.3 Occurrence of detrimental action

If a discloser reports an incident of detrimental action allegedly taken in reprisal for the making of the disclosure, the welfare manager must:

- record details of the incident;

- advise the discloser of his or her rights under the Act; and
- advise the Principal Officer 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 Public Interest Disclosure Officer or the Principal Officer will assess the report as a new disclosure under the Act, and it will be dealt with accordingly in accordance with these procedures.

15.4 Discloser implicated in improper conduct

Where a person who makes a disclosure is implicated in misconduct, the Council will handle the disclosure and protect the discloser from reprisals in accordance with the Act, the Ombudsman's guidelines and these procedures. At the same time 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 Principal Officer will make the final decision 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 person's 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 Principal Officer 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 Public Interest Disclosure Officer or Principal Officer 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 Public Interest Disclosure Officer or Principal Officer will clearly advise the discloser of the proposed action to be taken, and of any mitigating factors that have been taken into account.

16 Management of the person against whom a disclosure has been made

The 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 an investigation does not substantiate a disclosure, 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 Public Interest Disclosure Officer or Principal Officer will ensure that the person who is the subject of any disclosure investigated by or on behalf of the Council is accorded natural justice in accordance with [part 13.5](#) of these procedures.

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 of the investigation, the Public Interest Disclosure Officer or Principal Officer will formally advise the person who is the subject of the disclosure of the outcome of the investigation.

The 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 Principal Officer of the Council will consider any request by that person to issue a statement of support setting out that the allegations were clearly wrong or unsubstantiated.

17 Offences

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

- Section 19(1)
This provision makes it an offence for a person to take detrimental action against a person in reprisal for a protected disclosure being made. The section provides for a maximum penalty of a fine of 240 penalty units or two years imprisonment, or both.
- Section 23(1)
This provision makes it an offence for a person to disclose, except under specified circumstances, information which they have obtained or received in the course of or as a result of a protected disclosure or the investigation of a disclosed matter under the Act. The section provides for a maximum penalty of 60 penalty units or six months imprisonment, or both.
- Section 54
This section creates various offences relating to obstructing the work of the Ombudsman under the Act, including offences relating to misleading the

Ombudsman. The section provides for a maximum penalty of 240 penalty units or two years imprisonment, or both.

- Section 87(1)

This provision makes it an offence for a person to knowingly provide false information under the Act to certain officers (including the Ombudsman) with the intention that it be acted on as a disclosed matter. The provision provides for a maximum penalty of 240 penalty units or two years imprisonment, or both.

- Section 87(2)

This section makes it an offence for a person to knowingly provide false information to a person conducting an investigation under the Act. The provision provides for a maximum penalty of 240 penalty units or two years imprisonment, or both.

The value of a penalty unit varies from time to time in accordance with movements in the Consumer Price Index. For more information, see the [Department of Justice website](#).⁶

18 Approval and review of these procedures

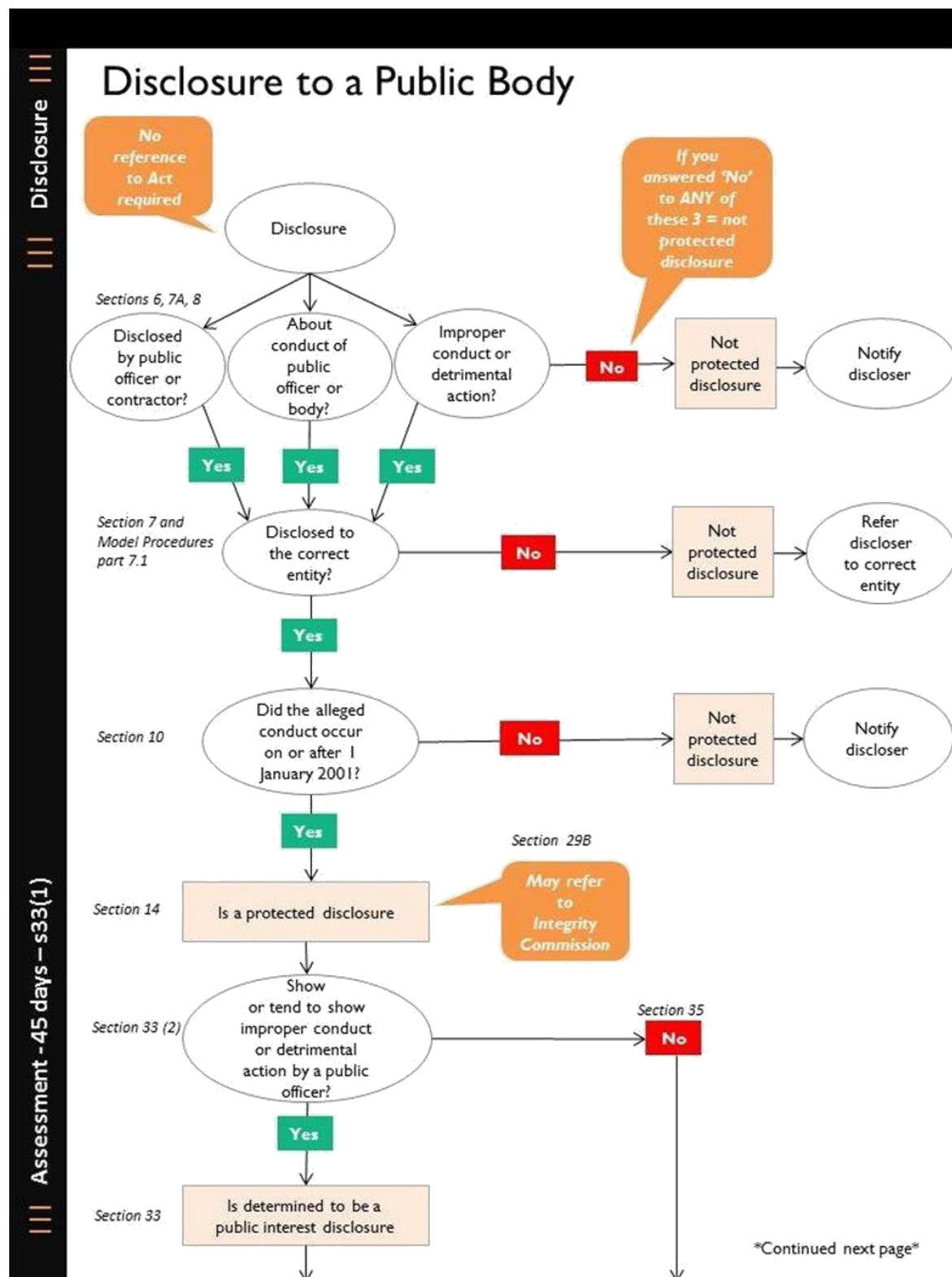
These procedures were approved by the Ombudsman under s 60(3) of the Act on 23 August 2017.

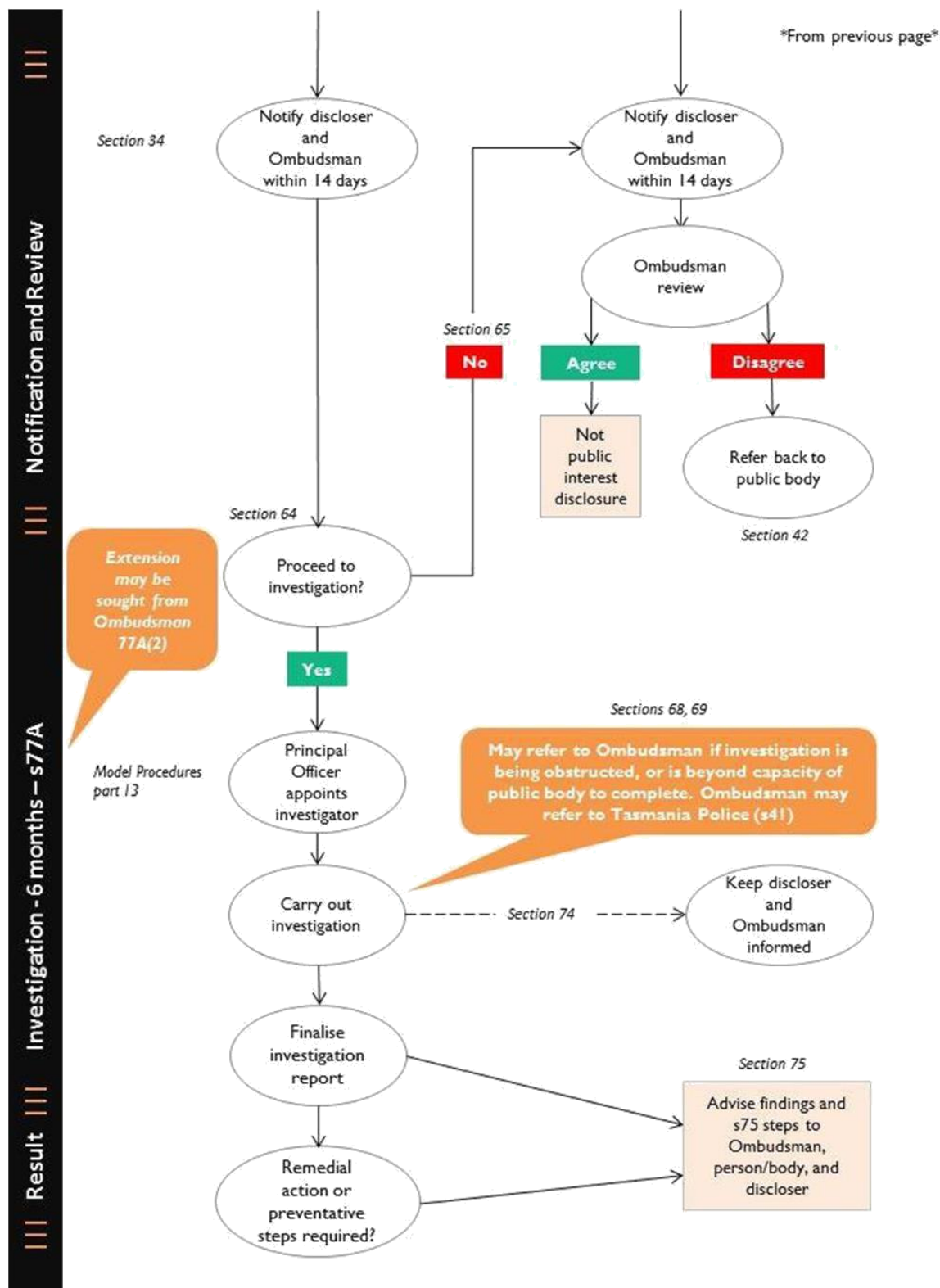
The procedures will be submitted to the Ombudsman for review at least once in each 3 year period to ensure they meet the objectives of the Act and accord with the Guidelines and Standards published by the Ombudsman under s 38(1)(c) of the Act.

The date by which the procedures must be submitted to the Ombudsman for review is 22 August 2020.

⁶ www.justice.tas.gov.au/about/legislation/value_of_indexed_units_in_legislation

20 Attachment I: Flowchart





Public Interest Disclosure



Public Interest Disclosures Act 2002

Model PID Procedures Manual

Tasmanian Ombudsman Revised Edition: May 2014

Adopted by Council Item 12 (29 August 2016) as per Council Minutes

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Attachment I : Flowcharts

I Statement of Support

The Glenorchy City Council is committed to the aims and objectives of the *Public Interest Disclosures Act 2002* (the Act). It does not tolerate improper conduct by its employees, officers or members, or the taking of detrimental action against those who come forward to disclose such conduct.

The Glenorchy City Council recognises the value of transparency and accountability in its administrative and management practices, and supports the making of disclosures that reveal the type of conduct to which the Act is directed.

The Glenorchy City Council will take all reasonable steps to protect people who make such a disclosure from any detrimental action in reprisal for making the disclosure, and to protect their welfare. It will also afford natural justice to all parties involved in the investigation of a disclosure.

2 Purpose of these procedures

These procedures establish a system for reporting disclosures of improper conduct or detrimental action by Glenorchy City Council or members, officers or employees of the public body. The procedures are also intended to assist its members, officers and employees to understand the way in which the Act operates and needs to be administered.

The system created by these procedures provides for such disclosures to be made to the General Manager (the Principal Officer) or to a delegated Public Interest Disclosure Officer. Disclosures may be made by people who are “public officers” with the Glenorchy City Council, or by people who are or have been “contractors” with Glenorchy City Council for the supply of goods or services. These expressions are explained later in this document.

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, and to use existing grievance procedures within the organisation where appropriate.

The procedures have been prepared in accordance with Guidelines and Standards published by the Ombudsman under s 38(1)(c) of the Act. These Guidelines and Standards can be seen on the Ombudsman's website at www.ombudsman.tas.gov.au.

3 The purpose of the Act

The Act commenced operation on 1 January 2004. It was substantially amended by the *Public Interest Disclosures Amendment Act 2009*, following a major review of the Act, and these procedures reflect those amendments. The amendments took effect on 1 October 2010.

The purposes of the Act are contained in its long title. These are:

- to encourage and facilitate disclosures of improper conduct by public officers and public bodies
- to protect persons making those disclosures, and others, from detrimental action
- to provide for the matters disclosed to be properly investigated and dealt with, and
- to provide all parties involved in the disclosures with natural justice.

The public interest is served by providing an avenue for persons to report improper conduct and be protected for doing so.

4 How the Act works

Briefly, the Act works in this way:

- It gives certain people – “public officers” and “contractors” – the right to make a disclosure about “improper conduct” or “detrimental action” to certain integrity agencies, other persons and bodies (Part 2 of the Act, particularly s 6).¹
- It provides certain statutory protections for protected disclosures (Part 3).
- It dictates how the recipient of the disclosure is to deal with it (Parts 4 to 8).
- It treats the Ombudsman as the oversight agency in relation to the operation of the Act, including the default investigator, monitor of investigations by public bodies, and setter of standards under the Act.
- Where the disclosure is handled by the Ombudsman or a public body, it requires a preliminary determination as to whether the protected disclosure is a “public interest disclosure” (ss 30 and 33). In other words a disclosure which, in the case of decision-making by the Ombudsman, meets the requirements of s 30(2), or, in the case of decision-making by the public body, meets the requirements of s 33(2).

¹ Note that s 7A of the Act permits a person to whom a disclosure may be made under Part 2 of the Act to treat a person who is not a public officer or contractor as a contractor for the purposes of the Act, if they consider that it would be in the public interest to do so.

- Subject to exceptions, it requires investigation by the Ombudsman or public body of any protected disclosure which is found to be a public interest disclosure (ss 39 and 63).
- It requires such investigation to be conducted as soon as practicable (ss 39A and 77A).
- It controls the manner in which a disclosure is investigated, and provides powers in this respect.
- In the case of investigation by the Ombudsman, it gives the Ombudsman the power to recommend that action be taken in light of the investigation (s 56.)
- In the case of an investigation by a public body which results in a finding that the alleged conduct occurred, it obliges the public body to take action to prevent that conduct from continuing or recurring, and to take action to remedy any harm or loss which may have arisen (s 75).

