

Public Interest Disclosures Procedures



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Manager Governance & Civic Support
Director Corporate Services
Governance
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Intent of the procedure

The Northern Grampians Shire Council is required to establish and publish procedures to protect people against detrimental action taken in reprisal for a public interest disclosure in accordance with the *Public Interest Disclosures Act 2012* (the PID Act) and guidelines issued by the Independent Broad-Based Anti-Corruption Commission (IBAC).

The PID Act encourages people to come forward and make complaints by offering legal protection. In some circumstances, a complaint will be a public interest disclosure because it involves 'improper conduct' or 'detrimental action'. These disclosures were previously known as 'whistleblower' complaints.

The PID Act aims to:

- encourage and assist people to report improper conduct in the public sector
- provide certain protections for people who make a disclosure or those who may suffer detrimental action in reprisal for a disclosure
- ensure that certain information about a disclosure is kept confidential – the identity of the person making the disclosure and the content of that disclosure
- ensure that disclosures are properly assessed and, where necessary, investigated.

Council supports the strengthening of the integrity of the Victorian public sector and the promotion of community confidence in public sector accountability. It does not tolerate corrupt or improper conduct by the organisation, its employees, officers and Councillors nor the taking of reprisals against those who come forward to disclose such conduct.

Council has established these procedures and a system for reporting in order to:

- facilitate the making of disclosures of improper or corrupt conduct by public officers and public bodies
- establish a system for the handling of disclosures and, where appropriate, for notification to IBAC
- provide protection from detrimental action to any person affected by a public interest disclosure
- provide for the confidentiality of the content of disclosures and the identity of persons who make those disclosures.

The procedures complement existing organisational communication channels between supervisors and employees.

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Contacts

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Supervisors

Public interest disclosures can also be made to the supervisor of the discloser or the supervisor of the person who is the subject of the disclosure.

Ombudsman/IBAC

A disclosure about improper conduct or detrimental action by a Northern Grampians Shire Council Councillor or employee may also be made directly to the Ombudsman or IBAC. Public interest disclosures relating to Councillors can only be made directly to the Ombudsman or IBAC.

IBAC will be able to refer public interest complaints (PIC) to the Chief Municipal Inspector where it considers:

- the complaint does not involve corrupt conduct
- it is relevant to the performance of the Chief Municipal Inspector's functions, and
- certain other conditions are met.

Victorian Ombudsman, Level 2, 570 Bourke Street, Melbourne 3000

Online: www.ombudsman.vic.gov.au

Email: ombudvic@ombudsman.vic.gov.au

Telephone: 03 9613 6222; Toll-free (regional only)- 1800 806 314

IBAC, Level 1, North Tower, 459 Collins Street, Melbourne 3000

Online: www.ibac.vic.gov.au

Email: info@ibac.vic.gov.au

Telephone: 1300 735 135

Actual Procedure

Council has established a centralised reporting system for the receipt, assessment and investigation of public interest disclosures.

The system ensures that-

- the Chief Executive Officer (CEO) and Director Corporate Services are involved and retain oversight
- confidentiality of the information and the identity of the persons making public interest disclosures are maintained throughout the process
- the roles of assessment and investigation of a disclosure are kept distinct from welfare management of the person making a disclosure
- clear contact points are identified for reporting public interest disclosures including all relevant disclosures made in person or by mail, phone calls and emails
- any disclosure about the CEO is immediately notified to IBAC.

A clear internal reporting system will benefit Council by encouraging staff to raise matters.

Records Management

To prevent breaches of confidentiality and to minimise the possibility of detrimental action, Council has established a secure electronic filing system which will ensure:

- all electronic public interest disclosure files are kept in Council's electronic document records management system (EDRMS) and can only be accessed by Council's electronic records management system Administrators and authorised officers
- all electronic public interest disclosure files are kept in either of two folders ie *Public Interest Disclosure Complaints (Confidential)* and *Public Interest Disclosure Information*. The confidential folder includes a prominent warning in the folder description that criminal penalties apply to any unauthorised divulging of information concerning a public interest disclosure. The naming of these two folders clearly differentiate between complaints and other public interest disclosure information
- any other material, such as tapes from interviews, are stored securely with access only by authorised officers
- the security of communication between nominated officers via email, ie sensitive information or documents, is also provided by use of copiers with key card access
- a report is capable of being run in the EDRMS to provide statistics for annual reporting as required.

Records staff will be aware of the general nature of public interest disclosures and the established reporting channels so that identified disclosures are dealt with appropriately.

All relevant information will be made available to all personnel to ensure that they are familiar with these procedures, relevant legislation, confidentiality obligations and consequences of a breach of the PID Act.

Council will ensure that persons making disclosures are advised that it is in their own interests to keep disclosures confidential by only discussing related matters with authorised persons within Council or IBAC's offices.

Handling disclosures

What is a disclosure?

A disclosure is a report about the **improper conduct** of public bodies or public officers that a person makes to any of the organisations specified in Part 2 of the PID Act.

A disclosure can also be made about **detrimental action** that a public officer or public body takes against a person in reprisal for them (or another person) having made a public interest disclosure or cooperated with the investigation of a public interest disclosure.

The disclosure can relate to conduct or action that:

- may have already taken place (including conduct that occurred before 10 February 2013 when the PID Act came into effect)
- may be occurring now, or
- may happen in the future. A complaint or allegation that is already in the public domain will not normally be a public interest disclosure – for example, if the matter has already been subject to media or other public commentary.

What is improper conduct?

Improper conduct must, at its lowest threshold level, be either a criminal offence or professional misconduct serious enough to result in a person's dismissal.

