



WARRNAMBOOL  
CITY COUNCIL

**Public Interest Disclosure  
Procedure**

## DOCUMENT CONTROL

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# 1. INTRODUCTION

## Purpose

These procedures form an essential part of the Council's commitment to the aims and objectives of the Public Interest Disclosure Act 2012 (the Act). The Council does not tolerate improper conduct by the organisation, Councillors, staff or contractors, nor the taking of reprisals against those who come forward to disclose such conduct.

The Council recognises the value of transparency and accountability in its administrative and management practices and supports the making of disclosures that reveal improper conduct or expose the taking of detrimental action against persons who come forward to report such improper conduct.

The 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 any person who is the subject of a disclosure.

## Scope

These procedures are a resource for disclosers and potential disclosers, whether they be a Councillor staff member, contractor, 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 a disclosure will be managed and handled by the Council.

All disclosures regarding local government Councillors must be made directly to IBAC or the Victorian Ombudsman. The Council is not permitted to receive disclosures about Councillors.

For complaints that do not meet the threshold for a public interest disclosure, a discloser should follow the process outlined in the Council's Complaint Handling Procedure.

## Definitions and Terminology

Term	Meaning
<b>Act</b>	Public Interest Disclosure Act 2012
<b>Assessable Disclosure</b>	Any disclosure either made directly to <b>IBAC, The Ombudsman</b> or the <b>VI</b> , or if received by the <b>Council</b> is required under s 21 of the <b>Act</b> to be notified by the <b>Council</b> to <b>IBAC</b> for assessment.
<b>Co-operators</b>	People who have cooperated or intend to cooperate with the investigation of a public interest disclosure complaint.
<b>Council</b>	Warrnambool City Council.
<b>CEO</b>	Chief Executive Officer of the <b>Council</b> .
<b>Discloser</b>	A person who (purports to) make(s) a complaint, allegation or disclosure (however described) under the <b>Act</b> .
<b>Disclosure</b>	Any complaint, concern, matter, allegation or disclosure (however described) purported to be made in accordance with Part 2 of the <b>Act</b> .
<b>Guidelines</b>	The Guidelines published by <b>IBAC</b> under s 57 of the <b>Act</b> .
<b>IBAC</b>	Independent Broad-based Anti-corruption Commission.

<b>Term</b>	<b>Meaning</b>
<b>Investigative Entity</b>	Any one of the bodies authorised to investigate a public interest disclosure complaint.
<b>Ombudsman</b>	Victorian Ombudsman
<b>Procedures</b>	This version of the procedures, as established under s58 of the <b>Act</b> by the <b>Council</b> .
<b>Protected discloser</b>	A person who makes a disclosure of improper conduct or detrimental action in accordance with the requirements of Part 2 of the <b>Act</b> .
<b>Public Bodies</b>	Defined in s. 6 of the Act. Includes: <ul style="list-style-type: none"> <li><input type="checkbox"/> a public sector body within the meaning of the Public Administration Act 2004;</li> <li><input type="checkbox"/> a body, whether corporate or unincorporated, established by or under an Act for a public purpose;</li> <li><input type="checkbox"/> a Council;</li> <li><input type="checkbox"/> a body that is performing a public function on behalf of the State or a public body or public officer (whether under contract or otherwise).</li> </ul>
<b>Public Interest Complaint (PIC)</b>	A public interest disclosure that has been determined <b>by IBAC, the VI, or the Integrity and Oversight Committee</b> to be a public interest complaint (previously a protected disclosure complaint).
<b>Public Interest Disclosure (PID)</b>	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 disclosure).
<b>Public Officers</b>	Defined in s. 6 of the Act. Includes: <ul style="list-style-type: none"> <li><input type="checkbox"/> a person employed in any capacity or holding any office in the public sector;</li> <li><input type="checkbox"/> a Councillor;</li> <li><input type="checkbox"/> a member of Council staff;</li> <li><input type="checkbox"/> a person that is performing a public function on behalf of the State or a public officer or public body (whether under contract or otherwise)</li> </ul>
<b>Regulations</b>	Public Interest Disclosure Regulations 2019
<b>VI</b>	Victorian Inspectorate.