Two flow charts which depict the way in which the Act works are attached, in Attachment 1. Table 1, which is for general information, depicts how the Ombudsman deals with a disclosure made to the Ombudsman. Table 2 depicts how a public authority deals with a disclosure made to it.

5 Comparison with the Integrity Commission Act

The PID Act and the *Integrity Commission Act 2009* (IC Act) work very differently.

Perhaps the most important difference is that the IC Act does not contain any provisions which protect a person who makes a complaint under that Act from detrimental action by way of reprisal. The provision of such protection is a key feature of the PID Act.

Other important differences are:

- the fact that anyone can make a complaint under the IC Act, whereas the right to make a disclosure under the PID Act is given only to a current public officer and a contractor;
- in the types of conduct to which the Act applies;² - the fact that a disclosure may be made under the PID Act about proposed conduct, whereas the IC Act only concerns past conduct;

² The PID Act concerns "improper conduct", which embraces "corrupt conduct". The IC Act concerns "misconduct". The definitions of the expressions thus used in the two Acts do not align.

- the fact that a disclosure under the PID Act may be oral, whereas a complaint under the IC Act must be in writing; and
- the different processes which each Act applies to a matter brought forward under it.

A person who is trying to decide which Act to proceed under should consider seeking legal advice on what is the best course for them to take.

It is possible for a disclosure which is made under the PID Act to be dealt with under the IC Act – see Part 4A of the PID Act.

6 Key terms

6.1 The right to make a disclosure

The right to make a disclosure under the Act is given by s 6 of the Act. That states:

6. *Disclosures about improper conduct or detrimental action*
 - (1) *A public officer who believes that another public officer or a public body –*
 - (a) *has engaged, is engaging or proposes to engage in improper conduct in their capacity as a public officer or public body; or*
 - (b) *has taken, is taking or proposes to take detrimental action in contravention of section 19 –**may disclose that improper conduct or detrimental action in accordance with this Part.*
 - (2) *A contractor who believes that the public body with which the contractor has entered into a contract –*
 - (a) *has engaged, is engaging or proposes to engage in improper conduct in its capacity as a public body; or*
 - (b) *has taken, is taking or proposes to take detrimental action in contravention of section 19 –**may disclose that improper conduct or detrimental action in accordance with this Part.*

As can be seen from the emphasis given to certain expressions in this version of s 6, a number of expressions are key to its operation. These are:

- “public officer”
- “public body”

- “contractor”
- “improper conduct”
- “detrimental action”

Because of the way that the expression “improper conduct” is defined in s 3 of the Act, a further expression is also very important. This is the expression “corrupt conduct”.

Each of these expressions is now explained.

6.2 “Public officer” and “public body”

These expressions are defined in ss 3 and 4 of the Act, in this way:

3. Interpretation

"public body" means a public body referred to in section 4;

"public officer" means a public officer referred to in section 4;

4. Public bodies and officers

(1) Subject to subsection (3), the following bodies and authorities are public bodies for the purposes of this Act:

- (a) the Parliament of Tasmania;*
- (b) a State Service Agency;*
- (c) the Police Service;*
- (d) a council;*
- (e) a Government Business Enterprise;*
- (f) a State-owned Company;*
- (g) a council-owned company;*
- (h) a body or authority, whether incorporated or not, whose members or a majority of whose members are appointed by the Governor or a Minister;*
- (i) any other prescribed body or authority, whether incorporated or not –*
 - (i) to which any money is paid by way of appropriation from the Public Account; or*

- (ii) over which the Government or a Minister exercises control.
- (2) Subject to subsection (3), the following persons are public officers for the purposes of this Act:
 - (a) a Member of Parliament;
 - (b) a councillor;
 - (c) a member, officer or employee of a public body;
 - (d) a member of the governing body of a public body;
 - (e) an employee of a council;
 - (f) any person performing functions under the Parliamentary Privilege Act 1898;
 - (g) a person employed in an office of a Minister, Parliamentary Secretary or other Member of Parliament whether in accordance with the State Service Act 2000, Parliamentary Privilege Act 1898 or otherwise;
 - (h) any person performing functions under the Governor of Tasmania Act 1982;
 - (i) a person appointed to an office by the Governor or a Minister under an Act
- (3) The following bodies are not public bodies for the purposes of this Act:
 - (a) a court;
 - (b) a tribunal;
 - (c) the Tasmanian Industrial Commission;

- (d) *the Integrity Commission;*
 - (e) *any other prescribed body.*
- (4) *The following persons are not public officers for the purposes of this Act:*
 - (a) *the Governor of Tasmania;*
 - (b) *a judge of the Supreme Court;*
 - (c) *the Associate Judge of the Supreme Court;*
 - (d) *a magistrate of the Magistrates Court;*
 - (e) *the Director of Public Prosecutions;*
 - (f) *any other prescribed person.*

The Glenorchy City Council is a "public body", as so defined.

Further, any member, officer or employee of Glenorchy City Council is a "public officer", as so defined.

Note that the right which s 6 of the Act gives to a public officer to make a disclosure must be exercised whilst the person is still a public officer.

6.3 "Contractor"

This expression is defined in s 3 of the Act, in this way:

3. Interpretation

"contractor" means –

- (a) *a person who at any time has entered into a contract with a public body for the supply of goods or services to, or on behalf of, the public body; or*
- (b) *an employee of the contractor; or*
- (c) *a subcontractor engaged by the contractor to fulfil all or part of a contract with a public body for the supply of goods or services to, or on behalf of, the public body;*

This definition has the effect that a person may exercise the right given to a contractor by s 6 of the Act even though the contract which they held with the public body is now over.

6.4 “Improper conduct” and “corrupt conduct”

These expressions are also defined in s 3 of the Act, in this way:

3. Interpretation

"improper conduct" means –

- (a) *conduct that constitutes an illegal or unlawful activity; or*
- (b) *corrupt conduct; or*
- (c) *conduct that constitutes maladministration; or*
- (d) *conduct that constitutes professional misconduct; or*
- (e) *conduct that constitutes a waste of public resources; or*
- (f) *conduct that constitutes a danger to public health or safety or to both public health and safety; or*
- (g) *conduct that constitutes a danger to the environment; or*
- (h) *misconduct, including breaches of applicable codes of conduct; or*
- (i) *conduct that constitutes detrimental action against a person who makes a public interest disclosure under this Act –*

that is serious or significant as determined in accordance with guidelines issued by the Ombudsman;

Note that paragraph (b) leads to another definition in s 3, being that of “corrupt conduct” –

"corrupt conduct" means –

- (a) *conduct of a person (whether or not a public officer) that adversely affects, or could adversely affect, either directly or indirectly, the honest performance of a public officer's or public body's functions; or*
- (b) *conduct of a public officer that amounts to the performance of any of his or her functions as a public officer dishonestly or with inappropriate partiality; or*
- (c) *conduct of a public officer, a former public officer or a public body that amounts to a breach of public trust; or*
- (d) *conduct of a public officer, a 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 functions as such (whether for the benefit of that person or body or otherwise); or*
- (e) *a conspiracy or attempt to engage in conduct referred to in paragraph (a), (b), (c) or (d);*

Note that, for the right of disclosure under s 6 to apply, the improper conduct (including corrupt conduct) must be serious or significant as determined in accordance with guidelines issued by the Ombudsman – as to which see Guideline I/2010 under the “Publications” tab at www.ombudsman.tas.gov.au.

Examples of “corrupt conduct”

- A public officer takes a bribe 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.

Examples of other types of “improper conduct”

- 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, giving rise to a risk to public health or safety.

6.5 Detrimental action

This expression is defined in s 3 of the Act, in this way:

"detrimental action" includes –

- (a) *action causing injury, loss or damage; and*
- (b) *intimidation or harassment; and*
- (c) *discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action; and*
- (d) *threats of detrimental action;*

Note that the right to make a disclosure in relation to detrimental action under s 6 relates to detrimental action taken in contravention of s 19 of the Act. Section 19 is in these terms:

19. Protection from reprisal

- (1) A person must not take detrimental action against a person in reprisal for a protected disclosure.*

Penalty:

Fine not exceeding 240 penalty units or imprisonment for a term not exceeding 2 years, or both.

- (2) A person takes detrimental action in reprisal for a protected disclosure if—*

- (a) the person takes or threatens to take the action because –*
- (i) a person has made, or intends to make, a protected disclosure; or*
 - (ii) the person believes that a person has made or intends to make the protected disclosure; or*
- (b) the person incites or permits another person to take or threaten to take the action for either of those reasons.*

- (3) In determining whether a person takes detrimental action in reprisal, it is irrelevant whether or not a reason referred to in subsection (2) is the only or dominant reason as long as it is a substantial reason.*

The effect of s 19 is that reprisal must have been a substantial reason behind the detrimental action taken.

Examples of detrimental action are:

- refusal of a deserved promotion;
- demotion, transfer, isolation in the workplace or changing a person's duties to their disadvantage;
- threats, abuse or other forms of harassment directly or indirectly against the discloser, his or her family or friends ; and
- discrimination against the discloser or his or her family and associates in applications for jobs, permits or tenders.

7 The reporting system

7.1 To whom a disclosure may be made – general principles

For the protections in the Act to apply, a disclosure must be made to the right person or body. Section 7 of the Act deals with this subject, and the following table summarises its effect:

Officer or public body to which the disclosure relates	Person to whom the disclosure may be made
a member, officer or employee of a public body other than the Police Service or a State Service Agency	that public body; or the Integrity Commission; or the Ombudsman
a member, officer or employee of a public body that is a State Service Agency	that State Service Agency; or the Integrity Commission; or the Ombudsman
a member of the Police Service, other than the Commissioner of Police	the Commissioner of Police
the Commissioner of Police	the Ombudsman
a member of the Legislative Council	the President of the Legislative Council
a member of the House of Assembly	the Speaker of the House
a councillor, within the meaning of the <i>Local Government Act 1993</i>	the Ombudsman
a person employed under the provisions of the <i>Parliamentary Privilege Act 1898</i>	the Ombudsman; or the Integrity Commission
the Auditor-General	the chairman of the Public Accounts Committee
the Ombudsman	the Joint Standing Committee on Integrity
a person employed in an office of a Minister, Parliamentary Secretary or other Member of Parliament	the Ombudsman
in any other case	the Ombudsman; or the Integrity Commission

Hence, disclosures which relate to improper conduct or detrimental action by a member, officer or employee of Glenorchy City Council must be made as explained in parts 7.2 to 7.6.

7.2 Disclosure to persons within the Glenorchy City Council

Disclosures of improper conduct or detrimental action by a member, officer or employee of Glenorchy City Council may be made to the following officers:

- The General Manager – who is the “Principal Officer” of the public body, within the terms of the Act.
- A Public Interest Disclosure Officer – Senior Human Resources Advisor

Each person who holds or acts in any of the following positions within Glenorchy City Council has been appointed by the Principal Officer to act as a Public Interest Disclosure Officer, and holds a delegation which enables them to receive public interest disclosures under the Act.

Where a person is contemplating making a disclosure and is concerned about approaching the Principal Officer or a Public Interest 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.

A disclosure about the Principal Officer should be immediately referred to the Ombudsman.

7.3 Disclosure to the Ombudsman

A disclosure about improper conduct or detrimental action by Glenorchy City Council or any of its members, officers or employees may also be made directly to the Ombudsman. The contact details for the Ombudsman are:

The Ombudsman
GPO Box 960
HOBART TAS 7001

or at

Level 6, 86 Collins Street
HOBART TAS 7000

Internet: www.ombudsman.tas.gov.au

Email: ombudsman@ombudsman.tas.gov.au

Phone: 1800 001 170 (Charges from mobile phones apply)

7.4 Disclosure to the Integrity Commission

A disclosure about improper conduct or detrimental action by Glenorchy City Council or any of its members, officers or employees may also be made directly to the Integrity Commission. The contact details for the Integrity Commission are:

Tasmanian Integrity Commission
GPO Box 822
HOBART TAS 7001

or at

Level 2
Surrey House
199 Macquarie Street
HOBART TAS 7000

Internet: www.integrity.tas.gov.au

Email: integritycommission@integrity.tas.gov.au

Phone: 1300 720 289

7.5 To which entity should a disclosure be made?

As can be seen from part 7.1, there are some situations in which a disclosure may only be made to a single entity. For instance, if the disclosure is about a councillor in a local council, it must be made to the Ombudsman.

Where there is a choice of entities, those choices will include the Ombudsman and the Integrity Commission. Either of those entities will be able to give advice on the most suitable entity to receive the disclosure, but the Ombudsman has overall responsibility for the administration of the Act.

The considerations which might sensibly bear on the choice of entity to which the disclosure is made include:

- the nature of the normal functions (and therefore the skills and experience) of the different entities which might be chosen;
- the desirability of independent investigation of the disclosure – which might, for instance, lead away from making the disclosure to the public body to which it relates; and
- the seriousness or otherwise of the disclosure.

Where the disclosure is against a public body, not against a public officer, it is recommended that the disclosure be made to the Ombudsman.

8 Roles and responsibilities

This part explains the roles and responsibilities of individuals within Glenorchy City Council under the Act.

8.1 Members, officers and employees

Members, officers and employees of Glenorchy City Council are encouraged to report known or suspected incidences of improper conduct or detrimental action under the Act, in accordance with these procedures.

All members, officers and employees of the Glenorchy 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, victimisation or harassment of 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.

8.2 Principal Officer

The Principal Officer has primary responsibility for ensuring that the provisions of the Act are implemented by the public body. Section 62A of the Act provides that the Principal Officer has responsibility for:

- preparing procedures for approval by the Ombudsman;
- receiving public interest disclosures and ensuring they are dealt with in accordance with the Act;
- ensuring the protection of witnesses;
- ensuring the application of natural justice in the public body's procedures;
- ensuring the promotion of the importance of public interest disclosures and general education about the Act to all staff, and ensuring easy access to information about the Act and the public body's procedures, and
- providing access to confidential employee assistance programs and appropriately trained internal support staff for those involved in the process.

The Principal Officer may delegate any or all of his or her functions to a Public Interest Disclosure Officer.

8.3 Public Interest Disclosure Officer

A Public Interest Disclosure Officer is appointed by the Principal Officer under s 62A(2) of the Act, and holds a delegation from the Principal Officer which enables him or her to exercise the statutory powers and functions given to the Principal Officer by the Act which are listed in their instrument of delegation.

These procedures frequently give responsibilities or functions to a Public Interest Disclosure Officer. Not all of these are referable to specific statutory powers or functions bestowed on the Principal Officer by the Act, and so some of them represent things which the Public Interest Disclosure Officer is expected to do on a purely administrative basis.

Subject to the terms of their delegation, the responsibilities of a Public Interest Disclosure Officer generally include:

- acting as 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;
- making arrangements for a disclosure to be made privately and discreetly and, if necessary, away from the workplace;
- receiving any disclosure made orally or in writing (from internal and external disclosers);
- recording in writing the details of any disclosure which is made orally;
- impartially assessing the allegation and determining whether it is a disclosure made in accordance with Part 2 of the Act (that is, “a protected disclosure”);
- impartially assessing under s 33 of the Act whether a disclosure is a “public interest disclosure”, and
- taking all necessary steps to ensure that the identity of the discloser and the identity of the person who is the subject of the disclosure are kept confidential.

