

ORGANISATIONAL PROCEDURE



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1. References

- *Public Interest Disclosures Act 2012* (Vic)
- Public Interest Disclosure Regulations 2019 (Vic)
- *Independent Broad-based Anti-Corruption Commission Act 2011* (Vic)
- Independent Broad-based Anti-corruption Commission - Guidelines For Handling Public Interest Disclosures January 2020
- Independent Broad-based Anti-corruption Commission - Guidelines For Public Interest Disclosure Welfare Management January 2020
- Council Policy Councillor Code of Conduct Policy CPO-CEO-CS-008 (DocSetID: 2246898)
- Organisational Policy Staff Code of Conduct Policy OPO-CEO-HR-003 (DocSetID: 1706557)
- Council Policy Fraud & Corruption Policy CPO-CORPS-GE-001 (DocSetID: 2553622)
- Council Policy Customer Complaint Handling CPO-CORPS-CUST-003 (DocSetID: 2299280)
- Glenelg Shire Council, Records Management Policy OPO-CORPS-RECM-001 (DocSetID: 1933907)

2. Introduction

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

These Procedures are a resource for disclosers and potential disclosers, whether an internal Council member, employee, contractor, consultant, volunteer or an external member of the public; essentially, any individual who wants to find out how to make a disclosure, receive the protections available under the Act, and how the discloser and their disclosure may be managed and handled by Council.

These Procedures cover:

- how disclosures may be made to Council;
- how Council manages the receipt of disclosures including disclosures that Council cannot accept and will pass on the disclosure to IBAC with the new 'no wrong door' provisions;
- how Council assesses disclosures it is able to receive under the Act;
- notifications Council is required to make about disclosures, to both disclosers and to IBAC;
- how Council protects certain people, including from detrimental action being taken against them in reprisal for making a public interest disclosure, namely:

- public interest disclosers,
- persons who are the subject of public interest disclosures and public interest complaints, and
- other persons connected to public interest disclosures, such as witnesses or persons cooperating with an investigation.

These Procedures form an essential part of Council's commitment to the aims and objectives of the Act. Council does not tolerate improper conduct by the organisation, its employees, officers, volunteers, contractors, consultants, Councillors nor the taking of reprisals against those who come forward to disclose such conduct.

Council recognises the value of transparency and accountability in its administrative and management practices, and supports the making of disclosures that reveal improper conduct or the taking of detrimental action.

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

3. Scope

These Procedures only apply to disclosures of improper conduct or detrimental action by the Council or its employees. Disclosures about improper conduct or detrimental action by Councillors must be made to IBAC or to the Victorian Ombudsman.

4. Abbreviations and key terms used in these Procedures

Act	<i>Public Interest Disclosure Act 2012</i>
assessable disclosure	Any disclosure either made directly to IBAC or an appropriate entity, or if received by Glenelg Shire Council is required under the Act to be notified by the Council to IBAC for assessment
Council	Glenelg Shire Council
disclosure	Any complaint, concern, matter, allegation or disclosure (however described) purported to be made in accordance with Part 2 of the Act
Guidelines	The Guidelines published by IBAC under section 57 of the Act. Available on IBAC's website.
IBAC Act	<i>Independent Broad-based Anti-corruption Commission Act 2011</i>
investigative entity	Any one of the listed bodies authorised to investigate a public interest complaint, being IBAC, the Victorian Ombudsman, the Chief Commissioner of Police, the Victorian Inspectorate, the Judicial Commissioner of Victoria, the Chief Municipal Inspector, the Information Commissioner and the Racing Integrity Commissioner.
procedures	This version of the procedures of Glenelg Shire Council, as established under section 58 of the Act
Public interest complaint	A public interest disclosure that has been determined by IBAC, the Victorian Inspectorate, or the Integrity and Oversight Committee to be a Public Interest Complaint. (Previously known as protected disclosure complaint).
Public interest disclosure	A disclosure by a natural person of information that shows or tends to show, or information that the person reasonably believes shows or tends to show, improper conduct or detrimental action (previously known as protected disclosures).
Regulations	<i>Public interest disclosure Regulations 2019</i>

5. About public interest disclosures

5.1. What is a public interest disclosure?

Public interest disclosures are reports about:

- improper conduct of public bodies or public officers (such as corrupt conduct); or
- detrimental action that a public officer or public body has taken 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.

A disclosure can relate to conduct or action that:

- may have already taken place;
- 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. Such material would, for example, include matters which have already been subject to media or other public commentary.

5.2. Who a public interest disclosure can be about

Disclosures can be made about:

- public bodies (including a council established under the *Local Government Act 1989*);
- public officers (including local government councillors and council employees); and
- the conduct of a person who is not a public officer or is not employed by a public body, where their conduct is adversely affecting the honest performance of a public body or public officer, or is intended to adversely affect their effective performance.

Further information about the types of public bodies and public officers about whom disclosures can be made is in the *Public Administration Act 2004*, and the *Independent Broad-based Anti-corruption Commission Act 2011* (the IBAC Act).

Someone can still make a disclosure even if they can't identify the person or the organisation to which the disclosure relates.

5.3. Who can make a disclosure?

Anyone can make a disclosure about improper conduct or detrimental action – both members of the public and employees of a public body. However, to fall within the scheme, disclosures must be made to an organisation that is authorised to receive disclosures.

Disclosures can be made by individuals or a group of people. A company or business cannot make a disclosure - but its officers or employees can.

5.4. Organisations that can receive public interest disclosures

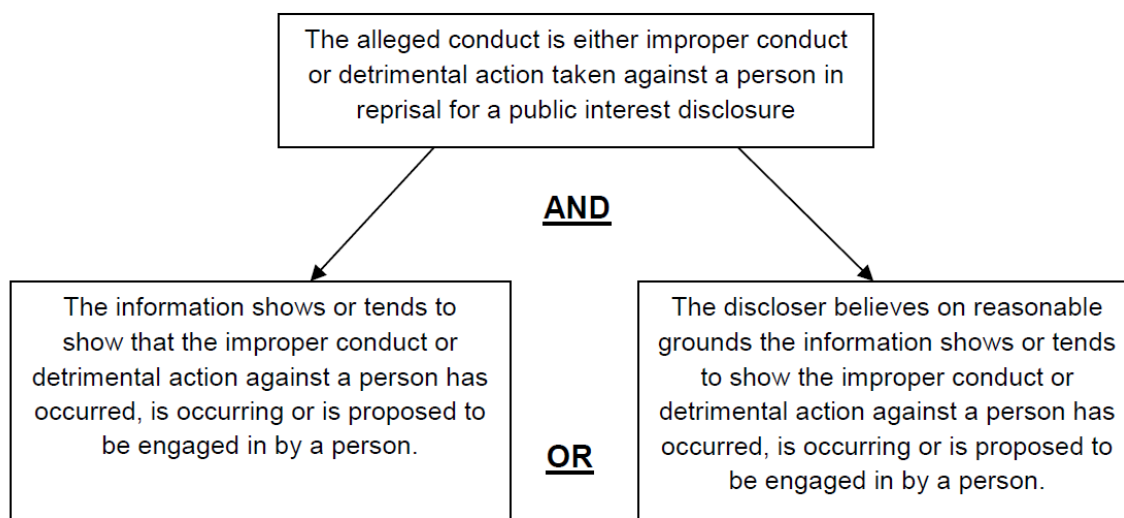
Disclosures about some public bodies or officers must only be made to particular entities. Disclosures related to councils should be made as follows:

- A disclosure about a Councillor **must** be reported to IBAC or the Victorian Ombudsman; and
- Councils can receive disclosures that relate to the conduct of themselves, or disclosures made by its own members, officers or employees. Disclosures about councils can also be made to IBAC, or to the Victorian Ombudsman or the Victorian Inspectorate.

Refer to the Guidelines for handling public interest disclosures for a full list of where to make disclosures about specific public bodies or officers.

6. What can a disclosure be made about?

A disclosure must be about the conduct of a person, public officer or public body in their capacity as a public body or public officer as outlined in the following diagram:



In assessing whether there is improper conduct or detrimental action, Council will look critically at all available information about the alleged conduct and about the discloser. Preliminary questions Council may seek answers to, or consider, include:

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

Disclosures can be made under the public interest disclosure regime where they relate to improper conduct or detrimental action. Definitions of these terms are set out below.

6.1. Improper conduct

Improper conduct includes corrupt conduct or any of the following conduct by a public officer or public body in their capacity as a public officer or public body:

- 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 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 public 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 gain, that the person or associate would not have otherwise obtained; and
- conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referred to above.

If the conduct is trivial, it will not meet the threshold of improper conduct.

When assessing allegations of improper conduct, Council will need to identify that there is a link between the conduct and the official function of a public officer or public body.

6.2. Detrimental action

It is an offence for a person to take, threaten to take or allow another person to take detrimental action against another person in reprisal for making a public interest disclosure.

Detrimental action includes:

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

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

When assessing a disclosure for detrimental action the following will be considered as part of the assessment:

- both the nature of the detrimental action and whether it is being taken in reprisal for a public interest disclosure; and
- did the person 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; and
 - the other person (or anyone else) has cooperated, or intends to cooperate, with an investigation of the disclosure.

The Act does not prevent a manager taking management action against a person who has made a disclosure provided that the making of the disclosure is not the reason for the management action being taken.

6.3. Serious professional misconduct

Serious professional misconduct is not defined in the Act. For the purpose of these Procedures it will be thought about where there is a serious failure to exhibit the skills and experience required to perform the responsibilities of the office, as well as a serious breach of professional conduct expected in the workplace.

To identify whether serious professional misconduct has occurred, the following will be considered:

- If the person has behaved in a way that is inconsistent with the expectations, skills and responsibilities of their office;
- The behaviour the person engaged in was in their capacity as a public officer; and
- Whether the misconduct was serious.

The following factors will be considered when assessing whether the misconduct is serious:

- Persistent, repeated or premeditated behaviour;
- Risks posed to others or the consequences of the behaviour (including for the public officer and others);
- The level of public trust and responsibility attached to the public office;
- The amount of money involved in the wrongdoing;
- How the conduct is perceived by the person's peers;
- Whether the conduct would result in significant disciplinary or potentially criminal penalties;
- The size of the discrepancy between what the person should have done and what they did; and
- Whether it should have been apparent to the person that they were wrong.

7. Council's internal reporting structures

Council supports a workplace culture where the making of public interest disclosures is valued by the organisation and the right of any individual to make a public interest disclosure is taken seriously.

Council will:

- ensure these Procedures, including detailed information about how disclosures may be made and to whom, are accessible on its website and available internally and externally to Councillors, officers, employees and any individual in the broader community;
- ensure that appropriate training is provided at all levels of the organisation to raise awareness of how a public interest disclosure may be made, and to take all reasonable steps to ensure officers, employees and Councillors are familiar with the Procedures and any relevant codes of conduct;
- ensure its reporting system is centralised and accessible only by appropriately authorised officers, allowing the flow of information to be tightly controlled to enhance confidentiality and minimising risks of reprisals being taken against disclosers;
- ensure the reporting system protects the confidentiality of information received or obtained in connection with a public interest disclosure in accordance with the Act;
- ensure the reporting system protects the identity of persons connected with a public interest disclosure in accordance with the Act;
- not tolerate the taking of detrimental action in reprisal against any person for making a public interest disclosure, including Council taking any reasonable steps to protect such persons from such action being taken against them;
- afford natural justice and treat fairly those who are the subject of allegations contained in disclosures;

- take the appropriate disciplinary and other action against any officers or employees engaged in the taking of detrimental action;
- ensure any officers or employees involved with handling public interest disclosures are trained to receive and manage public interest disclosures appropriately;
- ensure that Council as a whole handles public interest disclosures consistently and appropriately in accordance with its obligations under the Act, the Regulations, the Guidelines and these Procedures; and
- be visible, approachable, openly communicative and lead by example in establishing a workplace that supports the making of public interest disclosures.

7.1. Officers and employees

Officers and employees are encouraged to raise matters of concern in relation to Council, including about any officer or employee. In particular, officers and employees are encouraged to report known or suspected incidences of improper conduct or detrimental action in accordance with these Procedures, whether such conduct or action has taken place, is suspected will take place, or is still occurring.

All officers and employees of Council have an important role to play in supporting those who have made a legitimate disclosure in accordance with the Act. All persons must refrain from any activity that is, or could be perceived to be, victimisation or harassment of a person who makes a disclosure. Furthermore, they should protect and maintain the confidentiality of a person they know or suspect to have made a disclosure.

7.2. Councillors

A public interest disclosure in relation to the conduct of a Councillor cannot be made to a Council or an officer or employee of Council. A person who wishes to make a disclosure in relation to a Councillor must make that disclosure to IBAC or the Victorian Ombudsman.