Improper conduct is defined in the PID Act to mean:

- corrupt conduct
- conduct of a public officer or public body engaged in by the public officer or public body in their capacity as a public officer or a public body that constitutes:
 - a criminal offence
 - serious professional misconduct
 - dishonest performance of public functions
 - an intentional or reckless breach of public trust
 - an intentional or reckless misuse of information or material acquired in the course of the performance of the functions of the public officer or public body
 - a substantial mismanagement of public resources
 - a substantial risk to the health or safety of one or more persons
 - a substantial risk to the environment
- conduct of any person that
 - adversely affects the honest performance by a public officer or public body of their functions
 - is intended to adversely affect the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body and results in the person, or an associate of the person obtaining:
 - a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument
 - an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument
 - a financial benefit or real or personal property
 - any other direct or indirect monetary or proprietary gainthat the person or associate would not have otherwise obtained
- conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referred to in preceding paragraphs.

Less serious or trivial conduct is excluded from the definition of improper conduct.

What is a detrimental action?

The PID Act creates an offence for a person to take detrimental action against another person in reprisal for a public interest disclosure.

Detrimental action can be taken by any person, however, a disclosure under the PID Act can only be made about detrimental action by a public officer or public body.

Section 3 of the PID Act defines detrimental action by a person as including:

- 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.
- The person need not have actually taken the action, but can just have threatened to do so.
- The person need not have taken or threatened to take the action against the person themselves, but can have incited or permitted someone else to do so.
- The detrimental action need not be taken against a discloser, but against any person.

Detrimental action must be taken in reprisal for a public interest disclosure.

Authorised officers will consider both the nature of the detrimental action and whether it is being **taken in reprisal for a public interest disclosure**.

The person must take or threaten the action (or incite or permit another person to take or threaten the action) because, or in the belief that:

- the other person (or anyone else) has made, or intends to make, the disclosure
- the other person (or anyone else) has cooperated, or intends to cooperate with an investigation of the disclosure.

If the fact that an employee has made a disclosure forms any part of the reason for which action is taken against that employee, it will constitute detrimental action and be reportable as a public interest disclosure under the scheme as well as being a criminal offence.

Examples of detrimental action

- *Council refuses a deserved promotion of a person who makes a disclosure.*
- *Council demotes, transfers, isolates in the workplace or changes the duties of a discloser due to the making of a disclosure.*
- *Council threatens, abuses or carries out other forms of harassment directly or indirectly against the discloser, his or her family or friends.*
- *Council discriminates against the disclosure or his or her family and associates in subsequent applications for jobs, permits or tenders.*

Making a Disclosure

Who can make a disclosure?

Anyone can make a disclosure about improper conduct or detrimental action – both members of the public and Council employees, either as an individual or together with a group of individuals. Disclosures can be made anonymously, including from unverified email addresses, phone calls, in a conversation or meeting; however, this creates potential difficulties in assessing whether a complaint fits the definition of a disclosure. Disclosures in circumstances where the person or the organisation to which the disclosure relates cannot be identified can still be made.

How can a disclosure be made?

A person may make a disclosure:

- orally, in person, by phone or by leaving a voice mail message
- in writing (but not by facsimile as this is not permitted by the PID Act)
- electronically, including email and online form (to IBAC and the Victorian Ombudsman only);
- anonymously.

A person must make the verbal disclosure, **in private**; however, this does not preclude a group of individuals from making a joint disclosure at one time.

If the disclosure is made verbally, the Public Interest Disclosure Coordinator will make notes at the time and may also record the conversation, but only if the discloser gives permission or is given prior warning the conversation will be recorded.

A person doesn't need to identify themselves to make a disclosure under the PID Act. An anonymous disclosure can be made by using unverifiable email addresses, through anonymous phone calls, or in a face-to-face conversation or meeting where the person refuses to identify themselves (provided the meeting or conversation takes place in private in accordance with the PID Regulations).

If the disclosure is made in writing it must be addressed to Council or a permitted person and sent (by post or electronically) or delivered to, or left at the office of Council or the permitted person.

If the disclosure comes from an email address where the identity of the person making the disclosure cannot be determined, the disclosure should be treated as an anonymous disclosure.

Any person can submit an allegation or complaint. Potential disclosing persons will be advised of the most effective way to raise their concerns.

Who can a disclosure be about?

(1) A public interest disclosure that relates to the conduct of Council or of a member, officer or employee of a Council may be made to Council.

(2) A public interest disclosure may be made to a Council by a person who is a member, officer or employee of the Council unless—

- (a) the disclosure is required to be made to another entity under section 14 or 17(3); or
- (b) the disclosure relates to a member of Parliament.

Where a person seeks to make a disclosure about a Councillor, that disclosure must be made to the Victorian Ombudsman or IBAC.

Receiving a Disclosure

Which bodies can receive a public interest disclosure?

A person may make a public interest disclosure to the following bodies:

- IBAC
- Victorian Ombudsman
- Victorian Inspectorate (in relation to IBAC and the Public Interest Monitor)
- Victoria Police
- Public Service Bodies (within the meaning of the Public Administration Act 2004)
- local councils
- Judicial Commission of Victoria
- IOC (in relation to the Victorian Inspectorate)
- President of the Legislative Council (limited to members of the Legislative Council)
- Speaker of the Legislative Assembly (limited to members of the Legislative Assembly).

Bodies that cannot receive a public interest disclosure

Any public sector body not listed above may not receive a public interest disclosure. Persons wishing to make a PID about such bodies should contact IBAC. Public sector bodies that cannot receive PIDs must still have systems in place to manage confidentiality, welfare support and risk management measures for PIDs made about their organisation.

Who at Council can receive a public interest disclosure?

Disclosures may be made to a person permitted to receive a disclosure on behalf of Council (permitted persons are the CEO, Public Interest Disclosure Coordinator, the Public Interest Disclosure Officer, Public Interest Disclosure Welfare Manager, Manager/Supervisor of the discloser or Manager/Supervisor of the person who is the subject of the disclosure) who will forward the disclosure and supporting documentation to the Public Interest Disclosure Coordinator.