8.4 Investigator

Where the Glenorchy City Council has determined that a disclosure is a public interest disclosure, or where the Ombudsman has referred a disclosed matter to Glenorchy City Council for investigation, the Principal Officer will appoint an investigator to investigate the matter in accordance with the Act. An investigator may be a person from within the public body or a consultant engaged for that purpose.

8.5 Welfare manager

The welfare manager will be appointed by the Principal Officer or by a Public Interest Disclosure Officer, and is responsible for looking after the general welfare of the discloser. The welfare manager 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;³
- listen and respond to any concerns of harassment, intimidation, victimisation or other detrimental action which may be occurring in reprisal for making the disclosure; and
- so far as is practicable, protect the identity of the discloser in the course of carrying out these responsibilities.

A welfare manager may be a person from within the public body or a consultant engaged for that purpose.

9 Confidentiality

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

All reasonable care should also be taken to protect the privacy of witnesses and of the person against whom the disclosure has been made.

Section 23 of 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 this section constitutes an offence that is punishable by a maximum fine of 60 penalty units or six months imprisonment, or both.

The circumstances in which a person may disclose information obtained about a protected disclosure include:

- where exercising their functions or 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 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 made in accordance with Part 9 of the Act.

³ See Part 12 below for details of the legislative protections.

It may be necessary to consider disclosing information where:

- it is essential, having regard to the principles of natural justice, that the identifying information be disclosed to the person who is the subject of the disclosure, or
- the investigating body believes that the disclosure of the identifying information is necessary for the matter to be effectively investigated.

In both circumstances, the person who made the disclosure should be informed as to this step.

The Glenorchy City Council will ensure that all relevant files, whether paper or electronic, are kept securely and can only be accessed by the Principal Officer, Public Interest Disclosure Officer/s, the investigator, and (in relation to welfare matters only) the welfare manager.

All printed material will be kept in files that are clearly marked as confidential, and all materials relevant to an investigation, such as tapes from interviews, will also be stored securely with the files.

Care should also be taken to ensure that all relevant phone calls and meetings are conducted in private.

Section 90 exempts documents from release under the *Right to Information Act 2009* to the extent that they contain information regarding a disclosure, or information that is likely to lead to the identification of the person who made the disclosure or the person who is the subject of the disclosure.

10 Publishing statistics

Section 86 of the Act requires Glenorchy City Council to include in its annual report:

- the number and types of disclosures made to the Glenorchy City Council during the year, and the number of disclosures determined to be a public interest disclosure;
- the number of disclosures determined by the Glenorchy City Council to be public interest disclosures that it investigated during the year;
- the number and types of disclosed matters referred to the Glenorchy City Council by the Ombudsman for investigation;
- the number and types of disclosures referred by the Glenorchy City Council to the Ombudsman for investigation;
- the number and types of investigations taken over from the Glenorchy City Council by the Ombudsman;

- the number and types of disclosed matters that the Glenorchy City 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 Glenorchy City Council.

I I Preliminary issues

I I.1 What should the recipient of the disclosure do upon receipt of the disclosure?

If the disclosure is oral, the recipient should make a file note as soon as possible, which records the time when the disclosure was made, the circumstances under which it was made and, so far as is possible, the exact words used by the discloser. The recipient should also ask the discloser to put the disclosure in writing as soon as possible.

Unless the recipient is the Principal Officer (or the disclosure is about the Principal Officer), the recipient should immediately inform the Principal Officer of the disclosure, and should provide the Principal Officer with a copy of the disclosure, or record of the disclosure, and of any accompanying documents.

If the disclosure is about the Principal Officer, it should be immediately referred to the Ombudsman.

A file should be created for the disclosure, marked clearly as being a *Public Interest Disclosures Act* matter – see part 9 of these procedures (Confidentiality).

I I.2 Assessing the disclosure – is it a protected disclosure?

The protections provided by the Act to disclosers (contained in Part 4 of the Act) only apply where the disclosure made is a “protected disclosure”. This means a disclosure made in accordance with Part 2 of the Act: s 14.

As soon as practicable after the receipt of a disclosure, the disclosure should therefore be assessed by the Principal Officer or a Public Interest Disclosure Officer to determine whether it has been made in accordance with Part 2 of the Act. The following questions need to be asked in carrying out this assessment:

- Has the disclosure been made by a public officer or contractor? (See parts 6.2 and 6.3 above.)
- Does the disclosure concern improper conduct or detrimental action? (see parts 6.4 and 6.5 above.)

- Did the alleged conduct or action occur more than 3 years before the commencement of the Act – i.e. on or after 1 January 2001? (see s 10 of the Act)
- Has the disclosure been made to the appropriate person? (See part 7.1 above.)

As required by s 6 of the Act (see part 6.1 above), one of the preconditions to a disclosure being a protected disclosure, and therefore attracting the protections in Part 3 of the Act, is that it is made by a public officer or a contractor.

Note that an anonymous disclosure may be accepted if the person receiving it is satisfied that the disclosure is being made by a public officer or contractor: s 8.

The person who carries out the assessment should inform the discloser as soon as practicable of their conclusion as to whether the disclosure is a protected disclosure, and of their reasons for coming to that conclusion. This should be done in writing. If the disclosure has been assessed as being a protected disclosure, the discloser should be given a copy of Part 3 of the Act, which details the protections which the Act provides. These protections should be explained to the discloser if necessary. The discloser should also be informed of the process which will now be followed with respect to the disclosure.

A copy of the assessment should also be given to the Principal Officer without delay, where the person who carried out the assessment is not the Principal Officer.

If the disclosure is considered to be a protected disclosure, the Principal Officer or a Public Interest Disclosure Officer should immediately appoint a welfare manager to protect the interests of the discloser, and ensure that the discloser is advised of the name and contact details of that person – see parts 8.5 and 15.1.

Note that s 7A of the Act provides that a person to whom a disclosure may be made under Part 2 of the Act may, if the person considers that it would be in the public interest to do so, treat any other person who is not a public officer or a contractor as a contractor for the purposes of the Act. If this is under consideration, the matter should first be discussed with the Principal Officer, and consideration should also be given to seeking advice from the Ombudsman as to whether this step is appropriate.

11.3 Should the disclosure be referred to another body?

11.3.1 Referral to the Ombudsman

The Glenorchy City Council may refer a protected disclosure to the Ombudsman if it believes that it is not able to complete the investigation satisfactorily: s 68. The Act does not provide for other relevant circumstances in which a public body may refer a protected disclosure to the Ombudsman before commencing an investigation, but an alternative way of achieving the same result would for the public body to encourage the discloser to make their disclosure direct to the Ombudsman, such that there is no need for the public body to continue to investigate the matter.

11.3.2 Referral to the Integrity Commission

The Glenorchy City Council may refer a protected disclosure to the Integrity Commission where it considers that the disclosure relates to misconduct as defined in s 4(1) of the *Integrity Commission Act 2009*.

The Glenorchy City Council must notify the discloser of the referral within a reasonable time (unless the disclosure was made anonymously): s 29D.

The Integrity Commission may deal with the disclosure under the Integrity Commission Act, or it may refer the disclosure to the Ombudsman or a public body, as the case may require, for action by the Ombudsman or public body in accordance with the Public Interest Disclosures Act.

Matters which would bear on a decision as to whether a protected disclosure should be referred to the Integrity Commission are:

- the relevance of the disclosure to the normal functions of the Commission;
- the desirability of independent investigation by the Commission of the subject matter of the disclosure; and
- the views of the discloser as to whether referral should occur.

11.3.3 Referral of criminal conduct to the Police

It is possible that, before or during an investigation, facts are uncovered that reveal the possibility of a criminal offence. If this happens, the Glenorchy City Council will not commence, or will suspend the investigation and will consult with 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 Glenorchy City Council should consider whether the disclosure should be referred to the Ombudsman under s 68 of the Act.

Early referral of the matter may avoid interference with the evidentiary trail. Referral to the police through the Ombudsman will also avoid any question of a breach of confidentiality under s 23 of the Act. Once a disclosure is referred to the Commissioner of Police through the Ombudsman, the investigation under the Act ceases. However, there may still be administrative or operational issues which have been identified during the disclosure process or investigation that should be dealt with under other internal processes of the Glenorchy City Council. The Principal Officer, or the Public Interest Disclosure Officer acting in consultation with the Principal Officer, will decide how the matter should be dealt with.

11.3.4 Further assessment - Is the disclosure a public interest disclosure?

Where the Principal Officer or Public Interest Disclosure Officer has received a disclosure that has been assessed to be a protected disclosure, the Principal Officer or Public Interest Disclosure Officer must make a determination under s 33 of the

Act as to whether the disclosure is a public interest disclosure. This assessment must be made within 45 days of the receipt of the disclosure.

For a disclosure to be a public interest disclosure, the public body must be satisfied that the disclosure shows or tends to show that the public officer or public body 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.

A disclosure must be more than a mere allegation without substantiation. A disclosure must include an indication of the existence of evidence that if substantiated would show or tend to show that the alleged conduct occurred.

Where the Principal Officer or Public Interest Disclosure Officer concludes that the disclosure amounts to a public interest disclosure, he or she must -

- advise the Principal Officer (if not the person receiving the disclosure);
- notify the Ombudsman within 14 days of the decision;
- notify the person making the disclosure within 14 days of the decision (unless it is an anonymous disclosure), and
- proceed to investigate the disclosed matter - see part 12 (Investigations) below - see s 34.

If the Principal Officer or Public Interest Disclosure Officer concludes that the disclosure is not a public interest disclosure, he or she must -

- advise the Principal Officer (if not the person receiving the disclosure)
- notify the Ombudsman within 14 days of the decision, and
- notify the person making the disclosure within 14 days of the decision (unless it is an anonymous disclosure) – see s 35.

The Ombudsman must then review this decision: s 35(2).

If, on review of the matter, the Ombudsman decides that the disclosure is not a public interest disclosure, the matter does not need to be dealt with under the Act. The Principal Officer, or the Public Interest Disclosure Officer in consultation with the Principal Officer, will then decide how the disclosure should be dealt with.

If the Ombudsman determines the disclosure is not a public interest disclosure, but could be a complaint under the *Ombudsman's Act 1978* the Ombudsman must notify the discloser of his or her right to have the disclosure dealt with as a complaint under the *Ombudsman's Act* if he or she wishes.

12 Protection

12.1 When does protection commence?

Where the Glenorchy City Council receives a disclosure which complies with the requirements of Part 2 of the Act, the disclosure immediately attracts the protections set out in Part 3 of the Act. This is so whether or not the disclosure is factually correct (although one of the requirements of Part 2, as found in s 6, is that the discloser honestly believes that the alleged improper conduct or detrimental action in fact occurred).

The protection also extends to a person who intends to make a disclosure.

Note that, as provided in s 9, a disclosure can still be made where the discloser cannot identify the person or body to whom or to which the disclosure relates.

12.2 What protection does the Act provide?

Part 3 of the Act gives various types of protection to a person who makes a protected disclosure. This part of these procedures only provides a summary of some elements of that Part of the Act.

A person who makes a protected disclosure:

- is not subject to any civil or criminal liability, or to any liability arising by way of administrative process, for making the protected disclosure (s 16);
- does not by doing so commit an offence under a provision of any other Act that imposes a duty to maintain confidentiality, or which imposes any other restriction on the disclosure of information (s 17(1)(a)); and
- does not by doing so breach an obligation by way of oath, or rule of law or practice, or under an agreement, which requires the discloser to maintain confidentiality or otherwise restricts the disclosure of information (s 17(1)(b)).

These last two protections do not apply, however, to a disclosure of information to a person other than the person to whom the protected disclosure was originally made, unless that further disclosure was made in accordance with the Act: s 17(2).

Part 3 also contains various provisions which are intended to protect a discloser from detrimental action by way of reprisal for a protected disclosure. By s 19, the Act makes it an offence to take such detrimental action. By s 20, it creates a liability to pay damages for such detrimental action. And by s 21, it gives a person who believes that detrimental action has been taken against him or her the right to apply to the Supreme Court for an order requiring the person who has taken the detrimental action to remedy that action, or for an injunction.

13 Investigations

13.1 Introduction

The Glenorchy City Council must investigate every disclosure referred to it for investigation by the Ombudsman: s 63(b).

Unless the matters set out in 13.2 below apply, or the matter is referred to the Ombudsman, the Glenorchy City Council will investigate every disclosure that it receives and determines is a public interest disclosure under s 33 of the Act: s 63(a)

The Principal Officer will appoint an investigator to carry out the investigation. The investigator may be a person from within an organisation or a consultant engaged for that purpose.

The objectives of an investigation are:

- 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 generally to all parties involved in the disclosure

13.2 Matters that do not have to be investigated

Before embarking on the investigation of a public interest disclosure, the Principal Officer or Public Interest Disclosure Officer must first consider whether the disclosed matter deserves to be investigated. Section 64 specifies certain circumstances under which a public body may legitimately decide not to investigate. Those circumstances are if:

- in the opinion of the public body the disclosure is trivial, vexatious, misconceived or lacking in substance; or
- 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
- 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

- 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; or
- the disclosure relates solely to the personal interests of the person making the disclosure; or
- the disclosure is based on false or misleading information, or
- the matter which is the subject of the disclosure has already been determined and the additional disclosure does not provide significant or substantial new information.

Any decision not to proceed with an investigation on a ground specified in s 64 must be made by the Principal Officer.

If the Principal Officer determines that the disclosed matter is not to be investigated, notice of this fact must be given within 14 days to both the Ombudsman and (except in the case of an anonymous disclosure) the person who made the disclosure. Reasons for the decision must accompany the notice.

The Ombudsman is required by s 65(2) to review such a decision. Following the review, the Ombudsman must notify the Glenorchy City Council of his or her decision within a reasonable time. If the Ombudsman on review determines that the disclosure should not be investigated, the matter does not need to be dealt with under the Act. The Principal Officer, or the Public Interest Disclosure Officer in consultation with the Principal Officer, will decide how the matter should be dealt with.

If the Ombudsman determines that the disclosure should be investigated, and the matter is not referred to the Ombudsman for a reason specified in s 68, the Glenorchy City Council must proceed with the investigation.

13.3 Appointment of investigator and framing of terms of reference

The Principal Officer – not a Public Interest Disclosure Officer - will determine who is to carry out the investigation. As earlier indicated, this may be an officer within the Glenorchy City Council or an external consultant.

The investigator will be given formal terms of reference, signed by the Principal Officer.

The terms of reference will specify –

- the matters to be investigated;
- the date by which the investigation is to be concluded; and
- the resources available to the investigator for the purposes of the investigation.

The completion date should be as soon as practicable but, in any event, not more than 6 months from the date of the determination that the disclosure is a public interest disclosure: s 77A(1). If at any stage before or during the investigation it appears that the investigation cannot be completed within 6 months, the Glenorchy City Council may apply to the Ombudsman for an extension of up to 6 months in which to complete the investigation: s 77A(2).

The terms of reference should require the investigator to make regular reports to the Principal Officer.

