

# Protected Disclosures Procedure



**Prepared by position**  
**Approved by position**  
**Functional area**  
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**Review date**

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 protected disclosure in accordance with the *Protected Disclosures Act 2012* (the PD Act) and guidelines issued by the Independent Broad-Based Anti-Corruption Commission (IBAC) (collectively referred to as the PD scheme):

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

The PD Act aims to:

- encourage and assist people to report improper conduct and detrimental action taken in reprisal for a protected disclosure
- 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.

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

- to facilitate the making of disclosures of improper or corrupt conduct by public officers and public bodies
- to establish a system for the handling of disclosures and, where appropriate, for notification to IBAC
- to provide protection from detrimental action to any person affected by a protected disclosure
- to 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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[Protected Disclosure Coordinator \(Chief Executive Officer\)](#)

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[Protected Disclosure Welfare Manager \(Manager Human Resources\)](#)

## Contacts

### **Protected Disclosure Coordinator**

Chief Executive Officer, Northern Grampians Shire Council

Stawell Town Hall, PO Box 580, Stawell 3380

Telephone - 5358 8711

[www.ngshire@ngshire.vic.gov.au](mailto:www.ngshire@ngshire.vic.gov.au)

### **Protected Disclosure Officer**

Director Corporate Services, Northern Grampians Shire Council

Stawell Town Hall, PO Box 580, Stawell 3380

Telephone - 5358 8733

### **Protected Disclosure Welfare Manager**

Manager Human Resources, Northern Grampians Shire Council

Stawell Town Hall, PO Box 580, Stawell 3380

Telephone - 5358 8719

### **Supervisors**

Protected 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 employees may also be made directly to the Ombudsman or IBAC. Disclosures relating to Councillors can only be made directly to the Ombudsman or IBAC.

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

Internet- [www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au)

Email- [ombudvic@ombudsman.vic.gov.au](mailto: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

Internet- [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)

Telephone- 1300 735 135

## Actual Procedure

Council has established a centralised reporting system for the receipt, assessment and investigation of protected 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 protected 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 protected 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 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 files are kept in a folder *Protected Disclosure Complaints (Confidential)* which includes a prominent warning in the folder description that criminal penalties apply to any unauthorised divulging of information concerning a protected disclosure
- there are two other folders, it *Protected Disclosure Information* and *Protected Disclosure Survey-Processes* to clearly differentiate between complaints and other protected 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 provided by copiers with key card access
- a report is capable of being run in the EDRMS to provide statistics for annual reporting as required.

Records Management staff will be aware of the general nature of protected 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 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 office.

## 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 PD 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 protected disclosure or cooperated with the investigation of a protected 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 PD 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 protected 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 conduct serious enough to result in a person's dismissal.

Improper conduct is defined in section 4 of the PD Act to mean:

- corrupt conduct (as defined in the IBAC Act)
- specified conduct.

Improper conduct only covers certain types of conduct, namely:

- conduct of any person that adversely affects the honest performance by a public officer or public body of their official functions
- conduct of a person intended to adversely affect the effective performance of a public officer or public body, which leads to a benefit as described in the Act
- conduct of a public officer or public body that involves dishonest performance of their official functions, a breach of public trust, or misuse of information or material obtained in their official capacity
- conduct of a public officer or public body in their official capacity that involves substantial mismanagement of public resources, substantial risk to public health or safety, or substantial risk to the environment.

### **Corrupt conduct**

Under the IBAC Act, corrupt conduct is conduct of a certain type that would constitute a relevant offence. Relevant offences are:

- indictable offences against an Act
- the common law offences of attempting to pervert the course of justice, perverting the course of justice, bribery of a public official or misconduct in public office.

