



Darwin City Council

Wheel of Governance



Like a wheel that constantly rolls along the Council must have a governance framework to enable it to roll on as smoothly as possible.

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DARWIN CITY COUNCIL
STATEMENT
OF
BUSINESS ETHICS

Darwin City Council Statement of Business Ethics

Chief Executive Officer's foreword

This Statement of Business Ethics provides guidance for the private sector when doing business with the Darwin City Council.

It sets out Council's ethical standards and the expectation is that our goods and service providers, contractors and business partners will comply with these standards in all their dealings with us. The statement also outlines what all goods and service providers, contractors and business partners can expect of the Darwin City Council and its staff.

The Darwin City Council strives to be an open and accountable entity that provides leadership in local government. Protection of the public interest, proper use of public resources and prevention of breaches of public trust are among Council's primary concerns and responsibilities.

Council aims to build and maintain ethical relationships with the private sector by encouraging transparency and accountability in all its dealings with the private sector. This includes tendering, contracting, supply of goods and services, consultancies and business partnerships.

It also aims and, indeed, has an obligation, to promote integrity, ethical conduct and accountability within Council and the local government community generally. Council recognises the obligations of good governance and is accountable to its community for the proper administration of its assets and resources.

Council's procurement policies and business ethics are designed to be consistent with legislation, government regulation and good public administrative practice. Its aim is to provide a guiding example to the local government community through its own work practices and standards.

Council staff and Elected Members are expected to maintain high standards of integrity and ethical conduct consistent with the positions of trust they hold. Council expects no less of its service providers, contractors and business partners.

The Darwin City Council is committed to providing leadership, objectivity, accountability, openness and transparency, honesty, impartiality and fairness in all its dealings with its service providers.

This Statement of Business Ethics is intended to ensure that business relationships between the Darwin City Council and private sector service providers and contractors are fair and productive for all. To achieve this, it is important that private sector service providers understand the public sector's core values and support public sector contracting and ethical policies.

1. Darwin City Council's Key Business Principles

- The principle of best value for money is at the core of all of Council's business relationships with private sector suppliers of goods and services.
- Best value for money does not automatically mean the lowest price. Rather, Council must balance all relevant factors, including initial cost, whole-of-life costs, quality, reliability, past performance and timeliness in determining true value for money.
- Obtaining the best value for money also includes ensuring all business relationships are honest, ethical, fair and consistent.
- Fairness means being objective, reasonable and even-handed. It does not mean pleasing everyone. If some people are adversely affected by a particular decision, that is unfortunate, but not necessarily unfair or unreasonable. Council will strive to be fair by ensuring that its processes are appropriate and demonstrate this by being open and accountable, wherever practical.
- This does not mean Council will always go to open public tender. Council will only deal exclusively with parties in exceptional circumstances, and where it can demonstrate that there are valid reasons for doing so, based on sound probity principles. In some cases, required under the Local Government Act, Council might need to apply to the Minister of Local Government, who will review and either approve or deny the request.
- Council's business dealings will be transparent and open to public scrutiny wherever possible.
- Council officers will ensure that its prospective contractors and suppliers of services are afforded equal opportunity to tender/quote in relation to all goods and services.
- Council officers will adhere to all aspects of Council's Procurement Policy in the matter of procurement, including the procedures pertaining to the tendering process.



- Contractors or suppliers must not canvass Elected Members or Council staff in respect to gaining an advantage over other contractors or suppliers for the supply of goods or services to Council.
- Council officers must not, by virtue of their position, accept or acquire for a personal advantage any gifts, gratuities or hospitality except that which is permitted under Council's Code of Conduct and Policy on Acceptance of Gifts and Benefits.
- Council officers must not approach a contractor or supplier to pay a gift or benefit for the receipt of advice.
- Any person with a conflict of interest must declare that interest as soon as he or she becomes aware of the conflict of interest. This is whether or not the conflict of interest is real, or one that could be reasonably perceived as being a potential conflict of interest.
- In order to protect the commercial interests of all persons, no disclosure of confidential or proprietary information will be allowed. Council officers are only permitted to disclose information in the course of official Council business.

2. What private sector service providers can expect from Council and its staff

Council will ensure that all its policies, procedures and practices relating to tendering, contracting and the purchase of goods or services are consistent with best practice and the highest standards of ethical conduct, as it pertains to public administration.

Council staff are bound by Council's Code of Conduct. When doing business with the private sector, staff are accountable for their actions and are expected to comply with the following requirements:

- Council staff will abide by the law and all relevant policies and procedures.
- Council staff are accountable for their actions and are expected to act in the public interest. This means they will put the public interest ahead of their own interests.
- Council staff should always act with due care and diligence.
- Council staff will use public resources effectively and efficiently.
- Council staff will deal fairly, honestly and ethically with all individuals and organisations.
- Council staff will avoid any conflicts of interest (whether real or perceived).



- Council staff will not solicit or encourage any private service supplier, contractor or business partner to seek to gain any advantage by offering any inducement, gifts or benefits, in order to gain an advantage in Council contracting or tendering processes.

In addition, all Council procurement activities are guided by the following core business principles:

- All potential suppliers will be treated impartially and fairly, and be given equal access to information and opportunities for bids or tenders.
- All procurement activities and decisions will be fully and clearly documented to provide an effective audit trail and to allow for effective performance review of contracts.
- Energy efficient equipment, products containing recycled materials and environmentally friendly products will be purchased wherever reasonably possible.
- Tenders will not be called unless Council firmly intends to proceed to contract.
- Council will not disclose confidential or proprietary information.