13.4 Investigation plan

The investigator should prepare an investigation plan for approval by the Principal Officer. The plan should list the issues which are to be investigated and describe the steps which the investigator intends to take in investigating each of those issues.

The plan should be updated as necessary during the course of the investigation.

13.5 Natural justice

The principles of natural justice must be carefully observed in the course of the investigation, with respect to all parties involved. These principles are sometimes referred to as "procedural fairness".

The principles are a set of procedural standards which need to be met if the right of a person to a fair hearing can be accepted as having been satisfied.

The Glenorchy City Council will comply with the following requirements in ensuring that procedural fairness is accorded to all parties involved:

- No one is to be involved in the investigation who is known to be biased against any person who is potentially subject to an adverse finding, or
- is known to hold any biases which are relevant to the subject-matter of the investigation, or
- in respect of whom there is reasonable ground for apprehending or suspecting bias.⁴

If the investigator is aware of any reason why they may be susceptible to an allegation of bias on the basis of these principles, they should immediately inform the Principal Officer.

⁴ For apprehended bias, the test is whether a fair minded lay observer, taking into account all relevant circumstances, might reasonably apprehend that the decision-maker might not bring an impartial mind to the resolution of the questions that he or she is required to decide.

- Any person who is potentially subject to an adverse finding or comment must be told of:
 - the allegations made against them, or which have arisen against them as a result of the investigation;
 - all of the information which is adverse to their interests and which is, on an objective basis, credible, relevant and significant to the investigation; and
 - the potential findings in view, and their possible consequences.
- This must be done before any final conclusions are formed by the investigator.
- Each such person must be given a reasonable time to respond to the material which is provided to them
- The investigator must maintain an open mind, and must fairly take into account all representations which such a person may make.

Note that there is no requirement to inform the person who is subject to the disclosure as soon as it is received, or as soon as the investigation has commenced. Note also that the name of the person making the disclosure or any particulars which might identify that person must not be revealed unless necessary, and with the discloser's knowledge.

The final investigation report should be drafted in a way that demonstrates that procedural fairness has been accorded. For instance, it should record and deal with all submissions and evidence which a person has put in their defence.

13.6 Conduct of the investigation

A useful reference in planning and executing the investigation is the publication by the Australian Public Service Commission (albeit produced for a different purpose), *Handling misconduct: A human resource practitioner's guide to the reporting and handling of suspected and determined breaches of the APS Code of Conduct* (February, 2007).

The investigator should make contemporaneous notes of all discussions and phone calls, and consideration should be given to the desirability of audiotaping significant interviews with witnesses

All information gathered in the course of the investigation must be securely stored.

Interviews should be conducted in private, and the investigator should 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 should warn the discloser and his or her welfare manager of this.

13.7 Referral of an investigation to the Ombudsman

Under s 68 of the Act, a public body may refer the investigation of a disclosed matter to the Ombudsman where the public body considers that its own investigation is being obstructed or that it is otherwise not within the capacity of the public body to complete the investigation.

Any decision as to whether the investigation should be referred to the Ombudsman will be taken by the Principal Officer.

See also part 11.3.3, concerning referral of an investigation to the Ombudsman, with a view to referral by the Ombudsman to the Commissioner of Police of suspected criminal conduct.

13.8 Provision of information about the investigation

The Principal Officer or the Public Interest Disclosure Officer must ensure that the discloser is kept regularly informed concerning the handling of a protected disclosure and an investigation.

The Principal Officer must report to the Ombudsman about the progress of an investigation.

Section 74 of the Act requires a public body, at the request of the Ombudsman or the person who made the disclosure, to give the Ombudsman or that person reasonable information about the investigation. The information must be given within 28 days of the request.

However, as provided in s 74(3), such 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.

14 Action taken after an investigation

14.1 Investigator's final report

At the conclusion of the investigation, the investigator must submit a written report of his or her findings to the Principal Officer. The report should contain:

- the allegation/s;
- a description of the manner in which the investigation was conducted, with sufficient detail to demonstrate that procedural fairness was observed;
- an account of all relevant information received;

- details of the evidence and submissions supplied by any person against whom an adverse finding is made, and the evaluation of that material by the investigator; and
- the findings made and conclusions reached, and the basis for them.

Note in particular that the report should not include any comment adverse to any person unless that person has been given an opportunity to be heard in the matter and their defence is fairly set out in the report – see part 13.5.

With a view to potential action by the public body under s 75 of the Act, if the investigator has found that conduct disclosed by the discloser has occurred, the investigator may wish to include recommendations as to:

- any steps that need to be taken by the Glenorchy City Council to prevent the conduct from continuing or occurring in the future; and
- any action that should be taken by the Glenorchy City Council to remedy any harm or loss arising from that 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, consideration should be given to whether the matter should be referred to Tasmania Police, unless this has previously occurred.

The report must 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.

The report must not disclose particulars likely to lead to the identification of the discloser: s 23(2).

14.2 Action to be taken

If the Principal Officer is satisfied that the conduct which was the subject of the investigation has occurred, he or she must consider the recommendations in the investigator's report and decide upon the steps which are to be taken to prevent the conduct from continuing or occurring in the future: s 75(1)(a). Again taking into consideration any recommendations in the investigator's report, the Principal Officer must also consider whether any action should be taken to remedy any harm or loss arising from the conduct: s 75(1)(b).

Where the Public Interest Disclosure Officer is responsible for the progress of the investigation and is satisfied that the disclosed conduct has occurred, he or she will recommend to the Principal Officer the action that must be taken.

The Principal Officer will provide a written report to the Glenorchy City Council and the Ombudsman, setting out the findings of the investigation and any remedial steps taken.

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

As required by s 77 of the Act, the Principal Officer will also inform the discloser of the findings of the investigation, and of any steps taken under s 75 as a result of the findings made.

15 Managing the welfare of the discloser

15.1 Commitment to protecting disclosers

The Glenorchy City Council is committed to the protection of genuine disclosers against detrimental action taken in reprisal for the making of protected disclosures. The Principal Officer is responsible for ensuring that disclosers and witnesses are protected from detrimental action, and that the culture of the workplace is supportive of protected disclosures being made.

The Principal Officer or the Public Interest Disclosure Officer must appoint a welfare manager to support all persons who have made a protected disclosure. See part 8.5 for the responsibilities of a welfare manager.

The welfare manager must also provide advice about what the discloser should do if they believe that a colleague/s or a relative/s is being subjected to detrimental action. The advice will include what level of information it is necessary for them to provide.

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). The maximum penalty is a fine of 240 penalty units 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.

See part 6.5 for further details as to what constitutes detrimental action.

A discloser who believes that they are being subjected to detrimental action should report it to the Principal Officer or a Public Interest Disclosure Officer. If they believe that the reprisal is not being effectively dealt with by the Glenorchy City Council, they may report the matter to the Ombudsman. A report of detrimental action may qualify as a protected disclosure under the Act.

15.2 Keeping the discloser informed

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

15.3 Occurrence of detrimental action

If a discloser reports an incident of detrimental action allegedly taken in reprisal for the making of the disclosure, the welfare manager must:

- record details of the incident
- advise the discloser of his or her rights under the Act, and
- advise the Principal Officer 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 Public Interest Disclosure Officer or the Principal Officer will assess the report as a new disclosure under the Act, and it will be dealt with accordingly in accordance with these procedures.

15.4 Discloser implicated in improper conduct

Where a person who makes a disclosure is implicated in misconduct, the Glenorchy City Council will handle the disclosure and protect the discloser from reprisals in accordance with the Act, the Ombudsman's guidelines and these procedures. At the same time the Glenorchy City 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 Principal Officer will make the final decision 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 person's 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 Principal Officer 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 Public Interest Disclosure Officer or Principal Officer 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 Public Interest Disclosure Officer or Principal Officer will clearly advise the discloser of the proposed action to be taken, and of any mitigating factors that have been taken into account.

16 Management of the person against whom a disclosure has been made

The Glenorchy City Council recognises that employees against whom disclosures are made must also be supported during the handling and investigation of disclosures. The Glenorchy City 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 an investigation does not substantiate a disclosure, 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 Public Interest Disclosure Officer or Principal Officer will ensure that the person who is the subject of any disclosure investigated by or on behalf of the Glenorchy City Council is accorded natural justice in accordance with part 13.5 of these procedures.

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 of the investigation, the Public Interest Disclosure Officer or Principal Officer will formally advise the person who is the subject of the disclosure of the outcome of the investigation.

The Glenorchy 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 Principal Officer of the Glenorchy City Council will consider any request by that person to issue a statement of support setting out that the allegations were clearly wrong or unsubstantiated.

17 Offences

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

- Section 19(1)
This provision makes it an offence for a person to take detrimental action against a person in reprisal for a protected disclosure being made. The section provides for a maximum penalty of a fine of 240 penalty units or two years imprisonment, or both.
- Section 23(1)
This provision makes it an offence for a person to disclose, except under specified circumstances, information which they have obtained or received in the course of or as a result of a protected disclosure or the investigation of a disclosed matter under the Act. The section provides for a maximum penalty of 60 penalty units or six months imprisonment, or both.
- Section 54
This section creates various offences relating to obstructing the work of the Ombudsman under the Act, including offences relating to misleading the Ombudsman. The section provides for a maximum penalty of 240 penalty units or two years imprisonment, or both.
- Section 87(1)
This provision makes it an offence for a person to knowingly provide false information under the Act to certain officers (including the Ombudsman) with the intention that it be acted on as a disclosed matter. The provision provides for a maximum penalty of 240 penalty units or two years imprisonment, or both.
- Section 87(2)
This section makes it an offence for a person to knowingly provide false information to a person conducting an investigation under the Act. The provision provides for a maximum penalty of 240 penalty units or two years imprisonment, or both.

At the present time, the value of a penalty unit is \$157. The value of a penalty unit varies from time to time in accordance with movements in the Consumer Price Index. For more information, see the Department of Justice website at –

http://www.justice.tas.gov.au/about/legislation/value_of_indexed_units_in_legislation

18 Approval and review of these procedures

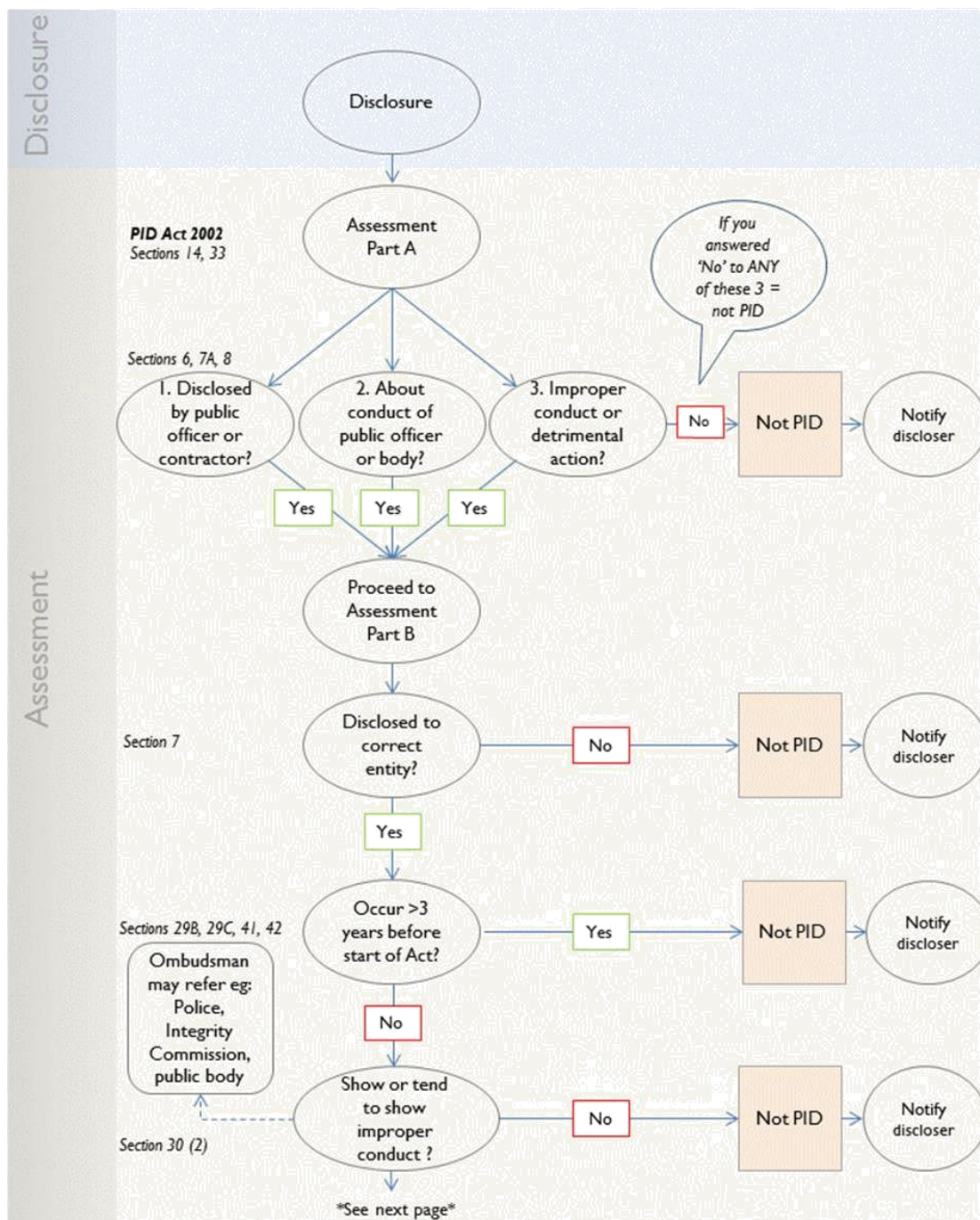
These procedures were approved by the Ombudsman under s 60(3) of the Act on 1 August 2016.

The procedures will be submitted to the Ombudsman for review at least once in each 3 year period to ensure they meet the objectives of the Act and accord with the Guidelines and Standards published by the Ombudsman under s 38(1)(c) of the Act.

The date by which the procedures must be submitted to the Ombudsman for review is 30 July 2019.