The Public Interest Disclosure Coordinator will determine whether the disclosure has been made to the right body, whether the disclosure may be a public interest disclosure and whether the matter falls under the PID Act.

Council employees are responsible for ensuring that any allegation made that may fall under the PID Act is referred to the Public Interest Disclosure Coordinator.

There may be situations where the Council receives an allegation of improper conduct or detrimental action, but the person making the allegation has not referred to the PID Act.

If an allegation raises issues that may fall within the provisions of the PID Act Council will assess the allegations in terms of the PID Act.

Assessing disclosures

To determine whether the conduct in question is improper conduct or detrimental action Council needs to consider the **seriousness of the conduct in terms of consequences** - not just whether the conduct constitutes or involves a particular type of conduct. There must be a link between the conduct and the official function of the officer.

Is this a public interest disclosure?

Where Council receives information relating to the conduct of an employee, member or officer, it **must** assess whether the disclosure meets the criteria of Part 2 of the PID Act to be a public interest disclosure. If Part 2 of the PID Act is satisfied, Council must determine if the information also satisfies Part 4 of the PID Act to be a public interest disclosure.

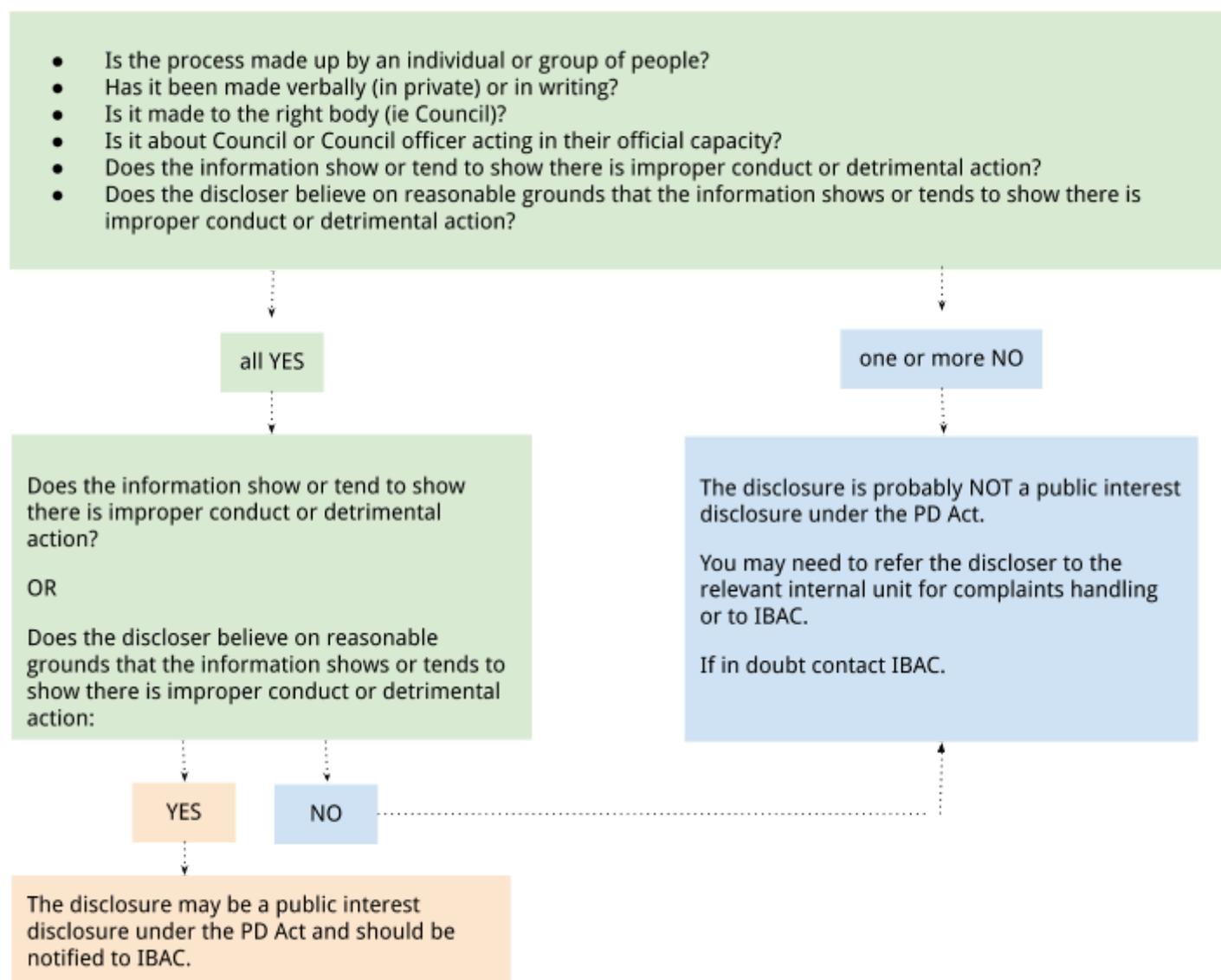
To be assessed as a public interest disclosure, a disclosure must meet the following criteria:

- a natural person (that is, an individual person rather than a corporation) has to have made the disclosure
- the disclosure has been made verbally (in private) to the Council's Public Interest Disclosure Coordinator or in writing
- the disclosure relates to conduct of the Council or public officer acting in their official capacity
- the alleged conduct is either improper conduct or detrimental action taken against a person in reprisal for making a public interest disclosure
- the person making the disclosure has reasonable grounds for believing the alleged conduct has occurred.

If one or more of the above elements are not satisfied, the person has not made an assessable disclosure under Part 2 of the PID Act.

Part 6 of the PID Act sets out the protections provided to persons who make a disclosure that is a public interest disclosure made in accordance with Part 2 of the PID Act. The person is not protected if they have made a false disclosure or provided false information.