3. *What Council asks from private sector providers*

Council requires all private sector goods and service providers, contractors and business partners to observe the following principles when doing business with the Council:

- respect the obligation of public officials to act in accordance with Council's Statement of Business Ethics
- make a commitment not to exert pressure on Council staff or Elected Members to act in ways that contravene the business ethics or Code of Conduct of the Council
- make a commitment not to offer Council staff or Elected Members inducements or incentives such as money, gifts, benefits, entertainment or employment opportunities designed to improperly influence the conduct of staff or Elected Members in their duties or their public office
- comply with Council's procurement policies and procedures
- provide accurate and reliable advice and information when required

- declare actual or perceived conflicts of interest as soon as a supplier, contractor or business partner becomes aware of the conflict
- act ethically, fairly and honestly in all dealings with Council
- take all reasonable steps to prevent the disclosure of confidential Council information
- refrain from engaging in any form of collusive practice
- refrain from discussing Council business or information in the media
- assist Council to prevent any unethical practices in its business relationships with the private sector.

4. Why is compliance with the statement important?

By complying with Council's Statement of business Ethics, private sector suppliers, contractors and business partners will be able to advance their business objectives and interests in a fair and ethical manner. Compliance with the statement will allow them to bid for work on a level playing field and enhance capacity to undertake public sector work with similar compliance requirements in the future.

Because all Council goods and services suppliers, contractors and business partners are required to adhere to the provisions of this statement, compliance will not disadvantage them in any way.

Goods and services suppliers, contractors and business partners of Council should be aware of the consequences of not complying with Council's ethical requirements for doing business. Demonstrated corrupt, improper or unethical conduct could lead to:

- termination of contracts
- loss of future work
- loss of reputation
- investigation for corruption
- matters being referred for criminal investigation.

The consequences for Council staff not complying with the Statement of Ethics include:

- criminal investigation
- disciplinary action
- dismissal.

5. Guidance Notes

Incentives, gifts or benefits

Council only permits staff and Elected Members to accept gifts if:

- gifts are token and of nominal value less than \$30.00
- refusing a gift is likely to be perceived as rude or offensive (this is most likely to occur in ceremonial situations)
- the offer is not targeted at an individual officer.

If a gift is accepted, Council requires staff members to first gain approval from their supervisor and to record the gift in the public *Gifts and Benefits Register*.

Confidentiality and intellectual property rights

Council and its staff are committed to operating in an open and transparent manner as is required of any ethical public sector organisation. This means that information about Council's activities will generally be available to the public, unless there is a specific agreement or reason that any information will be confidential. Thus, suppliers, contractors and business partners of Council should be aware that they may need to specify any commercial, in-confidence information in contractual arrangements they enter into with Council. Council will not disclose such confidential or proprietary information.

All Council information should be treated as confidential unless otherwise indicated.

In any business relationship with Council, parties will respect each other's intellectual property rights. These rights should not be assumed and must be negotiated before they will be recognised by Council. Similarly, Council will specify any limitations on contractors and others acquiring any intellectual property rights as a result of doing work for Council.

Ethical communication

Council recognises that in most situations where communication between public and private sector parties deals with ordinary matters that are not highly sensitive or controversial, specific communication protocols are not usually necessary.

Communication, however, should be clear, direct and accurate. All private sector suppliers, contractors and business partners of Council have an obligation to ensure that their communication with Council and its staff abides by these principles. Council seeks to minimise the risk of any inappropriate influences being brought to bear on the business relationship between itself and its suppliers, contractors and business partners.

Contracting employees

If a supplier, contractor or business partner of Council employs sub-contractors in their work for Council, they must make them aware of this Statement of Business Ethics and their obligation to comply with it.

Secondary employment

Council staff will need approval from the Chief Executive Officer to enter into any secondary employment arrangements with suppliers, contractors, sub-contractors or a business partner of Council. Secondary employment will not be approved if it has the potential to create a real or perceived conflict of interest between the staff member's public official role and his or her private interests.

Conflicts of interest

All Council staff are required to avoid any real or actual conflict of interest with their official duties or office. Similarly, staff are required to avoid or disclose any potential or perceived conflicts of interest which may arise in respect to business relationships with Council's suppliers, contractors and business partners.

Council extends this requirement to all their business partners, contractors and suppliers.

Any real or perceived conflict of interest must be disclosed as soon as possible to the Chief Executive Officer so that appropriate action can be taken to manage the situation. If a member of staff, contractor, supplier or business partner is unsure of whether there is a conflict of interest in a particular case, they should err on the side of caution and discuss the matter with the Chief Executive Officer or seek appropriate advice elsewhere.

Who to contact

Council welcomes any questions regarding this Statement of Business Ethics or any requests to provide additional information.

If anyone is concerned about a possible breach of this Statement of Business Ethics, or about any conduct that could involve fraud, corrupt conduct, maladministration or serious and substantial waste of public funds, please contact Council's Chief Executive Officer, Mr Brendan Dowd at:

Darwin City Council
Harry Chan Avenue
GPO Box 84 Darwin NT 0801

Phone: 08 8930 0300
Email: b.dowd@darwin.nt.gov.au
Fax: 08 8930 0311



WHISTLEBLOWER POLICY

FOR

THE DARWIN CITY COUNCIL

Whistleblower Policy for the Darwin City Council

1. SUPPORT FOR PEOPLE WHO MAKE DISCLOSURES

Darwin City Council is committed to the principles and objectives of an effective Whistleblower Policy.