Attachment I: Flowcharts

Table I: Disclosures made to the Ombudsman



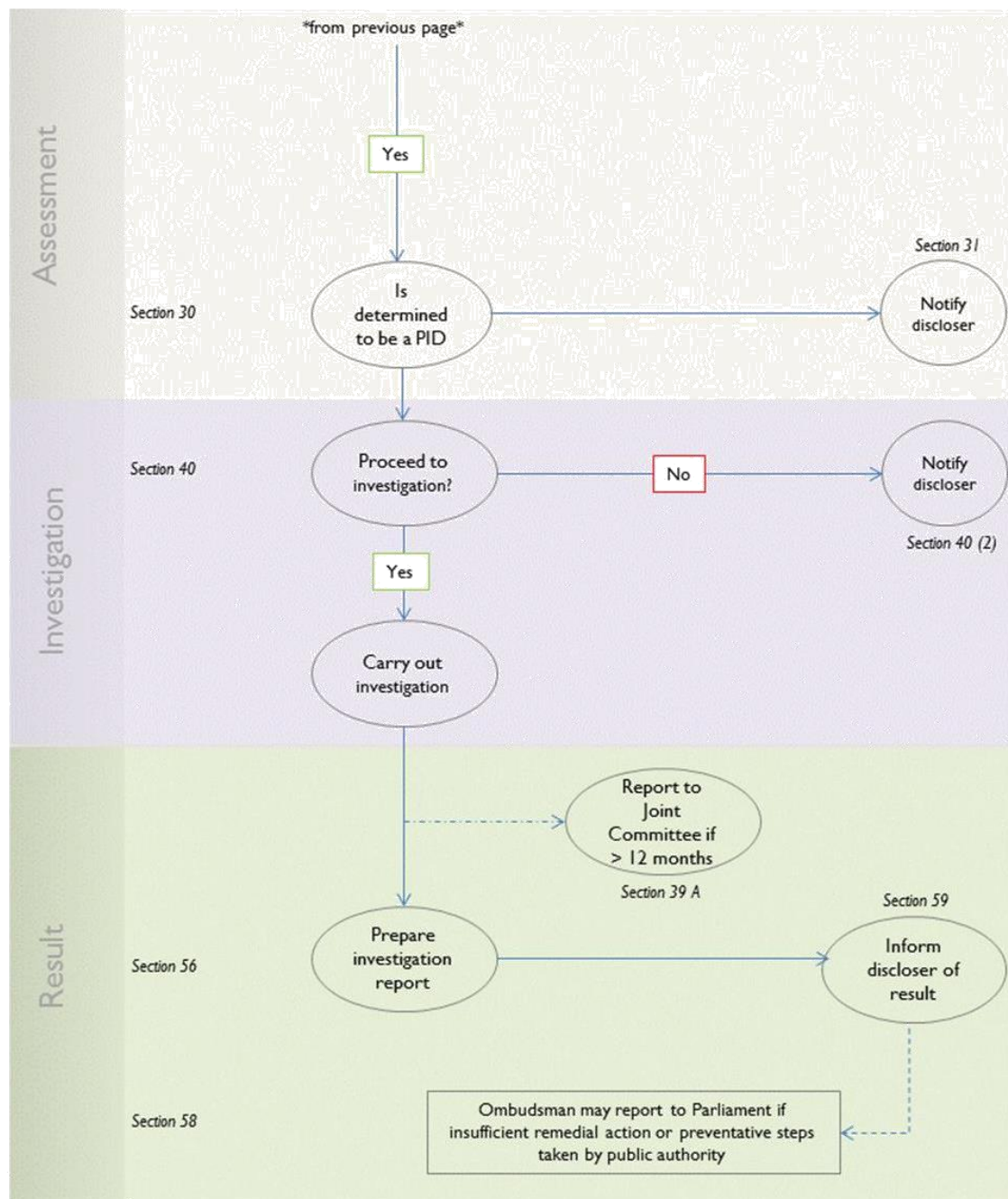
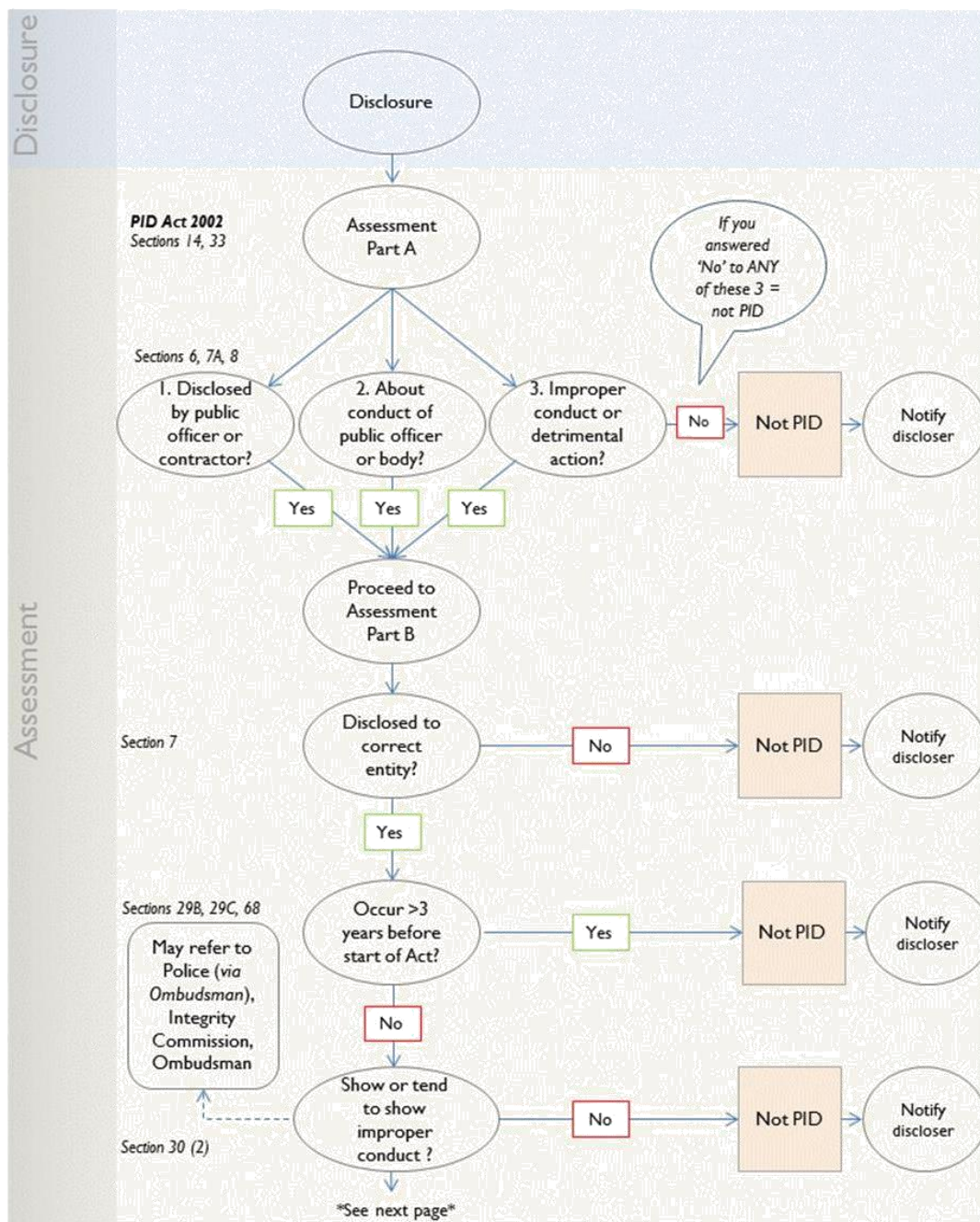
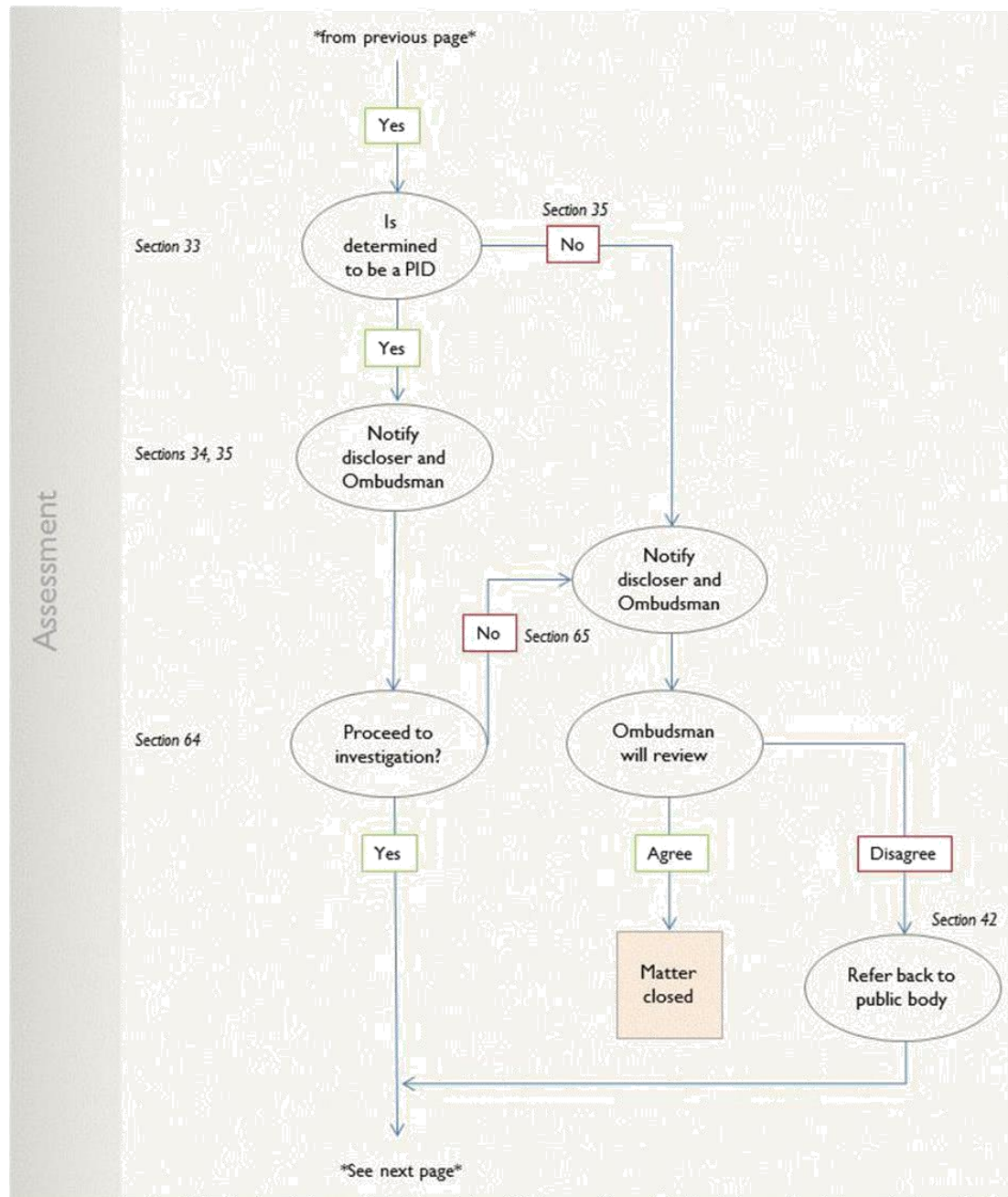
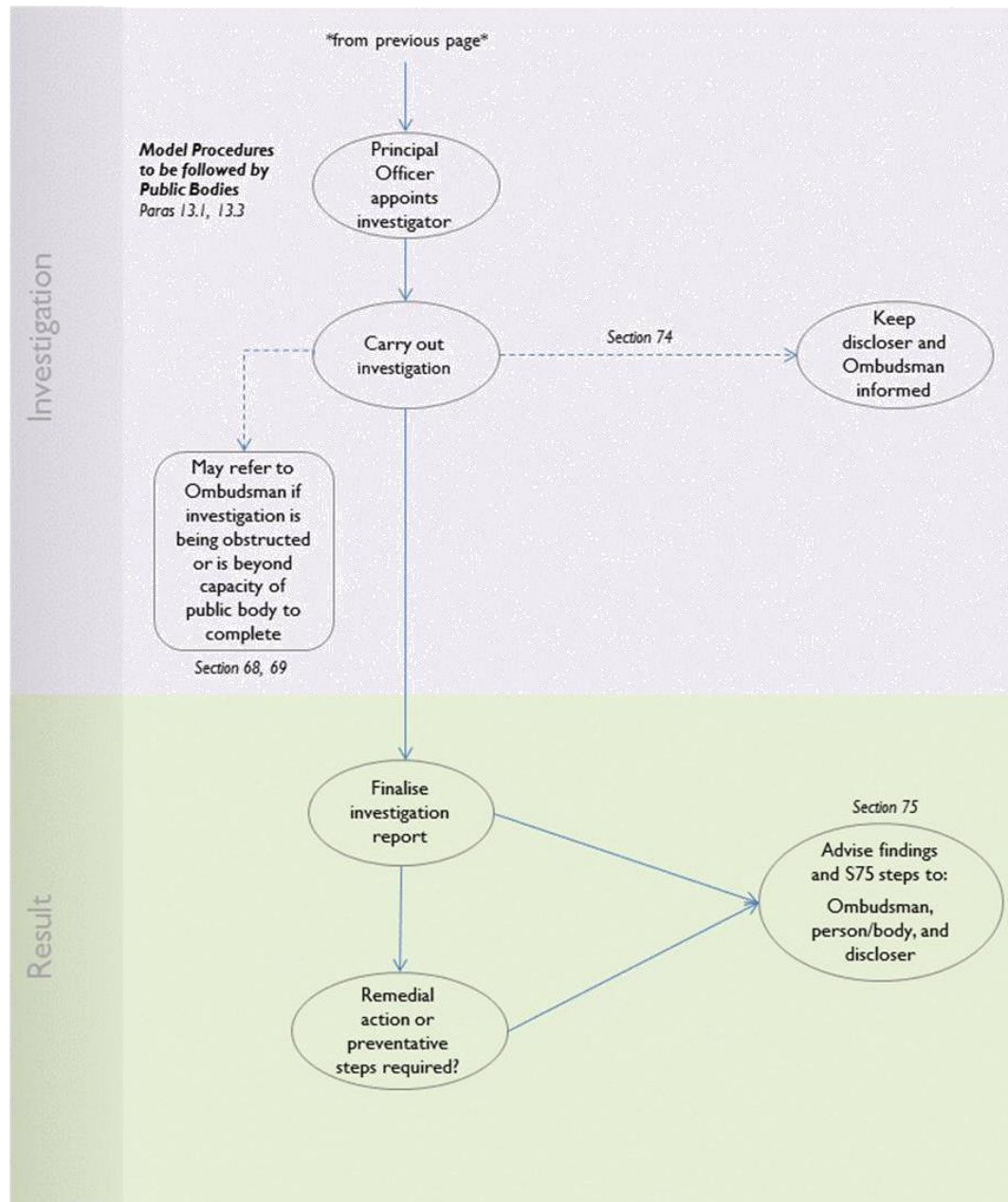


Table 2: Disclosures made to a Public Body









Risk Management Directive

Title	Risk Management Directive
Approval Date	DD MMM YYYY (Acting General Manager)
Responsible Directorate	Corporate Governance
Due for Review	Four (4) years from Council Resolution Date
Strategic Plan Reference	<u>Leading our Community</u> 4.1 Govern in the best interests of our community 4.1.1 Manage Council for maximum efficiency, accountability and transparency 4.1.2 Manage the City's assets soundly for the long term benefit of the Community 4.1.3 Maximise Regulatory Compliance in Council and the Community through our systems and processes.
ECM	Council Policies

PURPOSE

The purpose of this directive is to articulate Council's commitment to establishing a robust risk management framework. It provides direction on Council's risk management culture, principles, guidelines and responsibilities to promote awareness of risk management systems within the organisation.