7.3. Direct and indirect supervisors and managers

Employees of Council who wish to make a public interest disclosure may make that disclosure to their direct or indirect supervisor or manager.

If a person wishes to make a public interest disclosure about an officer or employee of Council, that person may make the disclosure to that employee's direct or indirect supervisor or manager.

The supervisor or manager receiving the disclosure will:

- immediately bring the matter to the attention of the Public Interest Disclosure Coordinator for further action in accordance with the Act;
- commit to writing down any disclosure made orally; and
- take all necessary steps to ensure the information disclosed, including the identity of the discloser and any persons involved, is secured, remains private and confidential.

7.4. Public Interest Disclosure Coordinator

Council's Public Interest Disclosure Coordinator has a central role in the internal reporting system.

The Public Interest Disclosure Coordinator is:

- contactable by external and internal persons making disclosures and has the authority to make enquiries of officers and employees within the organisation;
- to receive all disclosures including those reported to supervisors and managers;
- the contact point for general advice about the operation of the Act and for integrity agencies such as IBAC;
- responsible for ensuring that Council carries out its responsibilities under the Act, any regulations made pursuant to the Act and any guidelines issued by IBAC;
- Council's chief liaison with IBAC in regard to the Act;
- responsible for coordinating Council's reporting system;
- to take all necessary steps to ensure information received or obtained in connection with a disclosure, including the identities of the discloser and the person(s) to whom the disclosure relate, are kept secured, private and confidential at all times;
- required to consider each disclosure impartially to determine whether it should be notified to IBAC for assessment under the Act;
- responsible for arranging any necessary and appropriate welfare support for the discloser, including appointing a Welfare Manager to support the discloser and to protect him or her from any reprisals;
- to advise the discloser, appropriately and in accordance with the Act, the stage at which the disclosure is at (whether it has been notified to IBAC for assessment, etc.);
- to establish and manage a confidential filing system;
- to collate statistics on disclosures made; and
- to liaise with the Chief Executive Officer of Council.

The position of Director Corporate Services is the appointed Public Interest Disclosure Coordinator. Refer to 8.1 for contact details.

8. Making a disclosure

Disclosures about the council, its officers and employees (excluding Councillors) can be made to the following permitted people and organisations:

- Council's Public Interest Disclosure Coordinator;
- Council's Chief Executive Officer;
- Manager or supervisor of the discloser (if an employee of Council);
- A Council manager or supervisor of the person who is the subject of the disclosure;
- IBAC;
- Victorian Ombudsman; or
- Victorian Inspectorate.

Disclosures about **Councillors** must be reported to either:

- IBAC; or
- Victorian Ombudsman.

8.1. How to make a disclosure to Council

Whilst the Act specifies people that are permitted to receive disclosures, it is Council's preference for any disclosures made to Council be directed to:

- **Public Interest Disclosure Coordinator**
Ms Joan Lewis
Director Corporate Services
Physical Address: 71 Cliff Street, Portland Victoria 3305
Postal: PO Box 152, Portland Victoria 3305
Phone: (03) 5522 2530
Email: pid@glenelg.vic.gov.au
(dedicated public interest disclosure email address)

or

jlewis@glenelg.vic.gov.au

8.1.1 *Private verbal disclosure*

Disclosures can be made in person, by phone or by leaving a voice mail message.

Verbal disclosures **must** be made in private. This means the person making the disclosure must reasonably believe that only the following people (other than themselves) are present or able to listen to the conversation:

- a lawyer representing the person making the disclosure (if any); or

- one or more people to whom a disclosure can be made under the Act or Regulations.

This does not preclude a group of individuals from making a joint disclosure.

If the disclosure is made verbally, the person receiving the disclosure should make notes at the time. This person can also record the conversation, but should give prior warning that the conversation will be recorded. The conversation should not be recorded if the discloser objects.

8.1.2 *Written disclosure*

A written disclosure can be provided to Council by:

- delivering it personally to the council office at Cliff St Portland 3305, enclosed in a sealed envelope and clearly marked “*Private and Confidential, Name of Person and Position*”;
- mailing it to the Glenelg Shire Council PO Box 152 Portland 3305, with the envelope clearly marked “*Private and Confidential, Name of Person and Position*” or
- emailing to the email address of Council, or to the official email address of a person nominated to receive a disclosure in these Procedures or in the Regulations.

The following dedicated email address for public interest disclosures to Council has been setup:

pid@glenelg.vic.gov.au

A disclosure **cannot** be made by fax.

8.1.3 *Anonymous disclosure*

A discloser need not identify themselves to make a disclosure.

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 that meeting or conversation takes place ‘in private’ in accordance with the 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.

8.2. How to make a disclosure to IBAC

Disclosures may also be made directly to the Independent Broad-Based Anti-Corruption Commission (IBAC).

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

Telephone: 1300 735 135

Internet: www.ibac.vic.gov.au

Postal Address: IBAC GPO Box 24234 MELBOURNE VIC 3000

Online Complaints Form:

www.ibac.vic.gov.au/reporting-corruption/report/complaints-form

8.3. How to make a disclosure to the Victorian Ombudsman

Disclosures may also be made directly to Victorian Ombudsman.

Level 2, 570 Bourke Street Melbourne VIC 3000

Telephone: (03) 9613 6222 or 1800 806 314 (Regional Only)