Council does not tolerate corrupt conduct, maladministration or serious and substantial waste or mismanagement of public resources or public money.

Council does not tolerate improper conduct by its employees, officers or Elected Members, nor the taking of reprisals against those who come forward to disclose such conduct. Council will ensure that any person who is the subject of a disclosure pursuant to this Policy will be given procedural fairness/natural justice.

Council recognises the value and importance of contributions of staff to transparency and accountability and its administrative and management practices. It therefore supports the making of disclosures that reveal corrupt conduct, improper conduct or misconduct, maladministration, serious and substantial waste or mismanagement of public resources or public money, or conduct involving a substantial risk to public health and safety or the environment.

2. PURPOSE OF THE POLICY

This Policy establishes an internal system for reporting disclosures of corrupt conduct, improper conduct or misconduct, maladministration, serious and substantial waste of public resources or public money, or conduct involving substantial risk to public health and safety or the environment, by the Darwin City Council and staff. The Policy applies to Council employees, officers and Elected Members. Disclosures may be made by employees, Elected Members or members of the public.

This Policy is designed to complement normal communication channels between supervisors and staff. Staff are encouraged to continue to raise appropriate matters at any time with their supervisors, but as an alternative, have the option of making a disclosure in accordance with this Policy.

Similarly, this Policy is designed to complement normal communication channels between Council and members of the public. Members of the public are encouraged to continue to raise appropriate matters at any time with Council staff, senior managers and Elected Members.

Members of the public do have an alternative option of making a disclosure in accordance with this Policy.

3. OBJECT OF THE POLICY

The purpose of this Policy is to ensure that staff, Elected Members or members of the public who wish to make disclosures to Council can do so within the framework of the Policy. In doing so, such persons will receive protection from any detrimental actions or reprisals. The Policy also ensures that any matters raised in such disclosures will be properly investigated and rectified if necessary.

The aim of this Policy is to encourage and facilitate disclosure, in the public interest, of corrupt conduct, improper conduct or misconduct, maladministration, serious and substantial waste or mismanagement of public resources or public money, or conduct involving a substantial risk to public health and safety or the environment, within Council. This is achieved by:

- enhancing and augmenting established procedures for making disclosure concerning such matters
- protecting people from reprisals that might otherwise be inflicted on them because of these disclosures
- providing for those disclosures to be properly investigated and dealt with.

4. DEFINITIONS OF KEY TERMS

1. **Corrupt conduct**

Corrupt conduct means:

- conduct of any person (whether or not a public official) that adversely affects, or could adversely affect, either directly or indirectly, the honest performance of a public officer's or public body's functions
- conduct of a public officer that amounts to the dishonest or inappropriately partial performance of any of his or her functions as a public officer
- conduct of a public officer, former public officer or public body that amounts to a breach of public trust
- conduct of public officer, former public officer or public body that amounts to the misuse of information or material acquired in the course of performing his or her official functions
- a conspiracy or attempt to engage in the aforementioned conduct.

Corrupt conduct can take many forms. For example, a public officer might:

- *take a bribe or receive a payment other than his or her wages or salary. in exchange for the discharge of a public duty*
- *favour unmeritorious applications for jobs or grant permits for friends and/or relatives*
- *sell confidential information.*

2. *Improper conduct*

Improper conduct means:

- corrupt conduct
- substantial mismanagement of public resources
- conduct involving substantial risk to public health or safety
- conduct involving substantial risk to the environment.

The conduct, if proven, must be serious enough to constitute a criminal offence, reasonable grounds for dismissal or is of such a serious and significant nature that it is manifestly misconduct on the part of a public officer.

Examples:

- *a council parking inspector declines to issue parking fines to friends who regularly park in Council metered spaces without paying*
- *a council employee uses Council resources for private use*
- *an Elected Member uses a Council vehicle for unauthorised purposes, which do not relate to Council business or affairs.*

3. *Maladministration*

Maladministration for the purpose of this Policy is conduct that involves action or an action of a **serious nature** that is:

- contrary to law
- unreasonable, unjust, oppressive or improperly discriminatory
- based wholly or partly on improper motives.

The conduct covered by these terms includes:

- contrary to law, eg:
 - *a decision or action contrary to law*
 - *a decision or action ultra vires (ie. the decision maker had no power to make the decision or do the act)*
 - *a decision or action contrary to lawful and reasonable orders from people or agencies with authority to make or give such orders*
 - *a breach of natural justice or procedural fairness*
 - *improperly exercising a delegated power (eg, a decision or action not authorised by a delegation or acting under the direction of another)*
 - *unauthorised disclosure of confidential information*
 - *a decision or action induced or affected by fraud.*

- unreasonable, eg:
 - *a decision or action inconsistent with adopted guidelines or policies or with a decision or action that involves similar facts or circumstances not justified by any evidence, or so unreasonable that no reasonable person could so decide or act (e.g., irrational)*
 - *an arbitrary, partial, unfair or inequitable decision or action*
 - *a policy that is applied inflexibly and without regard to the merits of an individual case*
 - *a decision or action that does not take into account all relevant considerations or that takes into account irrelevant considerations*
 - *serious delays in making a decision or taking action*
 - *failing to give notice of rights*
 - *giving wrong, and accurate or misleading advice leading to detriment*
 - *failing to apply the law*
 - *a decision or action based on incorrect or misinterpreted information.*