The following flow chart details the assessment process:



Useful preliminary questions to ask

In assessing whether there is improper conduct or detrimental action the following questions will be asked:

- What is the discloser's connection to the alleged conduct? Are they a victim, a witness, or a participant?
- How did they come to know about the conduct? Were they directly involved in it? Did they observe it happening to another person? Did someone else tell them about it?
- How detailed is the information provided? Is there sufficient information to enable you to consider whether there is improper conduct or detrimental action?
- How reliable is the information? Is it supported by other information?

Tests for improper conduct or detrimental action

For a disclosure to be made under Part 2 of the PID Act it must satisfy one of two 'tests'.

Test 1 Does the information show or tend to show there is improper conduct or detrimental action?

The information needs to be assessed as to whether it satisfies the 'elements' of either improper conduct or detrimental action, as defined in the PID Act, and whether any of the exceptions apply. If it is not clear that the information disclosed does show or tend to show that there is improper conduct or detrimental action, then the second test can be applied.

Test 2 Does the discloser believe on reasonable grounds that the information shows or tends to show there is improper conduct or detrimental action?

This means the person must actually believe that the information shows or tends to show there is improper conduct or detrimental action, and his or her belief must be 'reasonable'. That is, the person's belief is based on facts that would be sufficient to make a reasonable person believe there was improper conduct or detrimental action.

Examples 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 environmental health officer allows a catering business to continue functioning when health standards have been breached.*
- *A building inspector tolerates poor practices and structural defects in the work of a leading local builder.*
- *A Council employee approves a colleague's corporate expense account for payment even though it appears to have non-work related expenditure items listed.*

In **urgent** cases, the Public Interest Disclosure Coordinator can authorise immediate action while considering whether or not it is an assessable disclosure that must be notified to IBAC. Immediate action can also be taken while awaiting IBAC's decision on a notified matter. It may be necessary to report criminal conduct to Victoria Police for immediate investigation, or take management action against an employee to prevent future conduct. While the PID Act limits the release of information about disclosures, it allows Council to disclose the content of the disclosure 'to the extent necessary for the purpose of taking lawful action' in relation to conduct that is the subject of an assessable disclosure, including disciplinary process or action (section 52(3)(a)(iii)). However, this does not allow Council to reveal the identity of the discloser.

What to do if it is a public interest disclosure

If Council considers the disclosure may be a public interest disclosure, it is required to-

- notify IBAC in writing within 28 days after the disclosure was made that:
 - it considers the disclosure may be a public interest disclosure
 - it is notifying the disclosure to IBAC for assessment.

Council may also provide IBAC with any information it has obtained regarding the disclosure in the course of its inquiries leading up to the notification.

- notify the discloser in writing within 28 days after the disclosure was made that:
 - the disclosure has been notified to IBAC for assessment
 - it is an offence under section 74 of the PID Act to disclose that the disclosure has been notified to IBAC for assessment under the PID Act.

Where the Council determines that the disclosure is not an assessable disclosure under the Act, it will **within 28 days** after the disclosure was made advise the person that-

- the Council does not consider the disclosure to be a public interest disclosure
- the disclosure has not been notified to IBAC for assessment
- the protections under Part 6 of the PID Act apply, regardless of whether the disclosure is notified to IBAC for assessment.

The Council will also either:

- refer the discloser to IBAC; or
- advise the discloser that the matter will be addressed by Council through its complaints processes.

If a disclosure does not meet the requirements of Part 2 of the PID Act, Council will consider whether it could be dealt with in accordance with its normal complaints process.

Bodies that can assess and determine a PID

Only IBAC, the Victorian Inspectorate and now the IOC can determine that a PID meets the criteria to be a PIC. The Victorian Inspectorate may only assess PIDs about IBAC officers and the Public Interest Monitor. The IOC may only assess PIDs about the Victorian Inspectorate or a Victorian Inspectorate Officer. All other PIDs are to be assessed by IBAC.

For a PID to be determined a PIC:

- It must be made in accordance with the PID Act (it must be made to a body who is able to receive the disclosure)
- The information must:
 - show or tend to show that the public officer or public body has engaged, is engaging or proposes to engage in improper conduct or detrimental action or
 - information that the person reasonably believes shows or tends to show that the public officer or public body has engaged, is engaging or proposes to engage in improper conduct or detrimental action.
- IBAC may refer a PIC to another more appropriate body for investigation. IBAC will also be able to refer complaints back to agencies for action with the consent of complainants and agencies.

Bodies that can investigate PICs

The following bodies can investigate PICs:

- IBAC
- Victorian Ombudsman
- Victorian Inspectorate Chief Commissioner of Police
- Judicial Commission of Victoria
- Chief Municipal Inspector
- Information Commissioner
- Racing Integrity Commissioner

Misdirected disclosures

Council will redirect any PID made to it when it is the wrong receiving entity to another receiving entity without the discloser losing the protections of the PID Act, where:

- Council is an entity to which a PID ordinarily may be made and
- the person making the disclosure must honestly believe that the Council was the appropriate entity to which to make the disclosure.

External disclosures

A discloser may disclose the details of a PIC to an external person or body (who is not able to receive disclosures) if the assessing entity does not notify the discloser about any action taken in response to the original disclosure within six months and has not responded to a request for advice within 30 days. An external disclosure may also be made if the investigation of the original disclosure is not completed within 12 months, and the investigating entity has not responded to a request for advice within 30 days.

An external disclosure may be made where the investigation of the original disclosure was not completed within 12 months, the discloser has received an update within 30 days of requesting it, but the discloser has then not received any further update advising that the investigation has been completed within a further six months of that response. Some exemptions apply, for example, in relation to any information that may prejudice a criminal investigation or proceeding, or other legal proceeding, or information that is likely to lead to the disclosure of an investigative method.