Offences punishable by imprisonment for five years or more are presumed to be indictable offences. The types of conduct that can be corrupt conduct are:

- conduct of any person that adversely affects the honest performance by a public officer or public body of their official functions
- conduct of a public officer or public body that:
  - constitutes or involves a dishonest performance of their official functions
  - constitutes or involves knowingly or recklessly breaching public trust
  - involves misuse of information or material that was obtained in their official capacity

- conduct that could constitute a conspiracy or attempt to engage in any of the above conduct
- conduct intended to adversely affect the effective performance of a public officer or public body which leads to a benefit as described in the Act.

*Examples of corrupt conduct:*

- *A Council officer takes a bribe or receives a payment other than his or her wages or salary in exchange for the discharge of a public duty.*
- *A Council officer favours unmeritorious applications for jobs or permits by friends and relatives.*
- *A Council officer sells confidential information.*

### **Specified conduct**

By contrast, specified conduct under the PD Act covers a broader range of conduct where that conduct would, if proved, constitute a criminal offence or reasonable grounds for dismissal.

The types of conduct that can be specified conduct are:

- all types of corrupt conduct, and
- conduct of a public officer or public body in their official capacity that:
  - involves substantial mismanagement of public resources
  - involves substantial risk to public health or safety, or
  - involves substantial risk to the environment.

### ***What is a detrimental action?***

The PD Act creates an offence for a person to take detrimental action against another person in reprisal for a protected disclosure.

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

Section 3 of the PD 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 protected disclosure.**

You will need to consider both the nature of the detrimental action and whether it is being **taken in reprisal for a protected 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 reason for the person taking action in reprisal must be a 'substantial' reason, or it is not considered to be detrimental action (section 43(3) of the PD Act).

### *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-

- verbally, in person, by phone or by leaving a voice mail message;
- in writing (but not by facsimile as this is not permitted by the 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 Protected 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 PD 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 PD Regulations).

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?**

Council may only receive disclosures that relate to the conduct of themselves or their own members, officers or employees, therefore, Council can only receive disclosures that relate to the conduct of-

- its own officers or employees
- a person/s whose actions relate to a Council officer or employee
- members of Council's s.86 committees.

If Council receives a disclosure about an employee, officer or member of another public body, the disclosure has not been made in accordance with Part 2 of the PD Act. In this case, Council will advise the person or body about where to go to make the disclosure (in most cases this will be IBAC).

Where a person seeks to make a submission about a Councillor, that disclosure must be made to IBAC.

### *Receiving a Disclosure*

#### *Who can receive a disclosure?*

Disclosures may be received by the CEO, Protected Disclosure Coordinator, the Protected Disclosure Officer, Protected 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 Protected Disclosure Coordinator.

The Protected Disclosure Coordinator will determine whether the disclosure has been made to the right body, whether the disclosure may be a protected disclosure and whether the matter falls under the PD Act.

Council employees are responsible for ensuring that any allegation made that may fall under the PD Act is referred to the Protected 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 PD Act.

If an allegation raises issues that may fall within the provisions of the PD Act Council will assess the allegations in terms of the PD 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 protected 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 PD Act to be a protected disclosure. If Part 2 of the Act is satisfied, Council must determine if the information also satisfies Part 4 of the Act to be a public interest disclosure.