- unjust, eg:
 - *a decision or action not justified by any evidence or that is unreasonable*
 - *a partial, unfair, inequitable or unconscionable decision or action.*

- oppressive, eg:
 - *an unconscionable decision or action*
 - *where the means used are not reasonably proportional to the ends to be achieved*
 - *an abuse of power, intimidation or harassment.*

- improperly discriminatory, eg:
 - *the inconsistent application of a law, policy or practices without reasonable, justifiable or appropriate reason to do so*
 - *applying a distinction not authorised by law, or failing to make a distinction which is authorised or required by law.*

- based wholly or partly on improper motives, eg:
 - *a decision or action for a purpose other than that for which a power was conferred (ie. in order to achieve a particular outcome)*
 - *a conflict of interest*
 - *bad faith or dishonesty*
 - *seeking or accepting gifts or benefits in connection with performance of official duties*
 - *misusing public property, official services or facilities.*

4. **Serious and Substantial Waste**

The New South Wales Auditor General provides the following working definition:

Serious and substantial waste refers to the uneconomical, inefficient or ineffective use of resources, authorised or unauthorised, which results in a loss/wastage of public funds/resources.

In addressing any complaint of serious and substantial waste, regard will be had to the nature and materiality of the waste.

The following delineation of the definition of serious and substantial waste may be of assistance to public officials and/or public authorities.

Types:

Absolute. *Serious and substantial waste might be regarded in absolute terms, where the waste is regarded as significant, eg. for example, \$200,000.*

Systemic. *The waste indicates a pattern, which results from a system weakness within public authorities.*

Material. *The serious and substantial waste is/was material in terms of the public authority's expenditure or a particular item of expenditure or is/was material to such an extent so as to affect a public authority's capacity to perform its primary functions.*

Material by nature not amount. *The serious and substantial waste may not be material in financial terms but may be significant by nature, ie. it may be improper or inappropriate. Alternatively, this type of waste may constitute 'maladministration'*

Waste can take many forms, eg:

- misappropriation or misuse of public property
- the purchase of unnecessary or inadequate goods and services
- too many staff being employed in a particular area, incurring costs, which might otherwise have been avoided
- staff being remunerated for skills that they do not have, but are required to have under the terms of conditions of their employment
- programs not achieving their objectives and therefore not cost effective.

Waste can result from such things as:

- the absence of appropriate safeguards to prevent the theft or misuse of public property
- purchasing procedures and practices which failed to ensure the goods and services are necessary and adequate for their intended purpose
- purchasing practices, where the lowest price is not obtained for comparable goods or services.

5. Detrimental Action

For the purpose of this Policy, it is wrong for a person to take detrimental action against a person in reprisal for making a disclosure. Detrimental action includes:

- action causing injury, loss or damage
- intimidation or harassment
- discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action.

5. THE REPORTING SYSTEM

1. Contact Persons within the Darwin City Council

Disclosures of corrupt conduct, improper conduct, serious maladministration or detrimental action by the Darwin City Council, its employees or Elected Members may be made to the following officers:

- The Disclosure Coordinator (General Manager Corporate Services – Direct Contact Number: 89300 539)

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

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

Where a person is contemplating making a disclosure and is concerned about approaching the Disclosure Coordinator because he or she may be involved in the complaint, he or she can contact directly the CEO (Direct Contact Number: 89300 505).

Where a person is contemplating making a disclosure about an Elected Member and is concerned about approaching the Disclosure Coordinator or the CEO, he or she can contact the Lord Mayor directly (Direct Contact Number: 89300 517).

2. Alternative Contact Persons

A disclosure about corrupt or improper conduct, serious maladministration or detrimental action by the Darwin City Council, its employees or any Elected Member, may also be made directly to the Ombudsman. Where a disclosure is made to the Ombudsman by a person relying on this Policy and the protection it affords, that person should indicate to the Ombudsman that this is the case.

Contact details:

The NT Ombudsman
PO Box 1344
Darwin NT 0801

email: nt.ombudsman@nt.gov.au

12TH Floor NT House
22 Mitchell Street
Darwin

via the internet:
www.ombudsman.nt.gov.au

phone: **8999 1818 or 1800 806 380**
(toll free)

6. ROLES AND RESPONSIBILITIES

1. Employees

Employees are encouraged to report known or suspected incidents of corrupt or improper conduct, serious maladministration or detrimental action in accordance with this Policy.

All Darwin City Council employees 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.

2. Disclosure Coordinator

The Disclosure Coordinator plays a pivotal role in the internal reporting system of Council and will act as a 'clearing house' for disclosures. (Director Corporate Services) will:

- receive all disclosures forwarded from staff (including records and customer services staff)
- receive all phone calls, emails and letters from members of the public or employees seeking to make a disclosure
- impartially assess each disclosure to determine whether it is the type covered by this Policy
- refer all protected disclosures to the Chief Executive Officer
- be responsible for overseeing and coordinating an investigation where an investigator has been appointed
- act as welfare officer to support the whistleblower and to protect him or her from any detrimental action or reprisals
- advise the whistleblower of the progress of an investigation into the disclosed matter, establish and manage a confidential filing system, and collate and publish statistics on disclosures made
- take all necessary steps to ensure the identities of the whistleblower and person who is the subject of the disclosure are kept confidential
- liaise with the Chief Executive Officer.

3. Investigator

An investigator will be responsible for carrying out an internal investigation into a disclosure where the Chief Executive Officer or the Lord Mayor has referred a matter for investigation. An investigator may be a person from within the Darwin City Council or a consultant engaged for that purpose.