A practical example of this could be a discloser who reports the nature of a PIC to a journalist if the assessing entity (for example, IBAC) does not provide an outcome letter to a discloser within six months of the disclosure being made and does not respond within 30 days to a further request for advice from the discloser.

Protections and offences

Part 6 of the PID Act sets out the protections provided to persons who may make a public interest disclosure.

They apply from the time that the disclosure is made even if Council does not notify the disclosure to IBAC. They also apply whether IBAC has determined that it is a public interest disclosure complaint. The protections apply when further information about the disclosure is provided by the discloser, verbally or in writing, to any of the following:

- the entity to which the public interest disclosure was made
- IBAC
- an investigating entity investigating the public interest disclosure.

The person making the disclosure will not be:

- subject to any civil or criminal liability or administrative action (including disciplinary action) for making the disclosure;
- committing an offence against the *Constitution Act 1975* or any other Act that imposes obligations of confidentiality or any other restriction on the disclosure of information;
- breaching any other obligation (made by oath, rule of law or practice) requiring them to maintain confidentiality or otherwise restrict confidentiality;
- held liable for defamation in relation to information included in a public interest disclosure.

An employee who has made a public interest disclosure and believes on reasonable grounds that detrimental action will be, is being, or has been taken against them, may request a transfer of employment.

Limitation on protection

A number of the protections in Part 6 of the PID Act do not apply if a discloser:

- provides information intending that it be acted on as a public interest disclosure, or further information that relates to a public interest disclosure, knowing it to be false or misleading
- claims that a matter is the subject of a public interest disclosure knowing the claim to be false
- falsely claims that a matter is the subject of a disclosure that IBAC has determined to be a public interest disclosure complaint.

The PID Act also specifically provides that a person remains liable for their own conduct even though the person has made a disclosure of that conduct under the PID Act.

A person who makes a disclosure is not protected against legitimate management action being taken in relation to them, including action in respect of performance development, conditions of employment or discipline or to ensure the safety of the workplace.

Taking disciplinary action against a person who has made a public interest disclosure

Taking disciplinary or other action against a person who has made a public interest disclosure invariably creates the perception that it is being taken in reprisal for the disclosure. In all cases where disciplinary or other action is being contemplated, the CEO must be able to clearly demonstrate:

- the fact that a person has made a public interest disclosure is not a reason for taking action against the employee
- there are good and sufficient grounds that would fully justify action against any other person in the same circumstances
- there are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

If the fact that an employee has made a disclosure forms any part of the reason for which action is taken against that employee, it will constitute detrimental action and be reportable as a public interest disclosure as well as being a criminal offence.

Council will take care to thoroughly document the process. This includes recording the reasons why the disciplinary or other action is being taken, and the reasons why the action is not in retribution for making the disclosure.

The person making a public interest disclosure will be clearly advised of the proposed action to be taken and of any mitigating factors that have been taken into account.

Confidentiality of disclosures

Ensuring confidentiality is one of the ways that disclosers and other people involved in public interest disclosure investigations are protected.

The PID Act requires information about the identity of a discloser and the content of a public interest disclosure to be kept confidential. However exemptions apply and all bodies to whom a public interest complaint is referred, are permitted to disclose information necessary to perform their investigative functions.

Part 7 of the PID Act contains two main restrictions on disclosing information. Breaching either of these restrictions is an offence.

Content of assessable disclosure must not be disclosed

The PID Act prohibits the disclosure of the content, or information about the content, of an assessable disclosure.

This restriction applies if the information was received in particular circumstances, including where a person or body receives a disclosure or is provided information about the disclosure by an investigating entity assessing or investigating it. The restriction does not apply to the discloser.

Exceptions to this restriction apply if disclosure is:

- necessary to exercise functions under the PID Act
- to be used by an investigating entity where necessary to exercise functions under their relevant Acts
- for the purpose of a proceeding for an offence against a relevant Act
- for the purpose of a disciplinary process or action instituted in respect of conduct that could constitute an offence against a relevant Act
- to obtain legal advice or representation
- to an interpreter to enable a person with insufficient knowledge of the English language to comply

- to a parent or guardian of a person under the age of 18 years
- to an independent person to enable a person who is illiterate or has a mental or physical impairment
- to be an external disclosure made in accordance with section 38A of the PID Act

Identity of person making an assessable disclosure must not be disclosed

The PID Act also prohibits the disclosure of information that would be likely to lead to the identification of a person who has made an assessable disclosure.

This restriction applies to any person or body, except the discloser. Exceptions to the restriction apply, including where the information may be disclosed:

- to exercise functions under the PID Act
- the discloser has given written consent to the Integrity and Oversight Committee or an investigating entity
- to obtain legal advice or representation
- after IBAC, the Victorian Inspectorate or Integrity and Oversight Committee has determined the assessable disclosure is not a public interest disclosure complaint

Complainants may always seek advice and support from specified categories of persons without seeking permission. Information about an assessable disclosure (content or information about the content) can be provided to a registered practitioner, a trade union, employee assistance program, the Victorian WorkCover Authority or for the purposes of an application to the Fair Work Commission.

To ensure confidentiality, Council will:

- remind staff that if they make a disclosure they should keep it confidential
- limit the number of people who can be made aware of the discloser’s identity, or information that could identify the discloser
- provide a secure electronic or paper filing system for the receipt, storage, assessment and notification of public disclosures
- develop a risk management plan for every disclosure to manage the risk of confidentiality breaches.

Criminal offences

The PID Act provides for offences for certain actions, including unauthorised disclosure.