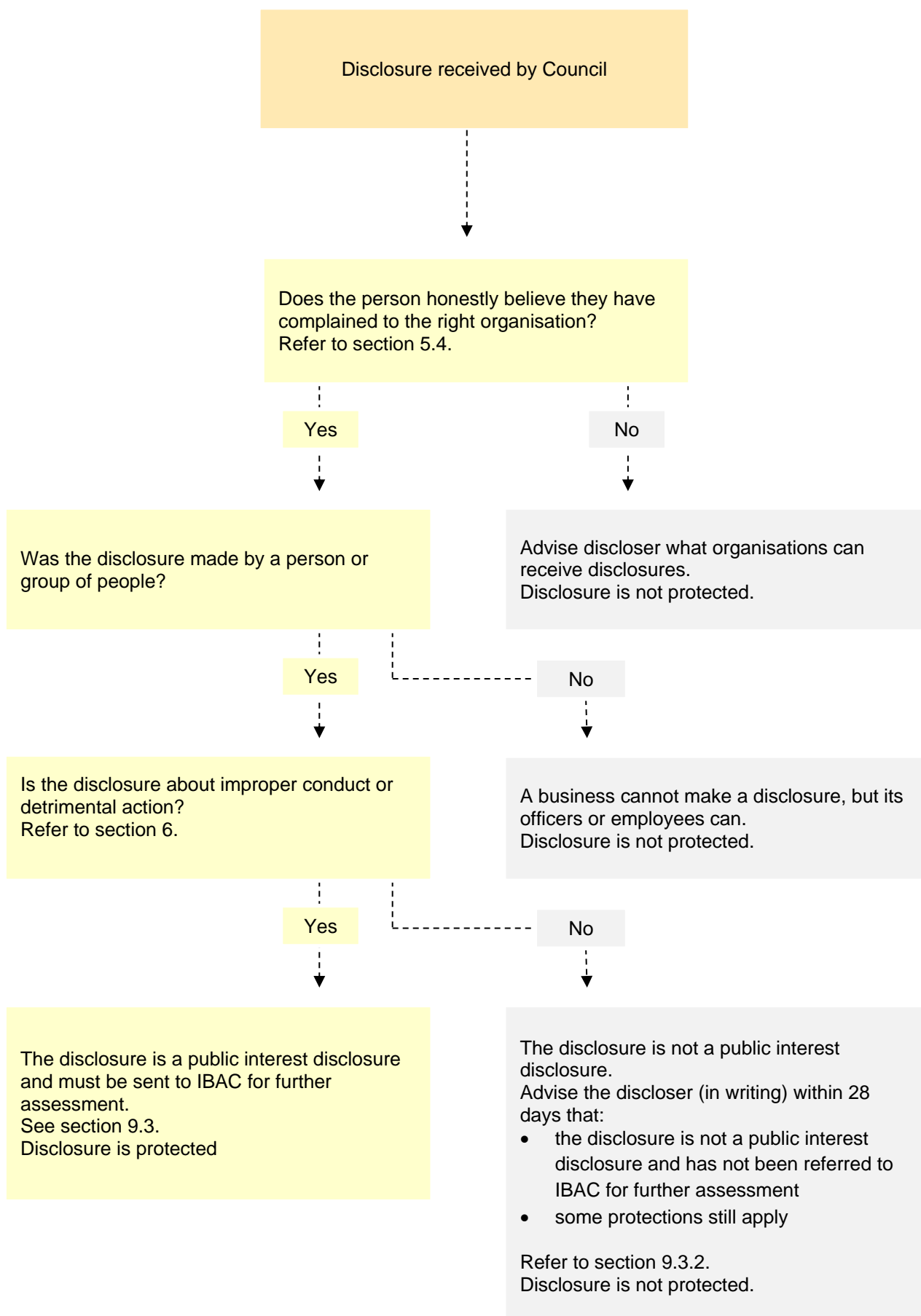
Internet: www.ombudsman.vic.gov.au/

Online Complaints Form:

www.ombudsman.vic.gov.au/Complaints/Make-a-Complaint

9. Handling disclosures

The following flow chart provides guidance for how a disclosure should be handled and how to decide if it is a public interest disclosure.



9.1. Receiving a disclosure

When Council receives a complaint, report or allegation of improper conduct or detrimental action, the first step will be to ascertain whether it is a disclosure that can properly be received by Council, that is, it relates to the conduct of Council or an officer or employee of Council. A public interest disclosure may be made by an officer or employee of Council. A disclosure relating to a Councillor must be made directly to IBAC or the Ombudsman.

9.1.1 *Misdirected disclosures*

A disclosure made to Council, where the discloser believed to be the correct place for the disclosure but it is not the correct place for that particular disclosure is known as a misdirected disclosure. A misdirected disclosure can still be notified to IBAC for assessment if Council considers the disclosure may be one which shows a public officer or public body has engaged in or proposes to engage in improper conduct or detrimental action. Council will notify the appropriate entity within 28 days.

Council cannot receive a disclosure relating to a Member of Parliament.

9.2. Assessing a disclosure

Council is required to assess whether the disclosure may be a public interest disclosure.

The preliminary assessment will include answering the following questions:

- Does the discloser honestly believe they have complained to the right organisation?
- Was the disclosure made by a person or group of people?

If the answer is 'no' than the disclosure is not protected. The discloser will be advised of what action they could take to make a disclosure. Refer to the Guidelines for further information.

If the answer is 'yes' than an assessment of whether the disclosure is about improper conduct or detrimental action will occur.

9.2.1 *Assessing the disclosure for improper conduct or detrimental action*

Council will assess the disclosure to decide if it is about improper conduct or detrimental action. There are two standards that need to be considered.

Shows or tends to show improper conduct or detrimental action	Reasonable belief that improper conduct or detrimental action has occurred
Does the information provided show or tend to show there is improper conduct or detrimental action?	Does the discloser believe on reasonable grounds that improper conduct or detrimental action has occurred?
Reliability of the information	Reasonable belief
<p>In assessing if there is improper conduct or detrimental action, look at all the information provided about the alleged conduct and about the discloser:</p> <ul style="list-style-type: none"> ○ 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? 	<p>A person making a disclosure must reasonably believe that improper conduct or detrimental action has occurred or is going to occur.</p> <p>This requires more than a suspicion, the belief must have supporting facts and circumstances. For example, it would not be sufficient for a person’s disclosure to consist simply of a one sentence statement like ‘I know XYZ is corrupt’.</p> <p>The test is whether a reasonable person, possessed of the same information, could believe that the improper conduct had occurred.</p> <p>Other matters that can be considered to determine if there are reasonable grounds for the discloser’s belief is the reliability of the information they have provided, even if it is second or third hand. Consider how the person would have obtained the information and the amount of detail that has been provided.</p> <p>Consider the credibility of the discloser or the people who provided the discloser with information.</p>

Refer to section 6 for information on what improper conduct and detrimental action includes.

9.2.2 *If urgent action is required while a disclosure is being assessed*

In some circumstances, the disclosure may be about conduct that may pose an immediate threat to the health and safety of individuals, or the preservation of property, or may consist of serious criminal conduct.

Examples could include a child protection worker allegedly assaulting children in care, a council worker allegedly lighting bush fires, or a person threatening to poison the water supply.

In these cases Council can take immediate action while considering whether or not it is a disclosure that must be notified to IBAC or 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 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 a disclosure, including disciplinary process or action. However, this does not allow Council to reveal the identity of the discloser.

9.2.3 *Assessment decisions*

At the conclusion of the assessment, Council must decide whether it considers the disclosure to be a public interest disclosure. If Council decides it may be a public interest disclosure, it **must** notify IBAC of the disclosure. If Council does not consider it to be a public interest disclosure, then it may be a matter that Council deals with through any other relevant internal complaint or grievance management processes.