## References

<b>Category</b>	<b>Document</b>
<b>Legislation</b>	Public Interest Disclosure Act 2012 Protected Disclosure Regulations 2013 Independent Broad-based Anti-Corruption Commission Act 2011 Local Government Act 1989 Local Government Act 2020 Freedom of Information Act 1982
<b>Standards and Guidelines</b>	IBAC Guidelines for handling public interest disclosures, January 2020 IBAC Guidelines for public interest disclosure welfare management, January 2020
<b>Council related Policies and Procedures</b>	Councillor Code of Conduct Staff Code of Conduct Complaint Handling Procedure

## Public Interest Disclosure Act 2012

The Protected Disclosure Act 2012 was renamed the Public Interest Disclosures Act 2012 (the Act) in March 2019. The new legislation introduced changes to support people making disclosures which are in the public interest. On 1 January 2020, these changes took effect replacing existing 'protected disclosure' arrangements with 'public interest disclosures' (PIDs).

The Act aims to:

- encourage and assist people to report improper conduct and detrimental action taken in reprisal for a public interest 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

## Procedure Requirements

The Council is required to establish and publish procedures under s 58 of the Act and in accordance with the Guidelines of IBAC published under s 57 of the Act. The Council is required to ensure that the procedures are readily available to members of the public as well as internally to all Councillors, staff and contractors.

These procedures cover:

- the Council's reporting structures
- how disclosures may be made to the Council;
- how the Council handles the receipt of disclosures;
- how the Council assesses disclosures it is able to receive under the Act;
- notifications the Council is required to make about disclosures, to both disclosers and to IBAC;
- how the Council protects certain people involved in the processes:
  - 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.

The procedures have been established to ensure the confidentiality of a person making a disclosure and their welfare is protected.

## 2 COUNCIL PRINCIPLES and STRUCTURE

### Principles

The Council supports a workplace culture based on trust, ethics and authenticity; 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. Councillor and Council staff are expected to act with integrity and demonstrate ethical behaviour.

The Council will:

- be visible, approachable, openly communicative and lead by example in establishing a workplace that supports the making of public interest disclosures and impartial investigations;
- ensure these procedures, including information about how disclosures may be made and to whom, are accessible on its website and available internally and externally to Councillors, staff and any individual in the broader community;
- provide appropriate training at all levels of the organisation to raise awareness of how a public interest disclosure may be made and how disclosures are received and managed;
- ensure its reporting system is centralised and accessible only by appropriately authorised staff, 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 and protects the identity of persons connected with a public interest disclosure;
- not tolerate the taking of detrimental action in reprisal against any person for making a public interest disclosure, including to take 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; and
- take appropriate action against any Councillor or staff engaged in the taking of detrimental action.

## **Councillors, Staff and Contractors**

All Councillors, staff and contractors 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 still occurring or is suspected will take place.

All Councillors, staff and contractors have an important role to play in supporting those who have made a legitimate disclosure. All persons must refrain from any activity that is, or could be perceived to be, victimisation, harassment or bullying 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.

## **Public Interest Disclosure Coordinator**

The Council has appointed a Public Interest Disclosure Coordinator who has a pivotal role in the internal reporting system and maintains oversight over the system.

The Public Interest Disclosure Coordinator will:

- be the primary contact point for general advice about the operation of the Act, for integrity agencies such as IBAC and for any person wishing to make a disclosure;
- liaise with the Public Interest Disclosure Officer and receive all disclosures forwarded from them;
- ensure that the Council carries out its responsibilities under the Act, any regulations made pursuant to the Act and any guidelines issued by IBAC;

- 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 relates, are kept secured, private and confidential at all times;
- consider each disclosure impartially to determine whether it should be notified to IBAC for assessment under the Act;
- arrange 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;
- advise the discloser, appropriately and in accordance with the Act, the progress of the disclosure and the stage reached at a given time (whether it has been notified to IBAC for assessment etc);
- coordinate the Council's reporting system and establish and manage a confidential filing system for the disclosures;
- collate and publish statistics on disclosures, as required by the Act; and
- liaise with the CEO of the Council.

The Council's Public Interest Disclosure Coordinator is: (temporary)

Name	Peter Utri
Position	Director Corporate Strategies
Address	25 Liebig street Warrnambool
Email	putri@warrnambool.vic.gov.au
Phone	0355594807

From time to time, it may be necessary to appoint other or additional Public Interest Disclosure Officers. The Council will take all reasonable steps to publicise the contact details of those persons.

### 3. MAKING a DISCLOSURE

#### What is a Disclosure?

A disclosure under the Act may be made about:

- the improper conduct of public bodies or public officers (including corrupt conduct); and
- the detrimental action taken by public bodies or public officers in reprisal against a person for the making of a public interest disclosure or co-operating with the investigation of a public interest disclosure.