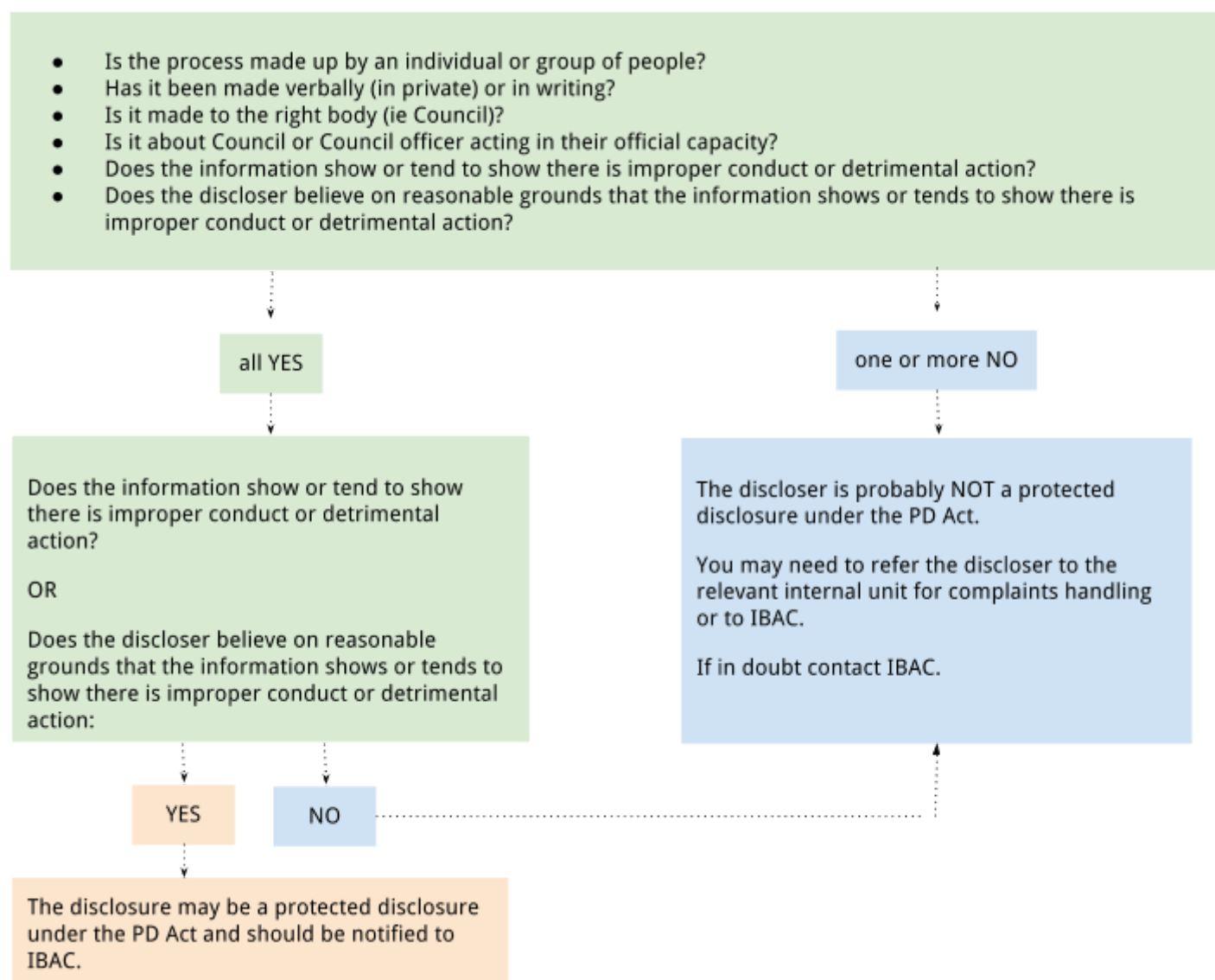
To be assessed as a protected disclosure, a disclosure must meet the following criteria-

- 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 Protected 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 protected 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 Act.

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





### *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 PD 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 PD 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 Protected 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 PD 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 disclosure**

If Council considers the disclosure may be a protected 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 protected 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 PD Act to disclose that the disclosure has been notified to IBAC for assessment under the PD 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 protected disclosure;

- the disclosure has not been notified to IBAC for assessment;
- the protections under Part 6 of the 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 PD Act, Council will consider whether it could be dealt with in accordance with its normal complaints process.

### Protections and offences

Part 6 of the PD Act sets out the protections provided to persons who may make a protected 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 protected 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 protected disclosure was made
- IBAC
- an investigating entity investigating the protected 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 protected disclosure.

An employee who has made a protected 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 PD Act do not apply if a discloser:

- provides information intending that it be acted on as a protected disclosure, or further information that relates to a protected disclosure, knowing it to be false or misleading
- claims that a matter is the subject of a protected 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 protected disclosure complaint.