9.3. Notifying the outcome of the assessment

9.3.1 *If Council considers the disclosure may be a public interest disclosure*

If Council considers the disclosure may be a public interest disclosure under the Act, Council will, within 28 days of receiving the disclosure:

- notify IBAC that:
 - Council considers the disclosure may be a public interest disclosure; and
 - Council is notifying the disclosure to IBAC for assessment under section 21 of the Act; and
- notify the discloser that the disclosure has been sent to IBAC for assessment under the Act.

In addition, at the time of notifying IBAC under section 21 of the Act or at any later time, Council may also provide IBAC with any information obtained by Council regarding the disclosure in the course of its enquiries leading up to its notification of the disclosure to IBAC.

9.3.2 *If Council does not consider the disclosure may be a public interest disclosure*

If Council considers that the disclosure is not a public interest disclosure, and the discloser has indicated to Council that the discloser wishes to receive the protections that apply to a public interest disclosure under the Act, the discloser will be notified in writing, within 28 days of Council receiving the disclosure, that:

- Council does not considers the disclosure shows or tends to show improper conduct or detrimental action;
- the disclosure has not been sent to IBAC for assessment; and
- the disclosers identity does not have to be kept confidential, but the protections under Part 6 of the Act apply.

Notifications to a discloser do not need to be provided by Council in response to an anonymously made disclosure.

9.4. Can a discloser ask that a complaint not be dealt with as a public interest disclosure?

A discloser can advise that they do not want the disclosure treated as a public interest disclosure by stating so in writing at the time of making the disclosure or within 28 days of making the disclosure.

9.5. Protection for public officers

When a public officer acts in good faith and in accordance with the public interest disclosure scheme, they do not commit an offence under section 95 of the *Constitution Act 1975* or any other Act that imposes a duty to maintain confidentiality, and do not breach confidentiality obligations or information disclosure restrictions.

10. IBAC assessment

10.1. IBAC determining if a disclosure is a public interest complaint

Once IBAC receives a notification, it must determine whether the disclosure is a public interest complaint.

In making its assessment, IBAC may seek additional information from Council or from the discloser.

If IBAC determines that a disclosure is a public interest complaint, it will investigate or refer a disclosure, or it may take no further action.

10.2. IBAC notifying Council and the discloser of the determination

Once IBAC has determined whether a disclosure is a public interest complaint, it will advise the:

- Council of its determination; and

- Discloser of the determination and the action it intends to take.

11. Welfare Management

Council is committed to the protection of genuine disclosers against detrimental action taken in reprisal for the making of public interest disclosures.

The protection of persons making genuine public interest disclosures about improper conduct or detrimental action is essential for the effective implementation of the Act. In addition, the Act extends the need for welfare management to people who have cooperated or intend to cooperate with an investigation of a public interest complaint (co-operators). Persons who are the subject of allegations will also have their welfare looked after.

Council must ensure disclosers and co-operators are protected from direct and indirect detrimental action being taken against them in reprisal for the public interest disclosure. Council will ensure its workplace culture supports disclosers and co-operators. Such support will extend to the relevant persons regardless of whether they are internal to the organisation (officers or employees) or members of the public. However, different legislative responsibilities (including those external to the Act) apply to persons internal to the organisation, and to persons who may be clients or users of Council's services. Those derive from various legislative and administrative obligations to:

- ensure the health and wellbeing of employees of a public sector body under laws including those relating to Occupational Health and Safety, the *Charter of Human Rights and Responsibilities Act 2006*, the *Public Administration Act 2004*, and various Victorian Public Sector Codes of Conduct (as relevant); and
- comply with various relevant laws, policies and practices when making administrative and other decisions or taking particular actions affecting a customer, client or user of the public body's services.

Generally, for internal persons, Council will ensure a supportive work environment and respond appropriately to any reports of intimidation or harassment against these persons. For external persons, Council will take reasonable steps to provide appropriate support. Council will discuss reasonable expectations with all persons receiving welfare management in connection with a public interest disclosure.

11.1. Support available to disclosers and co-operators

Council will support disclosers and co-operators by:

- keeping them informed, by providing:
 - confirmation that the disclosure has been received;
 - the legislative or administrative protections available to the person;
 - a description of any action proposed to be taken;
 - if action has been taken by Council, details about results of the action known to Council;
- providing active support by:
 - acknowledging the person for having come forward;

- assuring the discloser or co-operator that they have done the right thing, and Council appreciates it;
- making a clear offer of support;
- assuring them that all reasonable steps will be taken to protect them;
- giving them an undertaking to keep them informed as far as Council is reasonably able to;
- managing their expectations by undertaking an early discussion with them about:
 - what outcome they seek;
 - whether their expectations are realistic;
 - what Council will be able to deliver;
- maintaining confidentiality by:
 - ensuring as far as is possible that other people cannot infer the identity of the discloser or co-operator;
 - reminding the discloser or co-operator not to reveal themselves or to reveal any information that would enable others to identify them as a discloser or co-operator;
 - ensuring that hardcopy and electronic files relating to the disclosure are accessible only to those who are involved in managing disclosures at Council;
- proactively assessing the risk of detrimental action being taken in reprisal (rather than reactively waiting for a problem to arise and a complaint made by the discloser or co-operator), that is, actively monitoring the workplace, anticipating problems and dealing with them before they develop as far as is possible;
- protecting the discloser or co-operator by:
 - examining the immediate welfare and protection needs of the person and seeking to foster a supportive work environment;
 - listening and responding to any concerns the person may have about harassment, intimidation or victimisation in reprisal for their actions;
 - assessing whether the concerns the person may have about harassment, intimidation or victimisation might be due to other causes other than those related to the public interest disclosure;
- preventing the spread of gossip and rumours about any investigation into the public interest disclosure; and
- keeping contemporaneous records of all aspects of the case management of the person, including all contact and follow-up action.

11.1.1 Appointment of a Welfare Manager

In appropriate circumstances, Council will appoint a suitable welfare manager to protect a discloser or a co-operator. The following matters will be taken into consideration by Council when deciding whether to appoint a welfare manager in a particular case:

- are there any real risks of detrimental action against the discloser or co-operator, taking into account their particular circumstances?
- whether Council will take the discloser or co-operator seriously and treat them with respect?
- whether Council will give the discloser or co-operator effective support, including keeping the discloser informed of the status of the disclosure?
- can Council protect the person from suffering repercussions, by dealing with the matter discreetly and confidentially, and responding swiftly and fairly to any allegations that the discloser or co-operator has in fact suffered retribution?