The term disclosure is interpreted under the Act in the ordinary sense of the word, for example, as a "revelation" to the person receiving it. IBAC considers that 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.

The conduct or action being disclosed about may be one which has taken place, is still occurring, or is believed is intended to be taken or engaged in. Disclosures may also be made about conduct that occurred prior to the commencement of the Act (on 10 February 2013).

The following are not public interest disclosures under the Act:

- a disclosure that has not been made in accordance with all of the procedural requirements of Part 2 of the Act and the prescribed procedures in the Regulations;
- a disclosure made by a discloser who expressly states in writing, at the time of making the disclosure, that the disclosure **is not** a disclosure under the Act;
- a disclosure made by an officer or employee of an investigative entity in the course of carrying out his or her duties or functions under the relevant legislation, unless the person expressly states in writing that the disclosure **is a disclosure** and the disclosure is otherwise made in accordance with Part 2 of the Act.

If the Council receives any disclosures which do not meet all of the requirements of Part 2 of the Act or the prescribed procedures in the Regulations, the Council will not be required to consider whether it is a public interest disclosure under the Act. However, the Council will always consider whether it would be appropriate to inform the discloser how to make the disclosure in a way that would comply with the requirements of the Act and the Regulations in order to ensure that persons are properly afforded the opportunity to receive any appropriate protections available to them under the Act.

In addition, the Council is required to consider whether a disclosure that does not meet the requirements of the Act and the Regulations should be treated as a complaint, notification or referral to the Council in accordance with any other laws or internal policies and procedures.

## Who can make a Disclosure?

A disclosure may:

- only be made by a natural person (or a group of individuals making joint disclosures).
- be made anonymously;
- be made even where the discloser is unable to identify precisely the individual or the organisation to which the disclosure relates; and
- also be a complaint, notification or disclosure (however described) made under another law.

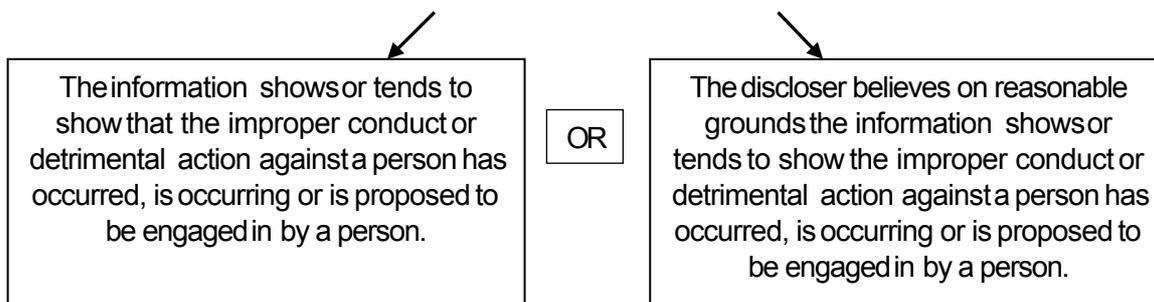
It should be noted that some of the protections set out in the Act protecting a discloser are available only to the person who makes a disclosure. As a consequence of this, if a person makes a disclosure by notifying the agency on behalf of another individual, then it is the notifier who may receive those protections, and not the person on whose behalf they have made the disclosure. The person on whose behalf the disclosure has been made will only be entitled to protections against detrimental taken against them in reprisal for the disclosure made by the notifier.

Anonymous disclosures may create difficulties for the Council. Some of the notification requirements imposed on the Council in relation to disclosures will not apply in relation to an anonymously made disclosure. In addition, it may impede the Council's ability to properly assess whether the complaint or allegation is a public interest disclosure for the purposes of the Act.

## What can a Disclosure be Made About?

A disclosure must be about the conduct of a person or organisation in their capacity as a Public Officer or a Public Body as outlined below:

The alleged conduct is either improper conduct or detrimental action taken against a person in reprisal for a protected disclosure  
AND



In assessing whether there is improper conduct or detrimental action, the Council will look critically at all available information about the alleged conduct and about the discloser.

Preliminary questions the 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 alleged conduct?
- 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 the Council to consider whether there is improper conduct or detrimental action?
- How reliable is the information given to the Council – is it supported by other information?

## Improper Conduct

Improper conduct includes corrupt conduct, criminal offences and other conduct specified in the Act. If the conduct is trivial, it will not meet the threshold of improper conduct.