The PD 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 PD Act.

A person who makes a disclosure is not protected against legitimate management action being taken in relation to them.

### ***Taking disciplinary action against a person who has made a protected disclosure***

Taking disciplinary or other action against a person who has made a protected 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 protected disclosure is not a substantial 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 a public body cannot demonstrate the above conditions have been met, it leaves itself open to allegations of taking detrimental action against a person for having made a disclosure. Council may therefore wish to obtain legal advice before taking any action against the person making a protected disclosure.

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 protected 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 protected disclosure investigations are protected.

Part 7 of the PD 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 PD 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.

A number of exceptions to the restriction apply, including where the information is revealed:

- to exercise functions under the PD Act
- to obtain legal advice or representation
- after IBAC or the Victorian Inspectorate has determined the assessable disclosure is not a protected disclosure complaint
- in accordance with a direction or authorisation from the investigating entity that is investigating the disclosure
- because it is necessary for taking lawful action in relation to the conduct that is the subject of the assessable disclosure.

### ***Identity of person making an assessable disclosure must not be disclosed***

The PD 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 is revealed:

- to exercise functions under the PD Act
- to obtain legal advice or representation
- after IBAC or the Victorian Inspectorate has determined the assessable disclosure is not a protected disclosure complaint
- by an investigating entity after and in accordance with the consent of the discloser.

### ***Criminal offences***

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

Table 3: Civil and criminal penalties under the PD Act

<b>Specific offences (Criminal)</b>	<b>Penalties</b>
<b>Detrimental action</b>	
<i>Liability of an individual</i>	
It is an offence for a person to take or threaten action in reprisal when: <ul style="list-style-type: none"> <li>• another person has made or intends to make a protected disclosure</li> <li>• the person believes another person has made or intends to make a protected disclosure</li> <li>• another person has cooperated or intends to cooperate with the investigation of a protected disclosure</li> <li>• the person believes another person has cooperated or intends to cooperate with the investigation of a protected disclosure</li> </ul>	<ul style="list-style-type: none"> <li>• Criminal penalty: 240 penalty units or two years' imprisonment or both</li> </ul> AND (if person is convicted or found guilty of an offence) <ul style="list-style-type: none"> <li>• Civil penalty: Order of court for offender to pay appropriate level of damages to compensate for injury, loss or damage</li> </ul>
<i>Vicarious liability of their employer</i>	
An employer may also be held to be liable for the detrimental action of their employee or agent	<ul style="list-style-type: none"> <li>• Criminal penalty: 240 penalty units or two years' imprisonment or both</li> </ul> AND (if person is convicted or found guilty of an offence) <ul style="list-style-type: none"> <li>• Civil penalty: Order of court for offender to pay appropriate level of damages to compensate for injury, loss or damage</li> </ul>
<b>Disclosure of content of assessable disclosure</b>	
A person/body must not disclose content of assessable disclosure or information about its content	<ul style="list-style-type: none"> <li>• Criminal penalty: 240 penalty units or two years' imprisonment or both</li> </ul> AND (if person is convicted or found

	<p>guilty of an offence)</p> <ul style="list-style-type: none"> <li>• Civil penalty: Order of court for offender to pay appropriate level of damages to compensate for injury, loss or damage</li> </ul>
<b>Disclosure of identity of person making assessable disclosure</b>	
A person/body must not disclose information likely to lead to the identification of a person who has made an assessable disclosure	<ul style="list-style-type: none"> <li>• 120 penalty units or 12 months' imprisonment or both (person)</li> <li>• 600 penalty units or six months' imprisonment or both</li> </ul>
<b>Disclosure of certain advice</b>	
A person must not disclose that a disclosure has been notified to IBAC or determined to be a protected disclosure complaint	60 penalty units or six months' imprisonment or both
<b>Making false disclosure or providing false further information</b>	
A person must not provide information intending it be acted on as a protected disclosure, or further information that relates to a protected disclosure, knowing it to be false or misleading	120 penalty units or 12 months' imprisonment or both
<b>Falsely claiming disclosure is a protected disclosure or protected disclosure complaint</b>	
A person must not falsely claim a matter is the subject of a protected disclosure or the subject of a disclosure determined to be a protected disclosure complaint	120 penalty units or 12 months' imprisonment or both
<b>Specific offences (Civil action)</b>	<b>Penalties</b>
<b>Detrimental action</b>	
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 protected disclosure	Civil penalty: Court order for damages for any injury, loss or damage, including exemplary damages