4. Welfare Manager

The Welfare Manager (the Disclosure Coordinator unless another person is appointed) is responsible for looking after the general welfare of the whistleblower. The Welfare Manager will:

- examine the immediate welfare and protection needs of a whistleblower who has made a disclosure and seek to foster a supportive work environment
- advise the whistleblower of the legislative and administrative protection available to him or her
- listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making a disclosure
- ensure the expectations of the whistleblower are realistic.

5. Chief Executive Officer

The Chief Executive Officer has two specific responsibilities arising from this Policy. Firstly, a disclosure may be made direct to the Chief Executive Officer, rather than by way of the internal reporting system established under this Policy. Secondly, the disclosure may be referred by the Disclosure Coordinator.

In each case the Chief Executive Officer will impartially assess each disclosure to determine:

- whether the disclosure appears to be within the meaning of this Policy
- the appropriate action to be taken in relation to the disclosure, for example:
 - no action/declining
 - the appropriate person to take responsibility for dealing with the disclosure
 - preliminary or formal investigation
 - formal investigation
 - prosecution or disciplinary action
 - referral to an investigating authority for investigation or other appropriate action
 - referral to the NT Police (if a criminal matter) or the Local Government Division of the Department of Community Development, Sport and Cultural Affairs (if a breach of *the Local Government Act*).

6. Lord Mayor

The Lord Mayor may also receive disclosures from a member of the public, a Council staff member or an Elected Member, concerning the Chief Executive Officer or an Elected Member. The Mayor will:

- impartially assess each disclosure made to him or her about the Chief Executive Officer or an Elected Member to determine:
 - whether the disclosure appears to be a disclosure within the meaning of this Policy

Note: In making this assessment the Lord Mayor may seek guidance from the Disclosure Coordinator, the Chief Executive Officer (as appropriate) or an investigating authority (ie. the Ombudsman or the Director of the Local Government Division of the Department of Community Development, Sport and Cultural Affairs).

- The appropriate course of action to be taken in relation to the disclosure (in consultation with the Chief Executive Officer, if appropriate), for example:
 - no action/decline
 - the appropriate person to take responsibility for dealing with the disclosure
 - preliminary and or informal investigation
 - formal investigation
 - prosecution or disciplinary action
 - referral to an investigating authority for investigation or other appropriate action
 - referral to the NT Police (if a criminal matter) or the Local Government Division of the Department of Community Development, Sport and Cultural Affairs (if a breach of the *Local Government Act*)
 - referral of disclosures to the Chief Executive Officer for appropriate action if they concern Council administration, within the day-to-day responsibilities of the Chief Executive Officer
 - take all necessary and reasonable steps to ensure that the identities of the person who has made a disclosure, and any person who is the subject of a disclosure, are kept confidential.

7. CONFIDENTIALITY

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

This Policy requires any person who receives information through the handling or investigation of a disclosure which comes within this Policy, not to disclose that information except in certain limited circumstances. Disclosure of information in breach of this Policy will constitute a breach of the Council's Code of Conduct in relation to employees and Elected Members, and appropriate action will be taken. Employees should be aware that a breach of confidentiality in relation to this Policy will be regarded as being of such a serious nature that it will constitute a disciplinary matter and if serious enough could lead to dismissal from employment.

The circumstances in which a person may disclose information obtained about a disclosure made under this Policy include:

- where exercising a function of the Council under this Policy
- when making a report or recommendations under this Policy
- when publishing statistics in the annual report of the Darwin City Council
- in criminal proceedings (for breaches of the *Criminal Code*) or for offences in relation to the *Local Government Act*.

This Policy prohibits the inclusion of particulars in any report or recommendation that is likely to lead to the identification of the whistleblower. This Policy also prohibits the identification of the person who is the subject of the disclosure of particulars included in the annual report.

The Darwin City Council will ensure all files, whether paper or in electronic form, are kept in a secure location and can only be accessed by the Disclosure Coordinator, the investigator and, where appropriate, the Chief Executive Officer or Lord Mayor.

All printed material will be kept in files that are clearly marked for whistleblower matters, and warn of the penalties and consequences that will apply to any unauthorised divulging of information concerning such a disclosure.

All electronic files will be protected and stored on a stand-alone computer and be given password protection. Backup files will be kept only on disc.

All materials relevant to an investigation, such as interview tape statements and other information, will also be stored securely with the whistleblower files.

The Darwin City Council will not email documents relevant to a whistleblower matter and will ensure all phone calls and meetings are conducted in a private and confidential manner.

8. COLLATING AND PUBLISHING STATISTICS

The Darwin City Council will publish, in its annual report, statistics relating to whistleblower disclosures made pursuant to this Policy.

The Disclosure Coordinator will establish a secure register to record the information required to be published in the Council's annual report, and to generally keep account of the status of whistleblower disclosures. The register will be confidential and will not record any information that may identify the whistleblower.

The register will contain:

- the number and types of disclosures made to the Darwin City Council during a given year
- the number of disclosures referred to the Ombudsman for assistance
- the number and types of disclosed matters that the Darwin 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
- any recommendations by the Ombudsman that relate to the Darwin City Council, arising from a disclosed matter.

9. RECEIVING AND ASSESSING DISCLOSURES

1. *Has the disclosure been made in accordance with this Policy?*

Where a disclosure has been received by the Disclosure Coordinator, he or she will assess whether this has been made in accordance with this Policy and is, therefore, a disclosure of the nature covered by this Policy.