Council's risk management framework (of which this directive is a key element) aims to:

- incorporate risk management into Council's decision making processes at strategic, operational and major project levels
- build a strong culture of risk awareness, and to set clear responsibilities and procedures for the management of risk which will be integrated into council's day-to-day operations
- provide the tools and procedures to identify, assess, control and report on any risk faced by Council that may impact on Council's ability to carry out its functions, or achieve its objectives and priorities, and
- enable management and elected representatives to capitalise on opportunities to achieve Council's objectives by embracing risk up to acceptable levels.

SCOPE

This directive applies to Aldermen, all Council employees (including the General Manager, Directors and Managers, and temporary employees), all volunteers and any external party assigned to a clearly defined project or program (including contractors, consultants, outsourced service providers and suppliers).

STATUTORY REQUIREMENTS

Council's Audit Panel is established as required under section 85 of the *Local Government Act 1993*.

Part 4 of the Audit Panel Charter provides that one of the Audit Panel's functions is to consider in a review of Council's performance the accounting, internal control, anti-fraud, anti-corruption and risk management policies, systems and controls that Council has in relation to safeguarding its long-term financial position.

Acts	<i>Local Government Act 1993</i>
Regulations	Not Applicable
Australian/International Standards	AS/NZS ISO 31000:2009 Risk management – Principles and guidelines



Risk Management Directive

DIRECTIVE

Part 1: Council's Approach to Risk Management

Introduction

Council is committed to achieving the aims defined in Council's Community Plan and Annual Plan. In pursuing those aims, Council recognises that it faces a variety of risks.

Risk is regarded as a quantifiable level of exposure to the threat of an event or action that could adversely affect our ability to achieve our objectives successfully. The task of Council's management is to respond to risks in an effective manner in order to maximise the likelihood of Council achieving its objectives while ensuring the best use of our limited resources.

This directive forms an integral part of Council's 'Risk Framework'. It sets out the high-level internal policy that will guide and influence all risk management activities undertaken by Council.

Risk Management Standard

Council's risk management framework is based on the principles and procedures set out in *AS/NZS ISO 31000:2009 Risk management – Principles and guidelines (the Standard)*.

Risk Management Principles

The Standard sets out the following eleven (11) principles that are required for effective risk management. The principles are that risk management:

- creates and protects value
- is an integral part of all Council's organisational processes
- is part of decision making
- explicitly addresses uncertainty
- is systematic, structured and timely
- is based on the best available information
- is tailored
- takes human and cultural factors into account
- is transparent and inclusive
- is dynamic, iterative and responsive to change, and
- facilitates the continual improvement of Council.

Council will recognise and observe the above principles whenever it undertakes any risk management activities.

Risk Management Statements

The following statements define and underpin Council's approach to risk management:

1. Council is committed to ensuring that the management of risk underpins our activities and that robust risk management procedures are in place. The application of this directive enables us to identify, assess and respond to a changing risk profile.
2. Council has a responsibility to manage risks and support a systematic approach to risk management, including the promotion of a risk aware culture.
3. Council will:
 - use risk management to systematically identify, record, monitor and report risks to meet our objectives, and to implement effective plans and actions to treat and mitigate risk, and
 - identify risks and their causes at the earliest opportunity, assess their potential impacts, and put in place controls to mitigate and/or actively monitor them.
4. Council recognises that the application of risk management practices will not eliminate all risk exposure. Through the application of the risk management approach identified in this directive,

*Risk Management Directive*

Council aims to achieve a better understanding of the risks it faces, and use that understanding to improve Council's decision making.

5. Council recognises that risk may also present opportunities for developing innovative ways of working.
6. Council expects management to take action to manage and mitigate the effects of any risks considered to be in excess of Council's defined risk appetite. Risks that are significant and/or in excess of Council's risk appetite will be included in Council's Headline Risk Register. Project and operational risks will be included in General Risk Register.
7. Management will ensure that effective mechanisms are in place for assessing, monitoring and responding to any risks. Management is expected to have a good understanding of the 'nature of risk' within Council and Council's risk appetite.
8. Council's risk management procedures will be embedded within the Council's Risk Registers systems, which are to be maintained by staff assigned to strategic; program; or major project levels (see Part 3), as appropriate.

Management Risk Workshop

Council will periodically hold a management risk workshop. The role of the workshop will be to undertake a comprehensive review Council's risk registers to ensure that they adequately capture and rate the risks that Council faces.

It is expected that workshops will be held approximately every two (2) years. The workshop will review and challenge existing risks and identify new, emerging and future risks.

A key aim of each workshop is to update Council's Strategic and Key Operational Risk Register (see part 3, below) which is a key strategic document that is referred to by the Council's internal auditors. It is critical that all internal audit activities consider the risks captured in that register when assessing Council's operations in accordance with audit terms of reference.

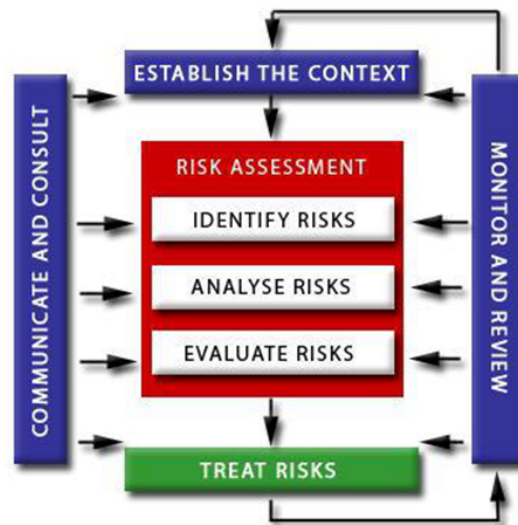
Risk Appetite and Tolerance

Council will consider and adopt the following:

1. a Risk Appetite Statement which will identify the amount and types of risk that Council is willing to pursue or retain, and
2. a Risk Tolerance Statement which will identify Council's readiness to bear the risk after risk treatments have been applied in order to achieve Council's objectives.

Part 2: Risk Management Process

Council adopts the risk management process outlined in the Standard's, which is illustrated below:



Source: Risk Management Process (AS/NZS ISO 31 000: 2009)

In accordance with the risk management process, Council will, as far as practicable, manage risk by:

1. establishing the context of risk management through the articulation and definition of the Council's objectives and operating environment
2. assess the risks it faces by:
 - a) identifying sources of risk, their potential causes and impacts
 - b) analysing levels of risks in terms of potential consequences and likelihood
 - c) evaluating risks to determine whether or not treatment is required to mitigate them,
3. establishing and implementing ongoing risk treatment plans
4. monitoring and reviewing the effectiveness of the risk management process, and
5. ensuring appropriate stakeholder consultation, co-operation and co-ordination of risk management activities.

Risk Assessment

Identify Risks

Risk identification is the process of determining what risks might prevent us from delivering our objectives, whether these are strategic or operational. For the purposes of identifying risks, the following broad risk categories will be used:

- Financial loss (funds and assets)
- Staff resources loss
- Reputation
- Work health and safety
- Business continuity
- Public safety
- Local economic growth
- Environment and sustainability, and
- Legal.



Risk Management Directive

Risk identification is an ongoing activity, with individual risks and the impact and/or likelihood of risks materialising and/or changing regularly.

It is important that risk features as a standing agenda item on management team meetings and drives the performance evaluation of staff.

Analyse and Evaluate Risks

Once a risk is identified, the risk is assessed. Risks should be assessed consistently across Council considering two factors:

- **Likelihood:** The likelihood of the identified risk occurring, and
- **Consequence:** If the identified risk were to occur, the consequences for Council.

Risk Likelihood Criteria

Council classifies risk likelihood into the following five levels

Likelihood		General Definition
L5	Almost Certain	Very likely. The event is expected to occur in most circumstances as there is evidence that predicts regular occurrence.
L4	Likely	There is a strong possibility that the event will occur as there is evidence that predicts frequent occurrence.
L3	Possible	The event might occur at some time as there is evidence that predicts causal occurrence
L2	Unlikely	The event is not expected to occur but there is a slight possibility that it may occur at some time.
L1	Rare	Highly unlikely but may occur in exceptional circumstances. The event could happen, but probably never will.

Refer to [Appendix 1 \(Risk Likelihood Criteria\)](#) for further particulars of the risk likelihood criteria.

The assessed likelihood for a risk is usually based on known evidence, including past experience, predictions, trends, indicators, standards, and/or various factors that may be collectively considered.

Risk Consequence Criteria

Council classifies risk consequence into the following five levels

Consequence		General Definition
C5	Severe	Prevents achievement of Council objectives
C4	Major	Would threaten Council's objectives
C3	Moderate	Requires moderate adjustment to activity to achieve Council's objectives
C2	Minor	Requires some adjustment to activity to achieve Council's objectives
C1	Insignificant	Small adjustment to activity to achieve Council's objectives

Definitions of the above consequence levels by reference to each of the risk categories that Council has adopted are contained in [Appendix 2 \(Risk Consequence Criteria\)](#).

Qualitative Risk Analysis: Likelihood and Consequence

The following process to analyse and evaluate risks will be followed:

1. Likelihood will be categorised on a scale of L1 to L5, with L1 being rare and L5 almost certain, and



Risk Management Directive

- Consequence will also be assessed on a scale of C1 to C5, with C1 being insignificant and C5 being severe.
- Likelihood and Consequence are multiplied together to obtain a total a 'gross risk score' (GRS).

The following table illustrates the GRS calculation, overlaid with Council's adopted risk classifications:

	LIKELIHOOD	Rare	Unlikely	Possible	Likely	Almost Certain
CONSEQUENCE	Level	L1	L2	L3	L4	L5
Severe	C5	5	10	15	20	25
Major	C4	4	8	12	16	20
Moderate	C3	3	6	9	12	15
Minor	C2	2	4	6	8	10
Insignificant	C1	1	2	3	4	5

Gross Risk vs Net Risk

Risk assessment undertaken for both Gross Risk and Net Risk.

'Gross risk' (or inherent risk) is the risk that applies in the absence of any measures and controls (or where all measures and controls have failed).

'Net risk' (or residual risk) is the risk that applies after considering the treatments and controls put in place to mitigate the gross risk.

Appendix 3 (Net Risk Matrix) rates risks according to their 'net risk score' (NRS).

Risk Treatment

The appropriate treatment or mitigation strategy for each risk will be guided by the levels of risk that are deemed to be acceptable to Council through Council's adopted risk appetite and tolerance statements (see Part 1, above).

A risk's net risk rating is determined after considering the internal controls to be applied to its gross risk to arrive at its net risk score (Council will develop a Risk Management Procedure to provide direction on this process). In the absence of an adopted Risk Appetite Statement, the appropriate response to be adopted by the each risk owner for each net risk rating are follows:

Net Risk Score (NRS)	Net Risk Rating	Description
17 - 25	High	Action to be taken urgently High (red) risks indicate an unacceptable level of risk exposure, and must be escalated to the top levels of management and added to Council's Strategic and Key Operational Risk Register
10 - 16	Notable to Significant	Requires action and active monitoring This is an acceptable level of risk, but one which should be actioned and monitored to ensure Council's risk exposure is reduced.
1 - 9	Low to Moderate	Normal controls acceptable This is an acceptable level of risk, provided normal controls are applied. In some cases it may be acceptable for no mitigating action to be taken (for example, if the NRS was less than 4).



Risk Management Directive

Where a risk (due to its NRS) could fall into two different risk rating categories, a conservative approach should ordinarily be taken and the higher risk rating applied, unless there is a sound reason not to (for example, the consequences may be insignificant).

Similarly, where a single risk falls within more than one category of risk (i.e. financial loss and reputational), the consequences should be assessed separately and the higher NRS adopted for the purpose of determining the risk's overall NRR.

Risk response

Based on risk scores there are four response options that may be taken:

1. **Terminate:** In this situation, the risk is terminated by deciding not to proceed with the activity. For example, if a particular project is very high risk and the risk cannot be mitigated, it might be decided to cancel the project. Alternatively, the decision may be made to carry out the activity in a different way.
2. **Transfer:** in this option, another party bears or shares all or part of the risk. Examples, may include engaging specialised external contractors to carry out the work, or taking out appropriate insurance coverage.
3. **Treat:** This involves identifying mitigating actions or controls to reduce risk. Controls should be monitored on a regular basis to ensure that they are effective.
4. **Tolerate:** It may not always may be necessary (or appropriate) to take action to treat risks (for example, where the cost of treating the risk is considered to outweigh the potential benefits). If the risk is shown as 'green' after mitigating actions are applied, it is likely that the risk can be tolerated.

Risk mitigation

Risk mitigation is the process of putting controls and actions put in place to reduce the likelihood of the risk occurring, or to minimise the impact of the risk if it does occur.

An internal control system incorporating policies, processes, business continuity arrangements and other aspects of Council's operations should, when taken together:

- enable Council to respond appropriately to risks
- help ensure the quality of internal and external reporting. This requires the maintenance of proper records and processes that generate the flow of timely, relevant and reliable information, and
- help ensure compliance with applicable laws and regulations, and also with internal policies. This would include, for example, having formal written procedures and policies applied consistently across the organisation supported by training for staff.

As noted above, the residual risk which remains after taking account of the relevant mitigations is the net risk. It is also good practice to define 'target' risk which, in simple terms, is the tolerable level of risk that council should aim for (i.e. where no further mitigating actions are required).

Monitor and Review

Management is expected to regularly monitor and review identified risks relevant to their department or program/project. Appendix 4 (Net Risk Management Responsibility) sets out who assumes responsibility for each level of net risk and also the level of risk management that is required.

In addition to the Management Risk Workshop, risks will be periodically scrutinised by Council's Audit Panel, and also during Council's Annual Planning and annual insurance renewal processes.

Communicate and Consult

Communication and consultation about risk will be regular and effective, and will be to both internal and external stakeholders.



The outcomes of the Management Risk Workshop will be communicated to staff after they are adopted, and periodic risk management training and awareness will also be undertaken to help build a risk aware culture within Council.

Documentation

The risk management process must be documented at each stage from initial concept, design or planning stage right through to the project or operational component, including strategic objectives, with any review or changes continually documented.

Adequate documentation will ensure the integrity of the process, and an adequate audit trail of a structured approach to risk identification and treatment options, including the recording of decision making and continuously developing a positive risk profile for Council. The risk management process will be covered within the Risk Management Procedures.

Part 3 Risk Management Structure

Risk Types

To ensure that Council fully documents all of the risks that it faces and their implications, risks will be identified and assessed as one the following three (3) types:

1. Strategic risks

Strategic risks are external and internal risks that, if realised, could have a significant detrimental effect on Council's key business processes and activities. Strategic risks have the potential to prevent Council from delivering the objectives set out in its Annual Plan.

2. Operational risks

Operational risks are risks relating to capital and operational projects and programs that, if realised, could have a significant detrimental effect on a project or program's key objectives and activities.

3. Major Project risks

Major project risks are risks that, if realised, could have a significant detrimental effect on the outcome or deliverable of one of Council's major projects.

For the purposes of Council's risk framework, a 'major project' is any capital or operational project which has:

- a total value of \$4,000,000 or greater, or
- multiple external stakeholders (other than ratepayers), or
- senior management oversight and the General Manager otherwise determines that the project is a major project because of its strategic importance or other influential factors.