If the answer to the first question above is 'yes' then IBAC recommends the appointment of a dedicated welfare manager. If the answer to the first question above is 'no' and Council can meet the needs set out in the remainder of the questions, IBAC suggests there may be no need for a dedicated welfare manager to be appointed for that particular case.

In most circumstances, a welfare manager will only be required where a public interest complaint proceeds to investigation, but each public interest disclosure received by Council will be assessed on its own merits. In particular, a welfare manager will be appointed where Council believes that one is required to ensure that the appropriate support as set out in 11.1 above can be provided to the discloser or co-operator.

If appointed, the Welfare Manager will, in addition to providing the general support set out in 11.1:

- advise the discloser or co-operator of the legislative and administrative protections available to him or her, including providing practical advice;
- listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making a disclosure;
- not divulge any details relating to the public interest disclosure to any person other than the Public Interest Disclosure Coordinator or the Chief Executive Officer;
- ensure all meetings between the Welfare Manager and the discloser or co-operator are conducted discreetly to protect the person from being identified as being involved in the public interest disclosure;
- offer use of the Employee Assistance Program for internal disclosers and co-operators, as relevant or applicable; and
- ensure the expectations of the discloser are realistic and reasonable, and that the discloser or co-operator understands the limits of the support Council is able to provide reasonably in the particular circumstances. This is particularly the case where a Welfare Manager has been appointed in relation to an external discloser or co-operator.

11.2. Welfare management of persons who are the subject of public interest disclosures

Council will also meet the welfare needs of a person who is the subject of a public interest disclosure. It is important to remember that until a public interest complaint is resolved, the information about the person is only an allegation.

Council will make a decision about whether or when the subject of a disclosure will be informed about a public interest disclosure involving an allegation made against him or her. The subject of the disclosure may never be told about the disclosure if it is not determined to be a public interest complaint, or if a decision is made to dismiss the disclosure.

The Act limits the disclosure of information about the content of an assessable disclosure and the identity of the discloser to certain specified circumstances set out in Part 7 of the Act. Council may give information about the disclosure to the subject of the disclosure if it is directed or authorised to do so by the investigative entity investigating the public interest complaint, or, for taking action with respect to the conduct alleged, including disciplinary action.

Investigative entities may also inform the subject of the public interest complaint in the course of their investigation or of any actions that they propose to take because of the investigation.

11.2.1 Welfare services

A person the subject of a disclosure who is made aware of their status as such may have a welfare manager appointed by Council, or be referred to Council's Employee Assistance Program for welfare assistance. Alternatively, the Public Interest Disclosure Coordinator will provide support and advice to a person the subject of a disclosure, particularly in relation to their rights and obligations under the Act, Council's internal reporting system, these Procedures, and any other relevant law or code of conduct. Council will consider each matter on a case by case basis, taking into account the particular circumstances of the person and the public interest.

11.2.2 Confidentiality

Consistent with Council's confidentiality obligations under the Act as outlined in these Procedures:

- the fact that a disclosure has been made;
- if a disclosure has been notified to IBAC for assessment;
- if any information has been received from IBAC or another investigative entity; and
- the identities of persons involved

– will not be divulged except as provided under the Act.

Council will take all reasonable steps to ensure the confidentiality of the subject of a disclosure during any assessment and any ensuing investigation.

All bodies to whom a public interest complaint is referred are permitted to disclose information necessary to perform their investigative functions.

Where the disclosure is dismissed or investigations do not substantiate the allegations made against the person, the fact that the investigation was undertaken, its results, and the identity of the person subject of the disclosure will still be kept confidential.

11.2.3 Natural Justice

Council will afford natural justice to the subject of a disclosure prior to any decision being made about the allegations. If the matter has been investigated by an investigative entity, then the investigative entity will be responsible for ensuring consultations with the subject include the provision of natural justice to him or her. IBAC has noted that affording a subject of a disclosure natural justice in this context means that if a decision is to be made about their conduct this 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; and
- have his or her defence set out fairly in any report.

11.2.4 If the allegations are wrong or unsubstantiated

Council will give its full support to a person who is the subject of a disclosure where the allegations contained in a disclosure are wrong or unsubstantiated. In those circumstances, Council and any investigative entity involved will ensure that there are no adverse consequences for this person arising out of the disclosure or its investigation. This is particularly crucial in a situation where there has been publicly disclosed information identifying the subject, but also where such information has become well-known across Council and the subject is an officer or employee or Councillor of Council.

Further, if the matter has been publicly disclosed by Council, the Chief Executive Officer will consider any request by that person to issue a statement of support setting out that the allegations were clearly wrong or unsubstantiated.

11.3. If detrimental action is reported

If any person reports an incident of harassment, discrimination or adverse treatment that may amount to detrimental action apparently taken in reprisal for a disclosure, the Welfare Manager or Public Interest Disclosure Coordinator must record details of the incident and advise the person of their rights under the Act.

A person takes detrimental action against another person in reprisal for a public interest disclosure if:

- the person takes, or threatens to take, detrimental action against the other person because, or in the belief that:
 - the other person or anyone else has made, or intends to make, the disclosure; or
 - the other person or anyone else has cooperated, or intends to cooperate, with an investigation of the disclosure; or
- for either of the reasons above, the person incites or permits someone else to take or threaten to take detrimental action against the other person.

All persons are reminded it is a criminal offence to take detrimental action against another person in reprisal for a public interest disclosure under the Act.

In such circumstances, Council will be careful about making preliminary enquiries or gathering information concerning such an allegation of detrimental action so that, to the extent it is reasonably able to, it protects the integrity of any evidence that might be later relied upon in a criminal prosecution.

In addition, the taking of detrimental action in reprisal for making a disclosure can be grounds for a person to make a further disclosure with respect to that conduct. The disclosure of this allegation will then be assessed by Council as a new disclosure under Part 2 of the Act. Where the detrimental action is of a serious nature likely to amount to a criminal offence, Council will also consider reporting the matter to Victoria Police or IBAC (if the matter was not already the subject of a disclosure notified to IBAC).

A discloser of a public interest disclosure may:

- take civil action against the person who took detrimental action against the discloser and seek damages;
- also take civil action against Council jointly and severally to seek damages if the person who took detrimental action against the discloser took that action in the course of employment with, or while acting as an agent of Council; or
- apply for an order or an injunction from the Supreme Court.