To be accepted under this Policy, a disclosure must satisfy the following criteria:

- it must relate to conduct of a public body or public officer (an employee of Council or an Elected Member), acting in their official capacity
- it must relate to:
 - corrupt conduct
 - improper conduct or misconduct
 - serious maladministration
 - serious and substantial waste or mismanagement of public resources or public money
 - or conduct involving a substantial risk to public health and safety or the environment.
 - or detrimental action taken against a person in reprisal for making a disclosure under this Policy.
- the person making a disclosure must have reasonable grounds for believing the alleged conduct has occurred?

The Disclosure Coordinator will assess whether a disclosure is deemed to be such, as covered by this Policy, and will determine how a matter should be responded to. He or she will also determine whether the disclosure is one that should be referred to the Chief Executive Officer or, if appropriate, the Lord Mayor.

2. *Is the disclosure within the scope of this Policy?*

The Disclosure Coordinator will determine whether the disclosure should be dealt with under this Policy. This assessment should be made within 21 days of it being received.

In reaching a conclusion as to whether a disclosure should be dealt with under this Policy, the Disclosure Coordinator will consider whether the disclosure **shows, or tends to show**, that the officer to whom the disclosure relates:

- has engaged, is engaging or proposes to engage in corrupt conduct, improper conduct or misconduct, maladministration, serious and substantial waste or mismanagement of public resources or public money, or conduct involving a substantial risk to public health and safety or the environment
- has taken, is taking or proposes to take, detrimental action in reprisal for

the making of a disclosure.

Where the Disclosure Coordinator concludes that the disclosure is legitimate under this Policy, he or she will:

1. notify the person who made the disclosure of that conclusion
2. refer the disclosure to the Chief Executive Officer (where it relates to an employee of Council or an Elected Member) or the Lord Mayor (where it relates to the Chief Executive Officer or an Elected Member). This is for the purpose of formal determination as to whether it is, indeed, a disclosure under the Policy and how it will be actioned.

Where the Disclosure Coordinator concludes that the disclosure is not a disclosure under this Policy, he or she will:

1. notify the person who made the disclosure of that conclusion
2. advise the person that he or she may request that the Council refer the disclosure to the Chief Executive Officer or the Lord Mayor for a formal determination as to whether the disclosure is one under this Policy. This request must be made within 28 days of notification by the Disclosure Coordinator
3. advise the person that he or she may request that Council refer the disclosure to the Ombudsman for any action that that authority considers appropriate within the scope of relevant legislation
4. in any case, make the notification and the referral within 14 days of conclusion by Council. Notification to the whistleblower is not necessary if the disclosure has been made anonymously.

10. RIGHTS OF A PERSON WHO IS THE SUBJECT OF A DISCLOSURE

The rights of any person who is the subject of a disclosure will also be protected. In this regard:

- The confidentiality of the identity of any person who is the subject of a disclosure made pursuant to this Policy will be protected and maintained (where this is possible and reasonable).
- All disclosures will be assessed and acted on impartially, fairly and reasonably.
- responsible officers who receive a disclosure in accordance with this Policy are obliged to:
 - protect and maintain the confidentiality of the identity of any person who is the subject of a disclosure
 - assess the disclosure impartially
 - act fairly towards any person who is the subject of such a disclosure.

- All disclosures will be investigated as discreetly as possible, with a strong emphasis on maintaining confidentiality in relation to the identity of the whistleblower and any person who is the subject of a disclosure.
- Where investigations or other inquiries do not substantiate a disclosure, the fact the investigation/enquiry has been carried out, the results of the investigation/enquiry and the identity of any person who is the subject of a disclosure will be kept confidential, unless otherwise requested.
- A person who is the subject of a disclosure under this Policy, and who is investigated by or on behalf of the Council, has the right to be:
 - informed as to the substance of the allegation
 - informed as to the substance of any adverse comment that may be included in a report/memorandum/letter or the like arising out of any such investigation
 - given a reasonable opportunity to put his or her case (either orally or in writing) to those carrying out the investigation for or on behalf of the Council before any final decision / determination / report / memorandum / letter or the like is made.
- Where the allegation in the disclosure has been investigated by or on behalf of the Council and the person who the subject of any allegation is aware of the substance of the allegation, the substance of any adverse comment, or the fact of the investigation, he or she should be formally advised of the outcome of the investigation, regardless of the outcome.
- Where the allegations contained in the disclosure are clearly wrong or unsubstantiated, the person who is the subject of a disclosure is entitled to the support of the Council, its senior management and/or Elected Members, as the case may be (the nature of that support - ie, what is reasonable and appropriate - would depend on the circumstances of the case, eg. it could include a public statement of support or a letter setting out the Council's views that the allegations were either clearly wrong or unsubstantiated).

11. MANAGING THE WELFARE OF THE WHISTLEBLOWER

1. Commitment to protecting whistleblowers

The Darwin City Council is committed to protecting genuine whistleblowers against detrimental action taken in reprisal for making a disclosure under this Policy. The Disclosure Coordinator is responsible for ensuring whistleblowers are protected from direct and indirect detrimental action, and that the culture of the workplace supports disclosures being made under this Policy.