Improper conduct is defined in the Act to mean either:

- corrupt conduct;
- conduct by a public officer or public body in their capacity as a public officer or public body that constitutes:
  - a criminal offence;
  - serious professional misconduct;
  - dishonest performance of public functions;
  - an intentional breach or reckless breach of public trust;
  - an intentional or reckless misuse of information or material acquired in the course of the performance of the functions of the public officer or public body;
  - a substantial mismanagement of public resources;
  - a substantial risk to the health or safety of one or more persons;
  - a substantial risk to the environment;
- conduct of any person that:
  - adversely affects the honest performance by a public officer or public body of their functions as a public officer or public body
  - 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.
- conduct by a third party that could constitute a conspiracy or attempt to engage in any of the conduct referred to above.

Central to the notion of improper conduct is the notion of the “public trust”. Public trust is a concept that provides the basis *‘for obligations of honesty and fidelity in public officers that exist to serve, protect and advance the interests of the public’*.

A person acting in their official capacity is exercising ‘public power’ that is derived from their public office holding and may be controlled or influenced by legislative provisions, administrative directions, or constitutional principles or conventions. There is an expectation that members of the community may rely on and trust their public bodies and officials to act honestly. The expectation is that public officers will not use their positions for personal advantage or use the influence of their public office for improper purposes where there is a duty to act objectively and impartially.

Discloser or the Council will need to identify that there is a link between the alleged improper conduct of a person or an organisation and their function as a public officer or a public body.

### **Corrupt conduct**

Corrupt conduct is defined in s 4 of the IBAC Act and includes:

- conduct of any person that adversely affects the honest performance by a public officer or public body of his or her or its functions as a public officer or public body;
- conduct of a public officer or public body that constitutes or involves the dishonest performance of his or her or its functions as a public officer or public body;
- conduct of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust;
- conduct of a public officer or a public body that involves the misuse of information or material acquired in the course of the performance of his or her or its functions as a public officer or public body, whether or not for the benefit of the public officer or public body or any other person; *or*
- conduct that could constitute a conspiracy or an attempt to engage in any of the conduct referred to above; **and**

if that conduct could be proved beyond reasonable doubt at a trial, amounts to:

- an indictable offence; *or*
- one of the following 3 types of common law offences committed in Victoria:
  - perverting the course of justice
  - attempting to pervert the course of justice
  - bribery of an official.

### **Detrimental Action**

It is an offence under the Act for a Public Officer or a Public Body to take detrimental action against a discloser in reprisal for making a public interest disclosure. Detrimental action as defined by the Act 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.

In addition, a person can have taken detrimental action without having taken the action itself, but just by threatening to take such action. Further, the detrimental action need not necessarily have been taken (or threatened to be taken) against a person making a public interest disclosure, but against any person connected with a public interest disclosure.

Examples of detrimental action prohibited by the Act include:

- threats to the discloser's personal safety or property, including intimidating, harassing a discloser or the discloser's family or friends, otherwise causing personal injury or prejudice to the safety or damaging property of a discloser or the discloser's family or friends;
- the demotion, transfer, isolation or change in duties of a discloser due to him or her having made a disclosure;
- discriminating or disadvantaging a discloser in their career, profession, employment, trade or business; or
- discriminating against the discloser or the discloser's family and associates in subsequent applications for promotions, jobs, permits or tenders resulting in financial loss or reputational damage.

The person (or the person incited to take detrimental action) must take or threaten the detrimental action, because, or in the belief that the:

- other person or anyone else has made, or intends to make the disclosure;
- other person or anyone else has co-operated or intends to cooperate with an investigation of the disclosure.

If the fact that a staff member has made a disclosure forms any part of the reason for which action is taken against them by their employer, it will constitute detrimental action. Said action is consequently reportable as a public interest disclosure as well as being a criminal offence.

## **How to Make a Disclosure?**

### **Disclosure to be Made to a Body Authorised to receive it**

One of the most critical requirements of the Act is that disclosures are made to a body authorised under the Act to receive the disclosure. The Council can only deal with disclosures which concern the organisation and its staff.

Disclosures about improper conduct or detrimental action by Councillors should be made to IBAC or to the Ombudsman. Those disclosures cannot be made to the Council.

Disclosures about improper conduct or detrimental action by the Council or its staff may be made to the Council or one of four (4) external authorities:

- IBAC;
- Ombudsman in relation to limited types of disclosures;
- VI in relation to limited types of disclosures; or
- Chief Commissioner of Police in relation to limited types of disclosures.