## Welfare management

<b>Welfare support</b>	At a minimum Council will provide for the discloser or cooperator on an ongoing basis:
<b>Inform</b>	<ul style="list-style-type: none"><li>• Confirm the disclosure has been received.</li><li>• Outline the legislative or administrative protections available.</li><li>• Describe the action proposed to be taken.</li><li>• If action has been taken, provide details about the results.</li></ul>
<b>Provide active support</b>	<ul style="list-style-type: none"><li>• Acknowledge the person for having come forward.</li><li>• Provide the person with assurance they have done the right thing and the organisation appreciates it.</li><li>• Make a clear offer of support.</li><li>• Assure them that all reasonable steps will be taken to protect them.</li><li>• Give them an undertaking to keep them informed.</li></ul>
<b>Manage expectations</b>	Have an early discussion with them: <ul style="list-style-type: none"><li>• What outcome do they want?</li><li>• Are their expectations realistic?</li><li>• What will the organisation be able to deliver?</li></ul>
<b>Maintain confidentiality</b>	<ul style="list-style-type: none"><li>• The identity of the discloser and the subject matter of their disclosure will be kept confidential:</li><li>• Make sure other staff cannot infer the identity of the discloser or cooperator with the investigation from any information they receive.</li><li>• Remind the discloser not to reveal themselves or give out information that would enable others to identify them as a discloser.</li><li>• 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.</li></ul>
<b>Assess the risks of detrimental action being taken in reprisal</b>	<ul style="list-style-type: none"><li>• Be proactive and do not wait for a complaint of victimisation.</li><li>• Actively monitor the workplace, anticipate problems and deal with them before they develop.</li></ul>
<b>Protect the discloser/cooperator</b>	<ul style="list-style-type: none"><li>• Examine the immediate welfare and protection needs of the person and foster a supportive work environment</li><li>• Listen and respond to any concerns the person may have about harassment, intimidation or victimisation in reprisal for their actions.</li><li>• Assess whether the concerns the person may have about harassment, intimidation or victimisation might be due to causes other than those related to a protected disclosure.</li></ul>
<b>Manage the impact of any investigation</b>	Prevent the spread of gossip and rumours about an investigation into the disclosure.
<b>Keep records</b>	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 PD Act, it is an offence for a person to take detrimental action against another person in reprisal for a protected 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 protected disclosure***

Council will consider both the nature of the detrimental action and whether it is being taken in reprisal for a protected 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 reason for the person taking action in reprisal must be a 'substantial' reason.

The Protected 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, officer***

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

It is the responsibility of the Protected 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 protected disclosures.

The Protected Disclosure Welfare Manager will also provide reasonable support to an external person, with the approval of the Protected Disclosure Coordinator, and document all details regarding support provided. The Protected Disclosure Welfare Manager will discuss the issue of reasonable expectations with the person making a protected 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 Protected Disclosure Welfare Manager or Protected Disclosure Coordinator must record details of the incident and advise the person of their rights under the PD Act. A person can make a protected 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 PD 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***

An employee of Council who has made a protected 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 PD Act). However, section 42 of the PD Act specifically provides that a person's liability for their own conduct is not affected by having disclosed that conduct under the PD 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 protected disclosure***

Until a protected 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 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 protected disclosure complaint, or a decision is made to dismiss the matter.

The PD 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 protected disclosure has been made, is protected from direct or indirect detrimental action.