The Disclosure Coordinator will act as the Welfare Coordinator (unless there is a separate appointment to such a position) to all whistleblowers who make a disclosure under this Policy. The Welfare Coordinator will:

- examine the immediate welfare and protection needs of the whistleblower who has made a disclosure and, where the whistleblower is an employee, seek to foster a supportive work environment
- advise the whistleblower of the administrative protections available to him or her under this Policy
- listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making a disclosure
- keep a contemporaneous record of all aspects of the case management of the whistleblower including all contact and follow-up action
- ensure the expectations of the whistleblower are realistic.

All Council staff and Elected Members will be advised that taking detrimental action/reprisal for a disclosure under this Policy constitutes a breach of Council's relevant Code of Conduct. The taking of detrimental action in breach of this Policy can also be grounds for making a separate disclosure under this Policy and can result in an investigation.

2. Keeping the whistleblower informed

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

3. Occurrence of detrimental action

If the whistleblower reports an incident of harassment, discrimination or adverse treatment that would amount to detrimental action taken in reprisal for making of the disclosure, the Welfare Coordinator will:

- record details of the incident
- advise the whistleblower of his or her rights under this Policy
- advise the Disclosure Coordinator (if a separate entity) and/or the Chief Executive Officer of the detrimental action.

Where such detrimental action is reported, the Disclosure Coordinator will assess the report as a new disclosure under this Policy. Where the Disclosure Coordinator is satisfied that the disclosure has substance, he or she will refer the matter to the Chief Executive Officer. If the Chief Executive Officer determines that the matter has substance he or she will treat it as a disclosure under this Policy and take appropriate action. Where the disclosure relates to the Chief Executive Officer or the Disclosure Coordinator, the matter will be referred to the Lord Mayor for action.

Council is committed to ensuring that where a whistleblower may be or is the subject of any detrimental action, appropriate action is taken. Where appropriate, consideration will be given to transferring the person who made the disclosure to another work area (provided this does not identify the person as a whistleblower). If appropriate, Council will also consider whether it is possible to relocate the

person who is the subject of the disclosure. This may be where an investigation would otherwise be prejudiced if the person remains in a particular work area or where the person may take detrimental action against suspected whistleblowers.

4. Whistleblowers implicated in improper conduct

Where a person who makes a disclosure is implicated in misconduct, the Darwin City Council will handle the disclosure and protect the whistleblower from reprisals in accordance with this Policy.

Council acknowledges that the act of whistleblowing should not shield whistleblowers from the reasonable consequences flowing from any involvement in corrupt conduct, improper conduct or serious maladministration

(Note: in relevant legislation it is usual for the legislation to specifically provide that a person's liability for his or her conduct is not affected by the person's disclosure of that conduct under any Act). However, in some circumstances, an admission may be a mitigating factor when considering disciplinary or other action against a whistleblower.

The Chief Executive Officer will make the final decision as to whether disciplinary or other action will be taken against a whistleblower. Where disciplinary or other action relates to conduct that is the subject of the whistleblower's disclosure, such action will be only taken after the disclosed matter has been appropriately dealt with.

In all cases where disciplinary or other action is being contemplated, the Chief Executive Officer must be satisfied that it has been clearly demonstrated that:

- the intention to proceed with disciplinary action is not directly or indirectly 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-whistleblower in the same circumstances
- there are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

The Disclosure Coordinator will thoroughly document the process, including recording 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 Disclosure Coordinator will clearly advise the whistleblower of the proposed action to be taken and of any mitigating factors that have been taken into account.

12. INVESTIGATIONS

1. Introduction

In accordance with this Policy, the Chief Executive Officer or, where appropriate the Lord Mayor, will appoint an investigator to a disclosure made pursuant to this Policy.

The objectives of an investigation will be:

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

2. Qualifications of investigators

The Darwin City Council is committed to the proper investigation of disclosures under this Policy and will ensure that adequate resources and funding are available for such purposes.

Council will also ensure that any investigator appointed to carry out an investigation in regard to a disclosure under this Policy, is properly qualified to do so. Council will commit to ensuring that its staff who may be requested to carry out such investigations receive adequate training to do so. In the event that staff within Council are not sufficiently qualified or trained, Council will undertake to appoint an external consultant to carry out the investigation.

3. Terms of reference

Before starting an investigation, the Chief Executive Officer or the Lord Mayor will draw up terms of reference for the investigation. The terms of reference will set a date by which the investigation report is to be concluded, and will describe the resources available to the investigator to complete his or her task within the time set. The Chief Executive Officer or Lord Mayor may approve a reasonable extension of time requested by the investigator. The terms of reference will require the investigator to make regular reports to the Chief Executive Officer or Lord Mayor.

The Chief Executive Officer will (unless inappropriate to do so) keep the Lord Mayor informed of the general progress of an investigation, where it concerns an Elected Member.

4. Investigation plan

The investigator will prepare an investigation plan for approval by the Chief Executive Officer or Lord Mayor. The plan will list the issues to be addressed and describe the avenues of inquiry. It will address the following issues:

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

At the start of the investigation, the whistleblower should be:

- notified by the investigator that he or she has been appointed to conduct the investigation
- asked to clarify any matters
- asked to provide any pertinent information or additional material that he or she might have.

The investigator will be sensitive to the whistleblower's possible fear of reprisals and will be aware of the protections provided under this Policy.

5. Conduct of the investigation.

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

The investigator has the discretion to allow any witness to have legal or other representation or support during an interview. If a witness has a special need for legal representation or support, permission should be granted. A legal representative should not unduly interfere in the investigation process.