Risk registers

Council will establish and maintain the following two (2) risk registers:

Strategic and Key Operational Risk Register

The Strategic and Key Operational Risk Register will capture the most significant risks that Council faces. Strategic and key operational risks are sometimes referred to as "headline risks" because, if realised they may be a newsworthy event (i.e. they would result in a headline).

A risk will be elevated to the Strategic and Key Operational Risk Register where an internal or external review has determined that the risk:

1. has a 'High' or 'Significant' risk rating, and
2. poses a significant strategic or operational risk to Council.



Not all 'High' or 'Significant' risks will require escalation, only those where the risk (if realised) would have a significant detrimental impact on Council's ability to carry out its functions.

An escalation of a risk to the Strategic and Key Operational Risk Register will ordinarily require the support of the Executive Leadership Team (ELT) and the endorsement of Council's Audit Panel.

Operational Risk Register

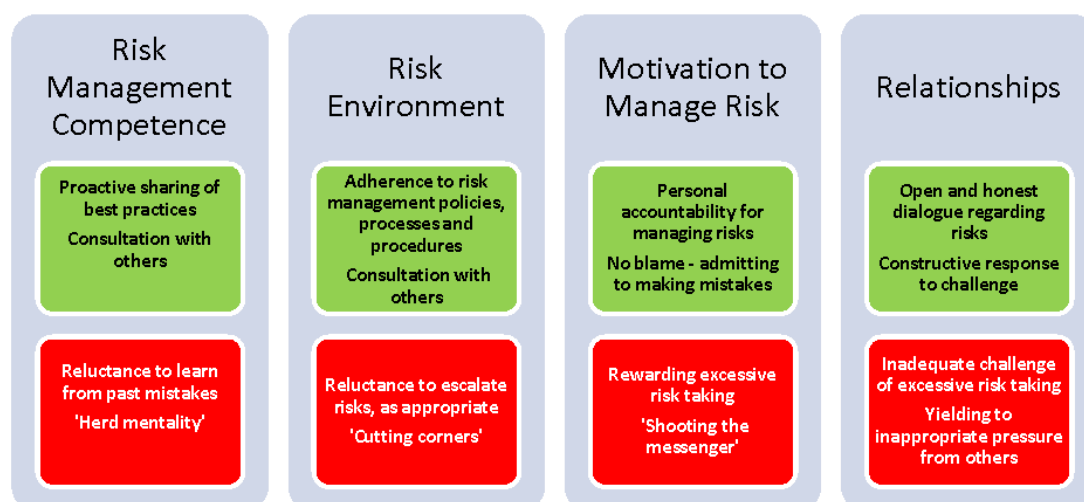
The Operational Risk Register captures ordinary operational risks faced by Council that are not strategic or key operational risks. As noted above, operational risks are those risks identified by the operational teams for both capital and operational projects and programs (including major projects).

The Operational Risk Register will be subject to periodic review by ELT and/or Audit Panel, which may eventuate in risk/s being escalated to the Strategic and Key Operational Risk Register.

Part 4 Risk Culture

A key part of achieving the objectives of Council's risk framework is establishing a positive risk culture within the organisation.

A summary of some of the positive and detrimental behaviours that respectively work for and against our desired risk culture are illustrated below:



Part 5 Accountability and Responsibility

Accountability and responsibility for the Council's performance and overall management of risk lies with the General Manager. However, it is the responsibility of all staff to be engaged in the functions of managing risk.

The following table provides guidance to the accountabilities and responsibilities for managing risk within Council:

Role / Group	Risk Management Responsibilities
Aldermen	- determine and articulate Council's risk appetite and tolerance - champion this Directive, ensuring it is appropriate and implemented and continually evolving to reflect the changing environment - approve Council's risk profile, and



Risk Management Directive

Role / Group	Risk Management Responsibilities
	• endorse the approach to managing significant and critical risk areas.
General Manager (as an individual) Executive Leadership Team (as a group) [ELT]	• establish and maintain an appropriate system of internal controls for Council • review recommendations from the Audit Panel and other assurance (internal and external auditors and local government regulators) and review activities and implement improvements as required • support Aldermen in determining Council's risk appetite and tolerance • review and monitor the performance of this Directive • champion this Directive, ensuring it is appropriate and implemented and continually evolving to reflect the changing environment, and • review, maintain and continuously improve Council's risk profile.
Directors (as individuals)	• model good risk management behaviours • contribute to the development of the Council's risk profile • review directorate risk profiles, as appropriate • review and assess the current and planned approach to managing significant and critical risk areas • ensure this Directive is implemented in the departments, sections, business units, teams, and projects, and • support staff engaged with risk in an appropriate and informed manner, regardless of the outcome.
Audit Panel	• review this Directive and any key documents related to it, including (but not limited to): ◦ risk management plan and risk registers ◦ fraud and corruption control plan and register ◦ business continuity plan, and ◦ emergency management response plans • review the adequacy of controls that are designed to ensure Council's compliance with legislation • review the adequacy of Council's Governance Framework and arrangements • review the adequacy of Council's internal control environment • provide advice to Council to help them meet their external accountability obligations, including statutory and fiduciary duties • review the adequacy of the management's response to reports of internal and, as far as practicable, external audits, and • review the content of reports of internal and external audits and to provide endorsement to Council of management's comments and strategies.
Manager, Governance and Risk	• lead risk activities, initiatives and assessments and encourage effective risk management within their area • provide practical guidance and support on risk management and security



Risk Management Directive

Role / Group	Risk Management Responsibilities
	strategies for Council to effectively deliver its critical functions and services - manage, challenge and drive risk management development within Council - facilitate the implementation of Council's Business Continuity Management Plans and the delivery of related outcomes, including assisting with the development and review of Business Continuity Plan initiatives - review and report on Council's operational risks (including recommending and implementing appropriate mitigation strategies as required), and - report to ELT on progress of risk management and security initiatives, including identifying and raising significant issues for decision making and opportunities for improvement.
Senior Risk and Assurance Advisor	- coordinate the implementation of the Directive - coordinate risk management planning to ensure consistency and accuracy of practice - facilitate, challenge and drive risk management development within Council: - escalate risk concerns when identified as approaching set or key risk appetite and/or risk tolerance limits - coach, mentor and advise on determining Council's risk appetite and tolerance, through consultation, cooperation and coordination - champion this Directive, ensuring it is appropriate and implemented and continually evolving to reflect the changing environment - report to the ELT and Audit Panel at regular intervals, and - act as the secretariat of the Audit Panel.
Managers, Senior Advisors, Coordinators and Supervisors	- identify, review and manage the risks, risk profiles and risk registers for their teams - ensure reports to Council include evidence of Council's Directive in their decision making - appropriately recognise risk management behaviours (positive or negative) within their teams - facilitate, challenge and drive risk management development within Council - escalate risk concerns when identified as approaching set or key risk appetite and/or risk tolerance limits, and - communicate risk information upwards and across Council wherever needed.
Risk Owners	- appointed to be the primary point of responsibility for monitoring and achieving identified control measures for either a specific risk, or a number of identified risks - understand the risks they are charged with and request sufficient resources and be sufficiently senior to influence the management of the



Risk Management Directive

Role / Group	Risk Management Responsibilities
	identified risks • understand and interpret the Council's risk appetite and tolerance as it applies to their risks • maintain the risk in appropriate risk registers • escalate risk concerns when identified risk is approaching set limits or key risk tolerance levels • actively monitor the risk context to understand and respond to any changes (actual or likely) • actively challenge control owners and the effectiveness of control measures • escalate risk concerns when identified as approaching set or key risk appetite and/or risk tolerance limits, and • communicate and report on the risk whenever required.
Control Owners	• responsible for maintaining controls or implementing treatment programmes • actively monitor the continued viability, relevance and effectiveness of the control measures and/or treatment programme • inform the relevant 'risk owner' should the effectiveness of the control measures or the treatment, be at risk, and • escalate risk control concerns when identified as approaching set limits or key risk tolerance levels
All staff	• recognise, communicate and respond to expected, emerging or changing risks • contribute to the process of developing risk profiles for their activities • implement risk plans within their area of responsibility, and • escalate risk concerns when identified as approaching set limits or key risk tolerance levels.

Refer to [Appendix 4 \(Net Risk Management Responsibility\)](#) for further information about roles and responsibilities for different risk ratings.

Part 6 Appendices

The following appendices to this Directive form part of Council's Risk Framework:

Appendix 1: Risk Likelihood Criteria

Appendix 2: Risk Consequence Criteria

Appendix 3: Net Risk Matrix

Appendix 4: Net Risk Management Responsibility



Appendix 1: Risk Likelihood Criteria

Likelihood Rating	Probability	General Definition	Frequency
L5	Almost Certain	Very likely. The event is expected to occur in most circumstances as there is evidence that predicts regular occurrence.	Present day to within 3 months' time
L4	Likely	There is a strong possibility that the event will occur as there is evidence that predicts frequent occurrence.	3 months to within 1 years' time
L3	Possible	The event might occur at some time as there is evidence that predicts causal occurrence	1 year to within 3 years' time
L2	Unlikely	The event is not expected to occur but there is a slight possibility that it may occur at some time.	3 years to within 10 years' time
L1	Rare	Highly unlikely but may occur in exceptional circumstances. The event could happen, but probably never will.	10 years or more



Appendix 2: Risk Consequence Criteria

Consequence Rating	Consequence	Financial Loss Funds / Assets *	Staff Resources Loss	Reputation	WH&S	Business Continuity	Public Safety	Local Economic Growth	Environment & Sustainability	Legal
C5	Severe	Strategic: \$1M or more Operational: 25% or more of total value (**)	10% or more total loss of staff resources assigned	Significant and sustained adverse media coverage (more than 6 months)	Fatality or permanent disability	Widespread or partial loss of operational capacity (more than 3 months)	Large number of serious injuries, loss of lives and/or loss of homes	Widespread business failure and/or loss of employment	Widespread, long-term damage. Loss of native wildlife, and major contamination or destruction of habitat	Significant legal, regulatory or policy failure. Prosecution by authorities
C4	Major	Strategic: \$600K to \$1M Operational: 15% to 25% of total value	5% to 10% total loss of staff resources assigned	Significant and sustained adverse media coverage (less than 6 months)	Lost time injury or illness	Widespread or partial loss of operational capacity (1 month to 3 months)	Isolated instances of serious injuries, loss of lives, and/or loss of homes	Isolated instances of business failure and/or loss of employment	Isolated, long term damage. Loss of native species, and contamination or destruction of habitat	Major legal, regulatory or policy failure. Threat of prosecution by authorities
C3	Moderate	Strategic: \$200K to \$600K Operational: 5% to 15% of total value	2% to 5% total loss of staff resources assigned	Intermittent adverse media coverage (less than 1 month)	Restricted duties due to injury or illness	Widespread or partial loss of operational capacity (1 week to 1 month)	Noticeable rise in illness, and/or injuries	Business stagnation, no growth, no employment opportunities	Isolated instances of short-term damage. Potential loss of native species, and some contamination	Limited legal, regulatory or internal policy failure
C2	Minor	Strategic: \$40K to \$200K Operational: 1% to 5% of total value	1% to 2% total loss of staff resources assigned	Adverse media coverage (one-off)	Medical treatment due to injury or illness	Widespread or partial loss of operational capacity (1 day to 1 week)	Serious near misses or minor injuries	Evidence of very slow growth. No change to unemployment	Reversible minor instances of damage and minor contamination or destruction of habitat	Minor legal, regulatory or internal policy failure
C1	Insignificant	Strategic: < \$40K Operational: < 1% of total value	< 1% total loss of staff resources assigned	Has no impact on Council's reputation at any level	First Aid injury or illness	Wide-spread or partial loss of operational capacity (up to 1 day)	Potential threat	Some growth and employment opportunities	Noticeable but very minor impact	Insignificant legal, regulatory or internal policy failure

(*) Where the operational loss is equal to or greater than its comparative strategic loss dollar value, then use the consequence rating relevant to that strategic dollar value.

(**) 'total value' = program or project's total costs or total funding (whichever is relevant)



Appendix 3: Net Risk Matrix

Consequence	Likelihood				
	L1	L2	L3	L4	L5
	Rare	Unlikely	Possible	Likely	Almost Certain
C5 Severe	Moderate	Notable	Significant	High	High
C4 Major	Low	Moderate	Notable	Significant	High
C3 Moderate	Low	Moderate	Moderate	Notable	Significant
C2 Minor	Low	Low	Moderate	Moderate	Notable
C1 Insignificant	Low	Low	Low	Low	Moderate

'Net Risk' means risk that remains after considering the treatments and controls put in place to mitigate the gross risk.



Appendix 4: Net Risk Management Responsibility

Net Risk Rating*	Risk Management Responsibility	Risk Management Level
High	General Manager must be informed. Executive Leadership Team informed and is involved in the decision making to accept or mitigate the risk.	Active management
Significant	Executive Leadership Team to monitor. Management responsibility to be specified. Departmental manager to actively control the risk.	Active management / Control critical
Notable	Management attention required. Departmental manager to accept or delegate responsibility to actively control the risk.	Control critical
Moderate	Coordinator, Program/Team leader to undertake specific monitoring and/or determine response procedures to the risk.	No major concern
Low	Coordinator, Program/Team leader to monitor risk through application of routine procedures (unlikely to require specific application of resources).	No major concern

* Refer to Appendix 3: Net Risk Matrix



Title	Risk Management Policy
Council Resolution	Item ### (## 2017) as per Council Minutes
Responsible Directorate	Corporate Governance
Due for Review	Four (4) years from Council Resolution Date
Strategic Plan Reference	4.1 Govern in the best interests of our community 4.1.2 Manage the City's assets soundly for the long term benefit of the community
ECM	Council Policy

PURPOSE

The purpose of this policy is to ensure that Council has appropriate risk management practices and procedures in place to minimise Council's exposure to risks which may adversely impact its ability to carry out its functions and achieve its objectives.

SCOPE

This policy applies to all risk management activities undertaken by Council.

STATUTORY REQUIREMENTS

Acts	Not Applicable
Regulations	Not Applicable
Australian/International Standards	AS/NZS ISO 31000:2009 Risk management – Principles and guidelines

POLICY STATEMENT

- Council recognises that risk management is essential for effective strategic and financial planning, and for the continuing operations of Council.
- Council will ensure that the organisation, its employees, and the Glenorchy community are protected against loss through the application of sound risk management practices.
- Council will establish and maintain a Risk Management Framework which sets out Council's approach to identifying and managing risks that, if realised, may prevent Council from carrying out its functions and achieving its objectives.
- Council's Risk Management Framework (which includes this policy) will:
 - be based on the principles in the *AS/NZS: 31000:2009 Risk Management – Principles and guidelines* and any supporting documents to that standard
 - include, at a minimum, a Risk Management Directive and a Risk Management Procedure which, collectively, will clearly articulate Council's risk management philosophy and the processes and procedures for identifying risks, analysing and assessing risks, treating and controlling risks, and monitoring, reporting and reviewing risks, and
 - provide an appropriate administrative structure to meet the Council's agreed policy objectives and organisational responsibilities for the management of risk.
- Council will review its risk management practices regularly, to ensure that:
 - Council is meeting its risk management obligations carrying out its risk management activities in line with best-practice



- b) Council has a detailed and current understanding of the nature of risks facing the organisation and strategies in place to eliminate or mitigate them, and
 - c) Council's current risk management practices are meeting its objectives as articulated in the Risk Management Framework.
6. Council will use its best endeavours to develop and promote a culture of risk management awareness among its staff, in which an understanding of Council's risk management philosophy, processes and procedures forms part of Council's decision making at all levels.