Table 3: Civil and criminal penalties under the PID Act

Specific offences (Criminal)	Penalties
<p>Detrimental action</p> <p><i>Liability of an individual</i></p> <p>It is an offence for a person to take or threaten action in reprisal when:</p> <ul style="list-style-type: none"> • another person has made or intends to make a public interest disclosure • the person believes another person has made or intends to make a public interest disclosure • another person has cooperated or intends to cooperate with the investigation of a public interest disclosure • the person believes another person has cooperated or intends to cooperate with the investigation of a public interest disclosure 	<ul style="list-style-type: none"> • Criminal penalty: 240 penalty units or two years’ imprisonment or both <p>AND (if person is convicted or found guilty of an offence)</p> <ul style="list-style-type: none"> • Civil penalty: Order of court for offender to pay appropriate level of damages to compensate for injury, loss or damage

<i>Vicarious liability of their employer</i>	<ul style="list-style-type: none"> • Criminal penalty: 240 penalty units or two years' imprisonment or both <p>AND (if person is convicted or found guilty of an offence)</p> <ul style="list-style-type: none"> • Civil penalty: Order of court for offender to pay appropriate level of damages to compensate for injury, loss or damage
Disclosure of content of assessable disclosure	<ul style="list-style-type: none"> • Criminal penalty: 240 penalty units or two years' imprisonment or both <p>AND (if person is convicted or found guilty of an offence)</p> <ul style="list-style-type: none"> • Civil penalty: Order of court for offender to pay appropriate level of damages to compensate for injury, loss or damage
Disclosure of identity of person making assessable disclosure	<ul style="list-style-type: none"> • 120 penalty units or 12 months' imprisonment or both (person) • 600 penalty units or six months' imprisonment or both
Disclosure of certain advice	60 penalty units or six months' imprisonment or both
Making false disclosure or providing false further information	120 penalty units or 12 months' imprisonment or both
Falsely claiming disclosure is a public interest disclosure or public interest disclosure complaint	120 penalty units or 12 months' imprisonment or both

Specific offences (Civil action)	Penalties
<p>Detrimental action</p> <p>A person who takes detrimental action may be subject to proceedings in tort in any court of competent jurisdiction injunction or interim injunction can be granted by the Supreme Court if the Court is satisfied that a person has taken or intends to take detrimental action against another person in reprisal for a public interest disclosure</p>	<p>Civil penalty: Court order for damages for any injury, loss or damage, including exemplary damages</p>

Welfare management

It takes courage to speak up and make a disclosure about improper conduct by a public official or public body and Council will respond quickly and appropriately.

Welfare support	At a minimum Council will provide for the discloser or cooperator on an ongoing basis:
Inform	<ul style="list-style-type: none"> ● Confirm the disclosure has been received. ● Outline the legislative or administrative protections available. ● Describe the action proposed to be taken. ● If action has been taken, provide details about the results.
Provide active support	<ul style="list-style-type: none"> ● Acknowledge the person for having come forward. ● Provide the person with assurance they have done the right thing and the organisation appreciates it. ● Make a clear offer of support. ● Assure them that all reasonable steps will be taken to protect them. ● Give them an undertaking to keep them informed.
Manage expectations	<p>Have an early discussion with them:</p> <ul style="list-style-type: none"> ● What outcome do they want? ● Are their expectations realistic? ● What will the organisation be able to deliver?
Maintain confidentiality	<ul style="list-style-type: none"> ● The identity of the discloser and the subject matter of their disclosure will be kept confidential. ● Make sure other staff cannot infer the identity of the discloser or cooperator with the investigation from any information they receive. ● Remind the discloser not to reveal themselves or give out information that would enable others to identify them as a discloser. ● Make sure that hard-copy and electronic files relating to the disclosure are accessible only to those who are involved in managing disclosures and persons affected by them in your organisation.
Assess the risks of detrimental action being taken in reprisal	<ul style="list-style-type: none"> ● Be proactive and do not wait for a complaint of victimisation. ● Actively monitor the workplace, anticipate problems and deal with them before they develop.
Manage the risks and protect the discloser/cooperator	<ul style="list-style-type: none"> ● Examine the immediate welfare and protection needs of the person and foster a supportive work environment.

- Listen and respond to any concerns the person may have about harassment, intimidation or victimisation in reprisal for their actions.
- Assess whether the concerns the person may have about harassment, intimidation or victimisation might be due to causes other than those related to a public interest disclosure.

Manage the impact of any investigation

Prevent the spread of gossip and rumours about an investigation into the disclosure.

Keep records

Keep contemporaneous records of all aspects of the case management of the person, including all contact and follow-up action.

Management of the person against whom the disclosure is made

Preventing Detrimental Action

Under the PID Act, it is an offence for a person to take detrimental action against another person in reprisal for a public interest disclosure.

The person need not have actually taken the action, but can just have threatened to do so. The person need not have taken or threatened to take the action against the person themselves, but can have incited or permitted someone else to do so.

The detrimental action need not be taken against a discloser, but against any person. Detrimental action can be taken by any person.

Action must be taken if detrimental action is in reprisal for a public interest disclosure

Council will consider both the nature of the detrimental action and whether it is being taken in reprisal for a public interest disclosure.

The person must take or threaten the action (or incite or permit another person to take or threaten the action) because, or in the belief that:

- the other person (or anyone else) has made, or intends to make, the disclosure
- the other person (or anyone else) has cooperated, or intends to cooperate with an investigation of the disclosure.

The Public Interest Disclosure Coordinator will tell persons making such disclosures that it is in their own interests to keep disclosures confidential by only discussing related matters with them or IBAC or other persons, as authorised by law.

Council is obligated to protect both internal and external persons from reprisal for the making of the disclosure. The management of both types of persons making protected persons will, however, be different.

Disclosure made by a Council employee

The Executive Leadership Team is responsible for ensuring persons making a public interest disclosure are protected from direct and indirect detrimental action. The Public Interest Disclosure Coordinator has appointed a Public Interest Disclosure Welfare Manager to coordinate welfare support for a discloser or cooperator. In most cases, the Public Interest Disclosure Welfare Manager will only be required where a public interest disclosure proceeds to investigation.