6. Reporting requirements

The Disclosure Coordinator will ensure the whistleblower is kept informed regularly on the handling of a disclosure and an investigation under this Policy. The Disclosure Coordinator will report to the Chief Executive Officer or Lord Mayor about the progress of an investigation. Where the Chief Executive Officer or Lord Mayor or whistleblower requests information about the progress of an investigation, that information will be provided as soon as possible, but no later than within 14 days of the date of the request.

7. Natural Justice

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

The Darwin City Council will have regard to the following issues in ensuring procedural fairness during an investigation:

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

13. ACTION TAKEN AFTER AN INVESTIGATION

1. Investigator's final report

At the conclusion of the investigation, the investigator will submit a written report of his or her findings to the Chief Executive Officer or Lord Mayor. The report will contain:

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

Where the investigator has found that the conduct disclosed by the whistleblower has occurred, recommendations may be made by the investigator and can include:

- all steps necessary by the Darwin City Council to prevent the conduct from continuing or occurring in the future
- any action that should be taken by the Darwin City Council to remedy any harm or loss arising from the conduct. This action may include bringing disciplinary proceedings against the person responsible for the conduct, and referring the matter to an appropriate authority such as the police for further consideration.

The report will be accompanied by:

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

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

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

2. Action to be taken

If the Chief Executive Officer or Lord Mayor is satisfied that the investigator has found that the disclosed conduct has occurred, he or she will take whatever action is necessary to prevent the conduct from continuing or occurring in the future. He or she will also consider what action should be taken to remedy any harm or loss arising from the conduct.

The Chief Executive Officer or Lord Mayor will provide a written report to the whistleblower and the employee or Elected Member who is the subject of the investigation. This report will set out the findings of the investigation and any remedial steps to be taken.

Where the investigation concludes that the disclosed conduct did not occur, the Chief Executive Officer or Mayor will report these findings to the whistleblower.

14. REVIEW

This Policy will be reviewed annually by a Whistleblower Committee set up by the Darwin City Council to ensure the Policy meets whistleblower objectives. The Committee will comprise Council staff representatives, an Elected Member, the Chief Executive Officer and the Lord Mayor.



DEALING
WITH
COMPLAINTS

DEALING WITH COMPLAINTS

A. INTRODUCTION

From time to time, the Darwin City Council will receive complaints regarding the behaviour of individuals or the performance of Council, which due to their nature, are not seen as "Customer Action Requests" relating more specifically to service issues.

In lodging a complaint a person may choose to do so by:

1. lodging a complaint with Council in accordance with Council procedures.
2. approaching the Ombudsman or other external agency.

A complainant may choose to remain anonymous and elect to make a complaint through Council's Whistle Blower Policy.

It will, however, be more common to receive complaints through the normal process. To assist in dealing with such complaints, the following framework shall apply. A complaint may relate to an Elected Member, Council employee or Council contractors.



B. COMPLAINT FRAMEWORK

Category Level	Source	Nature	Action Officer
1.	Ombudsman (or other external agency)	Various but generally to do with the administrative process of the Council	CEO
2.	Member of the public, Elected Member or staff	Serious misconduct (ie. fraud, theft etc)	CEO
3.	Member of the public, Elected Member or staff	* Misuse of Council equipment * Conflict of interest	CEO
4.	Various	* Minor behavioural matters	CEO

c. THE PROCESS

- Step 1
- * Complaint will be recorded and referred to Chief Executive Officer. The initial noting might not be by DataWorks but by a less formal system to ensure confidentiality is maintained.
 - * Complaints from the Ombudsman or from similar statutory agencies will be recorded in DataWorks but all others will be recorded in a Complaints Register held by the CEO pending initial enquiries.
- Step 2
- Determine the complaint level then CEO to appoint an investigating Officer.

- Step 3 If a level 1 or 2 complaint is received, the matter shall be:-
- (i) acknowledged within five working days
 - (ii) the subject of initial and timely enquiries and evaluation to test the veracity of the complaint. If not, complete within 20 days, with complainant to be informed as to the reasons for delay.
- Step 4 The results of the enquiries will be referred to the CEO for adjudication as to whether the matter requires further investigation and/or action.
- Should the initial enquiries indicate that the complaint has some substance, a more formal, comprehensive and detailed investigation will be undertaken.
- This investigation should be completed within 30 days of commencing Step 4.
- Step 5 Complainant and respondent will be formally advised of the outcome and proposed action, if any.

Level 3 and 4 Complaints

- Step 3 *
- The complaint to be acknowledged and initial enquiries commenced.
 - * Results to be referred to CEO for adjudication as to whether the matter requires further investigation and/or action.
- Step 4 *
- Further enquiries and investigation to be completed if necessary.
 - * CEO to make a further determination as to action.
- Step 5 *
- Complainant and respondent to be notified of results within 45 days of the complaint being received.

D. VEXATIOUS AND MALICIOUS COMPLAINTS

Vexatious and malicious complaints may be received for various reasons from time to time.

Following an appropriate level of enquiry and investigation, if it is concluded, that a complaint is vexatious or malicious in nature, the complainant will be:

1. notified of that conclusion
2. recorded as a vexatious complainant for future reference.

NOTE -

In conducting the investigation, the principles of natural justice and procedural fairness shall be applied at all times.

E. Review

In relation to complaints regarding staff, a person who feels aggrieved by the outcome of an investigation may seek to have the matter reviewed.

A review panel shall be appointed by the CEO and shall consist of:

- 1 director
- 1 staff representative
- 1 external appointee

F. Conduct Committee

To be developed when Council adopts Code of Conduct.