BACKGROUND

Due to the nature and multitude of services that Council provides to the community, Council faces a large and diverse number of risks.

In order to protect the interests of the community it represents, it is necessary for Council to manage risk effectively through a robust risk management framework. Apart from minimising financial loss and adverse publicity, Council's risk management practices must balance legal requirements and public expectations, and provide for the safety and wellbeing of employees, contractors and the community in general.

RISK MANAGEMENT POLICY

Policy Manual Number 01-2

Council Minutes Ref: 11th October 2010 (Item 14)
25th June 2007 (item 13)
18th August 2003 (Item12)

File Ref: 01902

Author: RISK MANAGEMENT COORDINATOR - MR S
LOVELL

Department: CORPORATE SERVICES

Background

The risks faced by Local Government are many and varied and it can be reasonably argued that Local Government, by the very nature of the multitude of services provided to the community, faces a wider range of risks than the majority of corporate companies.

Council recognizes that risk management is essential for sound strategic and financial planning and the continuing operations of the Council.

Apart from minimising financial loss and adverse publicity, risk management must balance legal requirements and public expectations, together with providing for the safety and wellbeing of employees, contractors and the community in general.

Adoption of the AS/NZS: 31000:2009 Risk Management Standard will ensure that the Council meets its duty of care. The Standard will form the basis of Council's risk management philosophy, strategies and processes.

Council will ensure that the Organisation, its employees and the community are reasonably protected against loss through the application of sound management principles and practices to eliminate or minimise exposure to risks and adverse impact on corporate objectives.

A Risk Management policy should provide a system of risk management that;

- is established, implemented, and maintained in accordance with AS/NZS: 31000:2009 and organisational responsibilities,
- provides appropriate responsibility, resources and authority for those persons overseeing the policy objectives and organisational responsibilities,
- provides an appropriate administrative structure to meet the policy objectives and organisational responsibilities, and
- ensures that the organisation will review risk management on a regular basis through the Risk Management Group to ensure policy outcomes and organisational responsibilities are being met.

Council's Risk Management policy seeks to ensure that the organisational context in which risk management procedures are to be carried out, is identified so that there is an understanding of the nature of the risks affecting the organisation.

A systematic process of identification of risks, of analysing and assessing risks, of treating and controlling risks, and of monitoring, reporting and reviewing risks will be implemented based on the Australian standard.

Council will ensure that the organisation can meet its responsibilities in relation to service delivery outcomes, governance, corporate management, operational management, accountability, transparency, probity, procedural fairness, due diligence, duty of care, compliance, regulatory and other important responsibilities.

Policy Statement

1. AS/NZS: 31000:2009 Risk Management Standard and accompanying Guidelines (HB 327:2010) will form the basis of Council's risk management philosophy, strategies and processes.
2. Council will protect the public's interest in the use, maintenance and utilisation of the Council's assets and resources.
3. Council will maintain a Risk Framework that articulates a comprehensive approach for Glenorchy City Council to adopt in identifying and managing risks, which if not realised could prevent Council effectively achieving its' business goals and strategies.
4. The risk management policy is to be communicated to all persons and stakeholders that need to be aware of these requirements, so that awareness and familiarity with what is required is achieved.
5. Appropriate risk treatment strategies will be included in organisational procedures and processes needed to assist Council in achieving its' business outcomes. These strategies will be in accordance with relevant standards, codes of practice and appropriate legislative guidelines.

This policy rescinds

Previous Risk Management Policy

Review (5 years) 11th October 2015

<i>Status:</i> Current

POLICY DOCUMENT CONTROL SHEET

Policy Name: Risk Management Policy

Policy No: 01-2

Department: Corporate Services

Date Policy Approved by Council:

Reviewed by (Name and Job Title of officer)	Nature of Amendment (List changes made to Policy)	Date Council Endorsed Amendment
Stuart Lovell Risk Management Officer	New Policy	18 th August 2003
Stuart Lovell Risk Management Officer	Updated to reflect change to standards.	25 th June 2007
Stuart Lovell – Risk Management Coordinator	Updated Policy to incorporate Risk Management Framework	11 th October 2010

Purchasing Exemption RegisterRegulation 28(j) *Local Government (General) Regulations 2015*

(requirement to report to Council where goods or services purchased in circumstances where a public tender or quotation process is not used)

Date	Supplier	Amount (ex GST)	Exemption Clause	Reason	Requested by:	Decision by:	Title
30/08/2017	Nigel Sugden, Sugden & Gee	\$21,600	9.2 (e), (f)	Contract and project management of remediation of building defects associated with the KGV building.	C. Higgins	T. McMullen	A/GM
4/09/2017	Wilson Blue	\$135 p/h	9.2 (c), (e), (f)	Ms Wilson has been, for more than 12 months, providing project management services to our website redevelopment project on a sub-consultancy basis with Peter Carr Advisory. This relationship no longer exists and I am advised that PCA have consented to having no further part in the project. There is therefore a need to procure Wilson Blue's services directly. Given her significant history with the project, it would be a retrograde step to re-procure the project management services for this project.	D. Ronaldson	T. McMullen	A/GM
4/09/2017	Hazell Brothers (IPM Safety as sub-contractors)	\$45,000	9.2 (a)	Excavator and truck hire and WHS inspections associated with post-fire remediation at former Claremont Primary School.	A. Askey	T. McMullen	A/GM
4/09/2017	Technology One	\$15,700	9.2 (c)	Technology One Variation 14 for Property and Rating changes to overlay data migration scripts and Pro-forma Work by T1 Consultant Sue Barnewall	A. Baccus	D. Ronaldson	A/DCEDB
6/09/2017	Tiffreno Builders Pty Ltd	\$2,955	9.2 (a)	Building repairs at DEC following break and enter event.	S. Cooper	T. McMullen	A/GM
6/09/2017	Alpha Electrics	\$12,050	9.2 (d)	Additional repair and replacement works required to damaged pump at BH11 (Derwent Park	F. Chen	T. McMullen	A/GM

Date	Supplier	Amount (ex GST)	Exemption Clause	Reason	Requested by:	Decision by:	Title
				Stormwater Harvesting)			
6/09/2017	Permeate Partners	\$9,675	9.2 (c)	Derwent Park Stormwater Reuse Scheme Feasibility Review	F. Chen	T. McMullen	A/GM
19/09/2017	Danny Warren	\$10,437	9.2 (c)	Cabling of fibre optic cables between computer room and Community Development and computer room and ICT. Contractor has existing knowledge of cable paths and server room.	I. Foster	T. McMullen	A/GM
15/09/2017	Technology One	\$29,799	9.2 (b)	Technology One ECM Support and Maintenance Fee.	V. Bonwick	D. Ronaldson	A/DCEDB

Outstanding Actions List: Open Council Meeting

Action List - Open Council Meeting

Attachment 1

Council Meeting Date	Item No.	Subject / Issue	Council Adopted Action	Directorate	Comments / Update	Estimated Completion Date
0/06/2014	22.3	Notice of Motion - Alderman C. Lucas - 2 - Car Parking Strategy	Council provide a report on current Car parking strategy in the City commercial precincts including: 1. The present parking strategy for the future of the city, and any proposed changes. 2. Details Cash-in-Lieu payments in Commercial areas, Glenorchy precinct, Moonah and Claremont – including total fees collected and numbers of spaces-in-lieu by year since the year 2000. 3. Any feedback received from developers. 4. How application of this policy and fee levels relate to the Regional Planning scheme. 5. A schedule of fee rates for all Southern councils.	CSI	The draft Parking Strategy was presented to Council at its meeting on 13 June 2017. Council approved the draft Strategy for public consultation. Public Consultation on the draft Strategy was completed on 28 July 2017. The final version of the strategy is expected to be presented to Council at the November Council meeting. Completion of the final version of the strategy has been delayed due to resource constraints and urgent Traffic related issues such as the closure of Derwent Park Rd for emergency Tasgas trunk main repair works.	30-Nov-17
1/09/2014	13.4	Question on Notice - Alderman K. Johnston (Relates to Notice of Motion - Alderman K. Johnston - CCTV Evaluation (12 February 2013))	That a report be prepared by the Director Community, Economic Development & Business following consultation with Tasmania Police with respect to the Closed Circuit TV system. That the CCTV system be evaluated every six months and a report produced with a range of identified KPIs. That Council as a priority develop and adopt CCTV system operating procedures and protocols. (refer to Question On Notice for specific details)	CSI / CEBD	As at Wednesday, 27 September 2017 most of the required technical works had been completed or nearing completion but there are unforeseen issues with the wireless interface that require rectification. The identified electrical safety issues and resultant wiring repairs to conform with Australian Standards are nearing completion. A further update will be reported at the Council meeting.	30-Oct-17
9/06/2015	13.3	Notice of Motion Alderman M. Stevenson	That a brief projects and major operational items summary be provided at each Council meeting.	General Manager	Blackadder Consultants provided a draft report to Council on 27 December 2016. The draft report has been circulated to departmental managers who are currently formulating a structure for the reporting model. The reporting model and potential actions will be presented to Council at a future meeting.	To be advised
5/03/2016	9	Intercity Cycleway Proposed Chicane Gate Changes at Road Intersections	That Council remove one of the existing "paired" chicane gates, to replicate what the Hobart City Council has completed, at all road crossings along the intercity cycleway.	CSI	At the 24 October 2016 meeting, Council approved the release of \$105,000 from the Strategic Asset Management Reserve to fund the project. The majority of the chicane gates have now been removed. Project planning has been completed for the remainder of the project and line marking and the first stage of signage installed. Cycling South are arranging fabrication of new signs for the chicane gates and it is understood that the remaining signs will be installed by the end of October 2017.	31-Oct-17

Outstanding Actions List: Open Council Meeting

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Attachment 1

Council Meeting Date	Item No.	Subject / Issue	Council Adopted Action	Directorate	Comments / Update	Estimated Completion Date
3/04/2016	10	Smoking Ban Along the Intercity Shared Pathway	That this item lay on the table for further information and consideration of this item at a future Council Workshop.	CSI	HCC's City Planning Committee approved HCC's support for the initiative at its meeting on 10 April 2017 and we were formally notified on the 5 June 2017. A draft joint letter to other stakeholders was sent to CoH for approval on 6 July 2017 however it was identified that the letter required amendments to facilitate a different pathway for State Government declaration (ie now requiring a change to the PHA 1997). An amended draft was forwarded to CoH on 15 September 2017 and awaiting response from their legal team.	TBA (subject to sign off by HCC of draft petition to the State Government)
3/05/2016	11	Proposed Environmental Amenity By-law	That Council: DECLARES its intention to make the Environmental Amenity By-law No. 1 2016 pursuant to s156 of the Local Government Act 1993; and APPROVES the initiation of the statutory process required under Part 11 of the Local Government Act 1993 for making the proposed Environmental Amenity By-law No. 1 of 2016.	CSI	The by-law was published in the Government Gazette on 23 August 2017 and therefore has come into effect as of that date. Accordingly this item is considered complete and the only remaining formality is the presentation of the by-law to both Houses of Parliament. Should this not be successful, Council will be further updated.	COMPLETED
4/07/2016	11	Acquisition and Disposal of Land - Bosco Drive AND Dalmacia Place	That Council: APPROVE Council Officers negotiations and settlement of the purchase of private land at 2/1 Dalmacia Place for the purpose of allowing Council to formalise and maintain a public walkway through Dalmacia Place to Bosco Drive APPROVE Council Officers to continue negotiations to dispose of part of the public land at 23 Bosco Drive for the purpose of extending the private rear yard of 19 Bosco Drive, subject to the compliance of the requirements of section 178 of the Local Government Act 1993 (noting the investigation of the possibility of a similar sale to the owners of 21 Bosco Drive, to establish a safe, easily maintained and monitored piece of land which will comprise part of the public walkway). APPROVES the advertising of Council's intention to dispose of any part of the public land at 23 Bosco Drive under section 178 of the <i>Local Government Act 1993</i> .	CG	A contract for the purchase of the adjoining parcel of land (2/1 Dalmacia Place – to be used by Council as a reserve) was provided to the vendor for execution some months ago, and some amendments were sought by the vendor's solicitor in July 2017. This has now been finalised, and Council has signed and sealed the contract, and contracts will be exchanged with the vendor's solicitor shortly. The Council approved the sale of parts of 23 Bosco Drive to the owners of 19 Bosco Drive and 21 Bosco Drive at its meeting on 13 June 2017. Contracts were sent to each purchaser. The owner of 21 Bosco Drive has signed and returned their contract which has now been executed by the Council. Council is currently waiting to receive confirmation from the conveyancer acting for the owners of 19 Bosco Drive that their client is ready to sign the contract. Negotiations with this contract have taken longer than expected due to last minute requests for contract amendments from the owners of 19 Bosco Drive. It would be ideal to get this contract, and the contract for the purchase of 2/1 Dalmacia Place, on foot at the same time to avoid any undesired consequences for this project.	To be advised
9/08/2016	17.1	Notice of Motion - Alderman J Branch-Allen	1. That Aldermen be on a rotating roster system at Council once a month to meet with the community. 2. Appointment could be pre arranged for members of the community who wanted to book or a drop-in system. 3. Advertising to be put in the Glenorchy Gazette each month of who is on duty and day and time they will be at Council. 4. That the office down stairs used by the JP on duty be used with similar signage outside the door, and 5. That this be conducted on a 3 month trial.	CEBD	Planning was underway to implement this process in the first quarter of 2017, with a trial planned for Feb, Mar and April 2017. However, the process has been placed on hold due to the suspension of Aldermen and will be resumed subject to the outcome of the Board of Inquiry.	To be advised

Outstanding Actions List: Open Council Meeting

Action List - Open Council Meeting

Council Meeting Date	Item No.	Subject / Issue	Council Adopted Action	Directorate	Comments / Update	Estimated Completion Date
1/11/2016	19.4	Question on Notice - Alderman M. Stevenson	Alderman Stevenson noted that the Shared Services Agreement included a requirement that the committee receive an Annual Report on the group's activities. He requested that Council receive regular reports on the activities of the Shared Services Committee.	CG	Council received a final draft of the LGSS Agreement on 10 March 2017, which is currently being reviewed. A report presenting the draft agreement to Council and making recommendations will be presented to Council at a future meeting.	To be advised
3/01/2017	11	Question taken on notice - Alderman Stevenson	Management to provide a report to Council identifying the deficiencies in items that are include in the Good Governance Framework which was adopted by Council on 23 January 2017.	CG	A report will be presented to Council at the 30 October 2017 Council meeting.	30-Oct-17