It is the responsibility of the Public Interest Disclosure Welfare Manager to foster a supportive work environment and respond to any reports of intimidation or harassment against any Council employee making the disclosure.

Disclosure made by a member of the public

Reprisals may also be taken against external persons making public interest disclosures.

The Public Interest Disclosure Welfare Manager will also provide reasonable support to an external person, with the approval of the Public Interest Disclosure Coordinator, and document all details regarding support provided. The Public Interest Disclosure Welfare Manager will discuss the issue of reasonable expectations with the person making a public interest disclosure and provide a copy of any agreement reached to the person.

Recording details and advising of rights

If anyone reports an incident of harassment, discrimination or adverse treatment that may amount to detrimental action, the Public Interest Disclosure Welfare Manager or Public Interest Disclosure Coordinator must record details of the incident and advise the person of their rights under the PID Act. A person can make a public interest disclosure about detrimental action taken against them in reprisal for making an earlier disclosure. If this occurs, it must be treated as a new disclosure under Part 2 of the PID Act.

Council will be extremely cautious about conducting enquiries or gathering information concerning an allegation of detrimental action, as a criminal offence may have been committed and any informal investigation may compromise the integrity of evidence.

Transfer of employees

A Council employee who has made a public interest disclosure and believes on reasonable grounds that detrimental action will be, is being, or has been taken against them, may request a transfer of employment.

Employees can be transferred internally or to certain other public bodies on similar terms and conditions of employment. This can only happen if they request, or consent to, a transfer and the following conditions apply:

- The CEO has reasonable grounds to suspect detrimental action will be, is being, or has been taken against the employee.
- The CEO considers that the transfer will avoid, reduce or eliminate the risk of detrimental action.
- If transfer to another public body is proposed, the head of that public body consents to the transfer. The transfer can be temporary or permanent. If the employee is moved to another public body, the employee's service in the new body is regarded as continuous with their pre-transfer service.

Referring serious instances of detrimental action

Where the detrimental action is of a serious nature likely to amount to a criminal offence, Council will consider reporting the matter to Victoria Police or IBAC. If Council reports the matter to Victoria Police or IBAC, it will be careful about making preliminary enquiries or gathering information about the allegation in order not to compromise the integrity of any evidence that might be later relied on in a criminal prosecution.

If the person making the disclosure is implicated in the improper conduct or detrimental action

The discloser is not subject to criminal or civil liability for making the disclosure (section 39 of the PID Act). However, section 42 of the PID Act specifically provides that a person's liability for their own conduct is not affected by having disclosed that conduct under the PID Act. In other words, a discloser is not protected from the reasonable consequences flowing from their involvement in any improper conduct.

The management of the welfare of a discloser may therefore become complicated when that person is implicated in misconduct, whether or not that misconduct is related to the disclosure. The general obligations on Council to handle a disclosure and protect the discloser still apply.

Care will be taken to thoroughly document the process of any action taken against a discloser. This includes recording why the disciplinary or other action is being taken, and the reasons why the action is not in retribution for making the disclosure.

The discloser will be clearly advised of the proposed action to be taken and of any mitigating factors that have been taken into account.

Meeting the welfare needs of the subject of a public interest disclosure

Until a public interest disclosure complaint is resolved (either by dismissing or investigating it) the information about the person who is the subject of the disclosure is only an allegation.

Council will meet the welfare needs of the subject of the disclosure as they may need support once they become aware that an allegation has been made against them. Council will consider each matter on a case-by-case basis, taking into account the particular circumstances of the person. A referral to Council's Employee Assistance Program may be appropriate.

Informing the subject of a disclosure

Whether the person who is the subject of a disclosure is informed about the allegation made against them depends on the circumstances. It is possible the subject may never be told about the disclosure if it is not determined to be a public interest disclosure complaint, or a decision is made to dismiss the matter.

The PID Act restricts the release of information about the content of disclosures or which would be likely to identify a discloser. This generally means Council cannot reveal this information to the person who is the subject of a disclosure.

However, Council may give information to the subject of the disclosure about the allegation made against them in some circumstances, such as:

- if it is directed or authorised to do so by the entity investigating the disclosure
- for the purpose of taking action with respect to the alleged conduct, including disciplinary action.

These exceptions do not allow Council to reveal information that would be likely to identify the discloser.

Confidentiality

Council will take all reasonable steps to ensure the person's confidentiality during the assessment and any ensuing investigation. Where the disclosure is dismissed or investigations do not substantiate the allegations, confidentiality should be maintained in relation to the subject's identity, as well as the fact of the investigation and any results.

Natural justice

The subject of an allegation must be afforded natural justice before a decision is made about their conduct.

Natural justice means the person has the right to:

- be informed about the substance of the allegations against them
- be given the opportunity to answer the allegations before a final decision is made
- be informed about the substance of any adverse comment that may be included in any report arising from an investigation
- have his/her defence set out fairly in any report.

If the matter has been investigated, the investigating entity (IBAC, the Victorian Inspectorate, Victoria Police or the Victorian Ombudsman) is responsible for carrying out this consultation.

If allegations are wrong or unsubstantiated

If someone has been the subject of allegations that are wrong or unsubstantiated, then Council and the investigating entity will ensure there are no adverse consequences for the person arising out of the disclosure or its investigation. This is particularly crucial where information has been publicly disclosed that has identified the person, but also where such information has become well known across the organisation.

Protection against reprisal

Council's Executive Leadership Team will take responsibility for ensuring a person against whom a public interest disclosure has been made, is protected from direct or indirect detrimental action.

A Public Interest Disclosure Welfare Manager will be assigned to monitor the welfare of the person against whom a disclosure has been made and to provide full support to the person where the allegations contained in a disclosure are clearly wrong or unsubstantiated.