A Protected 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 Protected Disclosure Coordinator will ensure that confidential records are kept to enable accurate reporting by IBAC as required by the 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 protected disclosure;
- the number and types of protected disclosures investigated, referred or dismissed by IBAC;
- any recommendations made by IBAC under the Act.

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

### ***Roles and Responsibilities***

#### ***Protected Disclosure Coordinator (Chief Executive Officer)***

The Protected Disclosure Coordinator will-

- impartially assess each disclosure to determine whether it appears to be a protected disclosure;
- coordinate the reporting system used by the organisation;
- be a contact point for general advice about the operation of the PD Act and for integrity agencies such as IBAC;
- be responsible for ensuring that the Council carries out its responsibilities under the PD Act and the Guidelines;
- liaise with IBAC in regard to the PD Act;
- where necessary, arrange for appropriate welfare support for the person making a protected disclosure;
- advise the person making a protected 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 protected 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 PD Act to remain confident in the receipt, handling, assessment and notification of disclosures.

#### ***Protected Disclosure Officer (Director Corporate Services)***

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

The Protected Disclosure Officer will-

- be a contact point for general advice about the operation of the Act for any person wishing to make a disclosure about improper conduct or detrimental action;
- forward all disclosures and supporting evidence to the Protected Disclosure Coordinator;
- undertake regular training in their responsibilities under the PD Act to remain confident in the receipt, handling, assessment and notification of disclosures.

#### ***Protected Disclosure Welfare Manager (Manager Human Resources)***

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

The Protected Disclosure Welfare Manager will-

- examine the immediate welfare and protection needs of a person, internal and external, making a protected 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 protected disclosure of the legislative and administrative protections available to them;
- keep records of all aspects of the case management of the person making the protected disclosure, including all contact and follow up action;
- endeavour to ensure that the expectations of the person making a protected disclosure are realistic;
- will not divulge any details relating to the disclosed matter to any person other than the Protected Disclosure Coordinator;
- will be discreet in the conduct of meetings to protect the confidentiality of the person making a protected disclosure; and
- undertake regular training in their responsibilities under the PD Act to remain confident in maintaining the welfare and monitoring the needs of the person making a protected disclosure.

## References

*Protected Disclosure Act 2012*

[IBAC Guidelines for Making and Handling Protected Disclosures 2016](#)

[IBAC Guidelines for Protected Disclosure Welfare Management 2016](#)

[Records Management Policy](#)

## Definitions

**assessable disclosure** means a disclosure that is made directly, or which must be notified, to IBAC or the Victorian Inspectorate, including a police complaint disclosure. In the case of a disclosure notified to IBAC, it is a disclosure that the notifier considers may be a protected disclosure.

- (a) a disclosure that, under s.21(2), must be notified to the IBAC; or
- (b) a disclosure that, under s.21(3), may be notified to the IBAC; or
- (c) a disclosure that, under s.36(2), must be notified to the IBAC; or
- (d) a disclosure made in accordance with Division 2 of Part 2 directly to the IBAC; or
- (e) a disclosure made in accordance with Division 2 of Part 2 to the Victorian Inspectorate under s.17; or
- (f) a police complaint disclosure that, under s.22, must be notified to the IBAC; or
- (g) a police complaint disclosure made directly to the IBAC

**discloser** means a person who makes a disclosure that may be a protected disclosure.

### **entity that can receive disclosure –**

- Investigating entities - IBAC, the Ombudsman, Chief Commissioner of Police and the Victorian Inspectorate
- public service bodies
- a council

Only these entities can investigate a protected disclosure complaint.

**investigating entity** means IBAC, the Victorian Ombudsman, Victoria Police and the Victorian Inspectorate. Only these entities can investigate a protected disclosure complaint.

**protected disclosure** means a disclosure made in accordance with Part 2 or a complaint made in accordance with s.167(3) of the *Victoria Police Act*.

**protected disclosure complaint** means a disclosure that has been determined by IBAC under s.26 of the PD Act to be a protected disclosure 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.