11.4. Protections for persons making a public interest disclosure

Part 6 of the Act sets out the protections provided to persons who make a disclosure that is a 'public interest disclosure', i.e. one that is made in accordance with Part 2 of the Act. In summary, they are as follows:

- the discloser is not subject to any civil or criminal liability for making the public interest disclosure;
- the discloser is not subject to any administrative action (including disciplinary action) for making the public interest disclosure;
- by making the public interest disclosure, the discloser is not committing an offence against the *Constitution Act 1975* or any other law that imposes obligations of confidentiality or otherwise restricts the disclosure of information;
- by making the public interest disclosure, the discloser is not breaching any other obligation (made by oath, rule of law or practice) requiring him or her to maintain confidentiality; and
- the discloser cannot be held liable for defamation in relation to information included in a public interest disclosure made by him or her.

The protections in Part 6 apply from the time at which the disclosure is made by the discloser. They apply even if Council receiving the disclosure does not notify the disclosure to IBAC, and even if IBAC has determined that the public interest disclosure is not a public interest complaint.

The protections also apply to further information relating to a public interest disclosure made by the original discloser, if the further information has been provided, verbally or in writing, to:

- the entity to which the public interest disclosure was made; or
- IBAC or any investigating entity investigating the public interest disclosure.

11.4.1 Actions of the discloser constituting offences and leading to protections being lost

A discloser is not protected if they commit an offence under section 72 or section 73 of Act, as follows:

- provide false or misleading information, or further information that relates to a public interest disclosure, that the person knows to be false or misleading in a material particular, intending that the information be acted on as a public interest disclosure;
- claim that a matter is the subject of a public interest disclosure knowing the claim to be false; or
- falsely claim that a matter is the subject of a disclosure that IBAC has determined to be a public interest complaint.

Similar provisions set out in the IBAC Act, such as in section 184, also makes it a criminal offence to disclose certain information received from IBAC.

11.4.2 Other limitations on protections afforded to disclosers

A discloser is not protected against legitimate management action being taken by Council in accordance with the Act.

In addition, although the discloser of a public interest disclosure is not subject to criminal or civil liability for making the disclosure, the Act specifically provides that a person remains liable for their own conduct even though the person has made a disclosure of that conduct under the Act. Therefore, the discloser will still be held liable for their own conduct that they disclose as part of making a public interest disclosure.

11.4.3 If the person making the disclosure is implicated in the improper conduct or detrimental action that is the subject of the disclosure

Where a discloser is implicated in improper conduct, Council will handle the disclosure and protect the discloser from reprisals in accordance with the Act, the Guidelines and these Procedures. Council acknowledges that the act of disclosing should not shield disclosers from the reasonable consequences flowing from any involvement in improper conduct. However, in some circumstances, an admission may be a mitigating factor when considering disciplinary or other action.

The management of the welfare of a discloser may become complicated when that person is implicated in misconduct, whether or not that misconduct is related to the 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. The Chief Executive Officer will make the final decision on the advice of the Public Interest Disclosure Coordinator as to whether disciplinary or other action will be taken against a discloser. Where disciplinary or other action relates to conduct that is the subject of the disclosure, the disciplinary or other action will only be taken after the disclosed matter has been appropriately dealt with. In all cases where disciplinary or other action is being contemplated, any such action will not be taken without the Chief Executive Officer ensuring that:

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

Council will take all reasonable steps to thoroughly document its decision-making process, including recording the reasons why the disciplinary or other action is being taken, and the reasons why the action is not being taken in retribution against the discloser for making the disclosure, so that

it will be able to clearly demonstrate that the disciplinary or other action was taken for the appropriate and permitted reasons under the Act.

The discloser will be clearly informed of any action proposed to be taken, be afforded natural justice, and inform and be informed of any mitigating factors that have been taken into account.

11.4.4 External disclosures

An external disclosure is a public interest disclosure made to a person or body who is not an entity to whom a public interest disclosure may be made under Division 2 of Part 2.

A discloser who has made a public interest disclosure, and is subject to confidentiality restrictions, may make a further disclosure of substantially the same subject matter to external parties (i.e. Those not authorised to receive public interest disclosures) if:

- the original disclosure was not made anonymously;
- the original disclosure was determined to be a public interest complaint and the discloser was notified of that determination; and
- one of the following situations applies:
 - the discloser has not been notified of any action taken in relation to the disclosure within six months of determination as a public interest complaint and has not received a response 30 days after requesting an update on progress;
 - an investigation has not been completed 12 months after determination as a public interest complaint and has not received a response 30 days after requesting an update on progress; or
 - an investigation has not been completed 12 months after determination as a public interest complaint and, although the discloser received a response within 30 days after requesting an update on progress, the discloser received no further update advising the investigation had been six months after that response.

The protections provided to public interest disclosures under Part 6 of the Act also apply to external disclosures.

Any external disclosure must not contain information that may prejudice a criminal investigation, criminal proceeding or other legal proceeding of which the person making the external disclosure is aware and must not disclose investigative methods used by IBAC or Victoria Police.

12. Confidentiality

12.1. General obligation of confidentiality on Council and all individuals

Council will take all reasonable steps to protect the identity of the discloser and the matters disclosed by a discloser. Maintaining confidentiality in relation to public interest disclosure matters is crucial, among other things, in ensuring reprisals are not made against a discloser.

A discloser is not restricted from disclosing the subject matter of the disclosure to another person if they are not under a confidentiality notice from an investigative body, however the protections will not apply to protect the discloser if that additional disclosure results in retribution or detrimental action.

Disclosers may consider whether it is in their best interests not to discuss any related matters other than with authorised persons within Council, officers of IBAC, or other persons authorised by law.

12.2. Steps taken by Council to ensure confidentiality

12.2.1 Information Management

Council will ensure all files, whether paper or electronic, are kept securely.

Those files will be accessible only by the Public Interest Disclosure Coordinator. Where necessary, the Welfare Manager may be able to gain access (where appropriate) to related welfare matters.

The Welfare Manager will not divulge any details relating to the disclosed matter to any person other than the Public Interest Disclosure Coordinator or an investigator appropriately authorised under the Act or the IBAC Act.

All meetings between any relevant persons, the Welfare Manager and disclosers will be conducted discreetly to protect the confidentiality of the person making a public interest disclosure.

All printed material will be kept in files that are clearly marked as public interest disclosures Act matters, and warn of the criminal penalties that apply to any unauthorised access, use or divulging of information concerning a public interest disclosure.

All electronic files will be produced and assigned specific password protection. All other materials in connection with a public interest disclosure will also be stored securely with the public interest disclosure file.