Collating and publishing statistics

The Public Interest Disclosure Coordinator will ensure that confidential records are kept to enable accurate reporting by IBAC as required by the PID Act.

The following details will be collected-

- number and types of assessable disclosures made directly to IBAC
- nature of the disclosure
- the number and types of disclosures notified to IBAC
- the number and types of assessments made to IBAC to determine if it is a public interest disclosure
- the number and types of public interest disclosures investigated, referred or dismissed by IBAC
- any recommendations made by IBAC under the PID Act.

Council will include in its Annual Report information about how to access the procedures established by the Council under Part 9 of the PID Act and the number of disclosures notified to IBAC under s.21(2) during the financial year.

Roles and Responsibilities

Public Interest Disclosure Coordinator (Chief Executive Officer)

The Public Interest Disclosure Coordinator will-

- impartially assess each disclosure to determine whether it appears to be a public interest disclosure
- coordinate the reporting system used by the organisation
- be a contact point for general advice about the operation of the PID Act and for integrity agencies such as IBAC
- be responsible for ensuring that the Council carries out its responsibilities under the PID Act and the Guidelines
- liaise with IBAC in regard to the PID Act
- where necessary, arrange for appropriate welfare support for the person making a public interest disclosure
- advise the person making a public interest disclosure of the progress of an investigation into the disclosed matter
- establish and manage a confidential filing system
- collate statistics on disclosures made
- take all necessary steps to ensure the identity of the person making a public interest disclosure and the identity of the person who is the subject of the disclosure are kept confidential
- undertake regular training in their responsibilities under the PID Act to remain confident in the receipt, handling, assessment and notification of disclosures.

Public Interest Disclosure Officer (Director Corporate Services)

The Public Interest Disclosure Officer will assist the Public Interest Disclosure Coordinator with the receipt of disclosures and by providing general advice about the Act.

The Public Interest Disclosure Officer will-

- be a contact point for general advice about the operation of the PID Act for any person wishing to make a disclosure about improper conduct or detrimental action

- forward all disclosures and supporting evidence to the Public Interest Disclosure Coordinator
- undertake regular training in their responsibilities under the PID Act to remain confident in the receipt, handling, assessment and notification of disclosures
- provide education and training for all staff
- evaluate and review the Council's public interest disclosure framework.

Public Interest Disclosure Welfare Manager (Manager People & Culture)

The Public Interest Disclosure Welfare Manager will be responsible for monitoring the specific needs of the person making a public interest disclosure and to provide practical advice and support.

The Public Interest Disclosure Welfare Manager will-

- examine the immediate welfare and protection needs of a person, internal and external, making a public interest disclosure and provide reasonable support
- foster a supportive work environment and respond to any reports of intimidation, victimisation or harassment against the person making the disclosure
- advise the person making a public interest disclosure of the legislative and administrative protections available to them
- keep records of all aspects of the case management of the person making the public interest disclosure, including all contact and follow up action
- endeavour to ensure that the expectations of the person making a public interest disclosure are realistic
- will not divulge any details relating to the disclosed matter to any person other than the Public Interest Disclosure Coordinator
- will be discreet in the conduct of meetings to protect the confidentiality of the person making a public interest disclosure
- undertake regular training in their responsibilities under the PID Act to remain confident in maintaining the welfare and monitoring the needs of the person making a public interest disclosure.

References

Public Interest Disclosure Act 2012

[IBAC Guidelines for Making and Handling Public Interest Disclosures 2020](#)

[IBAC Guidelines for Public Interest Disclosure Welfare Management 2020](#)

[Records Management Policy](#)

[NGSC Complaints Resolution Policy](#)

Definitions

assessable disclosure means

- (a) a disclosure that, under section 21(2), must be notified to the IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee
- (b) a disclosure that, under section 21(3), may be notified to the IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee;
- (c) a disclosure that, under section 36(2), must be notified to the IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee
- (d) a disclosure made to the IBAC in accordance with Division 2 of Part 2
- (e) a disclosure made to the Victorian Inspectorate under section 14(b)
- (f) a disclosure made to the Integrity and Oversight Committee under section 14(a)
- (g) a police complaint disclosure that, under section 22, must be notified to the IBAC
- (h) a police complaint disclosure made to the IBAC.

confidentiality obligations means the obligations on those receiving information relating to a public interest disclosure to not disclose that information, unless authorised by law. The primary obligations in relation to PIDs and PICs are contained in section 52, 53 and 54 of the PID Act and section 184 of the IBAC Act.

discloser means a person who makes a disclosure that may be a public interest disclosure.

external disclosures are PIDs made to a person or body who is not an entity to whom a PID can be made under Division 2, Part 2 of the PID Act (the part which prescribes how and to whom PIDs must be made)

investigating entity means IBAC, the Chief Commissioner of Police, the Judicial Commission of Victoria, the Victorian Ombudsman, the Victorian Inspectorate, the Chief Municipal Inspector, the Racing Integrity Commissioner and the Information Commissioner.

Only these entities can investigate a public interest disclosure complaint.

public interest disclosure means a disclosure made by a natural person of-

- (a) information that shows or tends to show—
 - (i) a person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct; or
 - (ii) a public officer or public body has taken, is taking or proposes to take detrimental action against a person in contravention of section 45; or
- (b) information that the person reasonably believes shows or tends to show—
 - (i) a person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct; or
 - (ii) a public officer or public body has taken, is taking or proposes to take detrimental action against a person in contravention of section 45.

public interest complaint means a disclosure that has been determined under s.26, 31 or 31B of the PID Act to be a public interest complaint.

public bodies include a council (established under the *Local Government Act 1989*).

public officers include local government councillors and council employees.

Review history

Date	Review details	Action
1/8/2017	Four yearly officer review	New format, minor rewording to align with 2016 Guidelines only, no material changes.
1/1/2020	Legislation changes	Aligned to new legislation.