Council will not use unsecured email to transmit documents in connection with a disclosure and will ensure all telephone calls and meetings in connection to disclosures are conducted privately and in the strictest of confidence. Hard copy documents will not be delivered by internal mail to a generally accessible area and, where possible, will be delivered in person.

12.2.2 Exemption from the Freedom of Information Act 1982 (FOI Act)

The FOI Act provides a general right of access for any person to seek documents in the possession of Council.

However, the Act provides that certain information related to public interest disclosures as contained in documents in the possession of Council will be exempt from the application of the FOI Act. Such information excluded from the operation of the FOI Act includes:

- any information relating to a public interest disclosure or assessable disclosure made in accordance with the Act;
- any information relating to a disclosure notified to IBAC by Council under section 21 of the Act for assessment; and
- any information that is likely to lead to the identification of a discloser.

Council is required to contact IBAC prior to providing any document originating from IBAC or relating to a public interest disclosure, if that document is sought under the FOI Act.

12.2.3 Training for all employees

Council will:

- ensure that employees have access to a copy of these Procedures;
- incorporate into its induction procedures training about Council's general obligations under the Act and the rights and obligations of all employees;
- introduce periodic refresher courses for existing employees about their rights and obligations under the Act;
- provide additional training and assistance to:
 - any employees of Council with specific responsibilities and functions to handle and manage public interest disclosures under the Act, including the Public Interest Disclosure Coordinator and people involved in welfare management;
 - any staff with functions and duties under the FOI Act or with responsibilities for information management, to ensure that no prohibited information is disclosed under the Act and to ensure there is appropriate liaising with the staff of IBAC or other investigative agencies where required in response to a request for access under the FOI Act; and
 - all employees dealing with customers to ensure any potential disclosures received from external sources can be handled appropriately in accordance with the Act and these Procedures.

12.3. Limited exceptions permitted by the Act

The Act makes it a crime to disclose information connected with a disclosure made in accordance with the Act. Limited exceptions to the prohibition on disclosure are specified by the Act including circumstances such as:

- where disclosure is required by Council (or one of its officers or employees) in the exercise of functions of Council under the Act;
- where necessary for the purpose of the exercise of functions under the Act;
- by an investigating entity for the purpose of exercising that entity's functions under the IBAC Act;
- in accordance with a direction or authorisation given by the investigating entity that is investigating the disclosure;
- to the extent necessary for the purpose of taking lawful action in relation to the conduct that is the subject of an assessable disclosure including a disciplinary process or action;
- where IBAC or the Victorian Inspectorate has determined that the assessable disclosure is not a public interest disclosure and the discloser or Council subsequently discloses the information;
- when an investigative entity had published a report to Parliament, in accordance with its confidentiality obligations;
- for the purpose of obtaining legal advice in relation to matters specified in the Act;
- in order to enable compliance with the Act:
 - where a person does not have a sufficient knowledge of the English language, to obtain a translation from an interpreter;
 - where a person is under 18 years of age, to a parent or guardian of a discloser;
 - where a person is suffering a disability and is not able to understand, to an independent person; and
- in disciplinary actions or legal proceedings for certain offences in the Act or other specified Acts.

The discloser of a public interest complaint may always seek advice and support from specified categories of persons without seeking permission. This enables information and content about an assessable disclosure to be provided to a registered health practitioner, trade union, employee assistance program, the Victorian WorkCover Authority or, for the purposes of an application, to the Fair Work Commission.

The Act prohibits the inclusion of any details in any report or recommendation that are likely to lead to the identification of a discloser. The Act also prohibits the identification of the person who is the subject of the disclosure in any particulars included in an annual report or any reports to Parliament.

13. Offences

13.1. Civil and criminal penalties under the Act

See Appendix 1 for a list of the specific offences and penalties under the Act.

14. Collating and Publishing Statistics

Council is required to publish certain statistics about the Act in its annual reports. That information relates mainly to how these Procedures may be accessed and the number of disclosures notified to IBAC for assessment under section 21 of the Act during the financial year.

The Public Interest Disclosure Coordinator will maintain the information required to be published in the Annual Report, and to generally keep account of the status of public interest disclosures.

15. Records Management

All Council records created and managed as a result of implementing this policy will be managed in accordance with Council's Records Management Policy.

The Records Management Policy assigns responsibilities for records management to employees, supervisors, volunteers and other specific positions.

No Council records are to be destroyed without consideration of the requirements of the Act(s) that govern the functions relevant to this policy. Prior to destruction, advice must be sought from the Records Management Unit, with consideration to the requirements of the appropriate Retention and Disposal Authority (RDA).

Appendix 1 - Civil and criminal penalties under the Act

Specific offences	Penalties
Detrimental action	
<p>Liability of an individual</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 	<p>Criminal penalty: 240 penalty units or two years imprisonment or both</p> <p>AND (if person is convicted or found guilty of an offence) possible order of court for reinstatement or reemployment of person subjected to detrimental action.</p> <p>Civil penalty: Order of court for offender to pay appropriate level of damages to compensate for injury, loss or damage.</p>
<p>Vicarious liability of their employer</p> <p>An employer may also be held to be liable for the detrimental action of their employee or agent</p>	<p>Criminal penalty: 240 penalty units or two years imprisonment or both</p> <p>AND (if person is convicted or found guilty of an offence) possible order of court for reinstatement or reemployment of person subjected to detrimental action.</p> <p>Civil penalty: Order of court for offender to pay appropriate level of damages to compensate for injury, loss or damage.</p>
Disclosure of content of a public interest disclosure or police complaint disclosure	
<p>A person/body must not disclose content of a disclosure or information about its content</p>	<ul style="list-style-type: none"> • 120 penalty units or 12 months imprisonment or both (person) • 600 penalty units (body corporate)
Disclosure of identity of person making a public interest disclosure or police complaint disclosure	
<p>A person/body must not disclose information likely to lead to the identification of a person who has made a disclosure</p>	<ul style="list-style-type: none"> • 120 penalty units or 12 months' imprisonment or both (person) • 600 penalty units (body corporate)
Making false disclosure or providing false further information	
<p>A person must not provide information intending 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</p>	<p>120 penalty units or 12 months imprisonment or both</p>
Falsely claiming a disclosure is a public interest disclosure	
<p>A person must not falsely claim a matter is the subject of a public interest disclosure or the subject of a disclosure determined to be a public interest disclosure</p>	<p>120 penalty units or 12 months imprisonment or both</p>