In most circumstances, disclosures about the Council or its staff should be made to the Council or to IBAC.

A public interest disclosure made to the Council, when the Council is not the receiving entity to which the disclosure may or must be made under Part 2 of the Act, is a misdirected disclosure if the discloser honestly believed that the Council was the appropriate receiving entity. A misdirected disclosure may be redirected to another receiving entity without the discloser losing the protections contained in the Act.

The Council must notify the appropriate receiving entity of the disclosure within 28 days. Beyond this notification, the Council is prohibited from disclosing the content of the misdirected disclosure and from disclosing information likely to reveal the identity of the discloser.

## **Making a Disclosure to the Council**

### **Oral disclosures**

An oral disclosure to the Council **must** be made in private and **may** be made:

- in person; or
- by telephone to one of the persons authorised to receive disclosures set out below, including by leaving a voicemail message on that telephone number; or
- by some other form of non-written electronic communication.

The oral disclosure **must** be made to one of the following persons:

- the CEO of the Council (Phone: 1300 003 280 (local call) or 5559 4800);
- the Public Interest Disclosure Officer identified in these procedures;
- the Public Interest Disclosure Coordinator identified in these procedures;
- to the direct or indirect manager of the discloser, if the discloser is a staff member of Council; or
- to the direct or indirect manager of the person to whom the disclosure relates, if that person is a staff member of Council.

If the disclosure is made orally, the person receiving the disclosure will make notes at the time recording the disclosure. Recording of the conversation will only be done with the discloser's permission or by giving prior warning that the conversation will be recorded.

### **Written disclosures**

A written disclosure to the Council **must** be:

- delivered personally to the office of the Council at 25 Liebig Street, Warrambool; or
- sent by post marked "Confidential" and addressed to the Public Interest Disclosure Coordinator, Warrambool City Council, PO Box 198, Warrambool, Victoria 3280; or
- sent by email marked "Confidential" to the official email address of:
  - the Public Interest Disclosure Officer identified in these procedures; or
  - the Public Interest Disclosure Coordinator specified in these procedures.
- if the discloser is a staff member of the Council the disclosure may also be made to:
  - the direct or indirect supervisor or manager of the discloser; or
  - the direct or indirect supervisor or manager of the person to whom the disclosure relates.

The Council recommends that the discloser ensures, where a written disclosure is being provided personally or by post to the official office location or address of the Council, that the disclosure be sealed in an envelope which is clearly marked with one or more of the following:

- "Re: Public interest disclosure";
- "To the personal attention of the Chief Executive Officer";
- "To the personal attention of the Public Interest Disclosure Coordinator"; or
- "To the personal attention of the Public Interest Disclosure Officer".

In relation to a disclosure being emailed to the official email address of the Council, rather than to the email address of one of the individuals specified above the Council recommends that the

discloser insert in the email subject line one of the labels set out above applicable to personally delivered or posted items.

Disclosures cannot be made by fax. A disclosure made by email from an address from which the identity of the discloser cannot be ascertained will be treated as an anonymous disclosure.

### **Disclosures to Council Supervisors or Managers**

A Council supervisor or manager receiving a disclosure from staff will:

- immediately bring the matter to the attention of the Public Interest Disclosure Coordinator or Public Interest Disclosure Officer for further action in accordance with the Act;
- commit to writing down any disclosures made orally;
- 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; and
- offer to remain a support person for the discloser in dealing with the Public Interest Disclosure Coordinator or Public Interest Disclosure Officer.

### **Making a Disclosure to IBAC**

#### **Oral disclosures**

An oral disclosure to IBAC **must** be made in private and **may** be made:

- in person;
- by telephone, to 1300 735 135;
- by leaving a voicemail message for one of the specified individuals below; or
- by some other form of non-written electronic communication.

The oral disclosure **must** be made to one of the following persons:

- the Commissioner of IBAC;
- the Deputy Commissioner of IBAC;
- the CEO of IBAC;
- an employee referred to in s 35(1) of the IBAC Act; or
- any staff referred to in s 35(2) of the IBAC Act.

Contact details are available from IBAC (telephone 1300 735 135).

#### **Written disclosures**

A written disclosure to IBAC **must** be:

- delivered personally to the office of IBAC, at Level 1, North Tower, 459 Collins Street, Melbourne, VIC 3001; or
- sent by post addressed to the office of IBAC, at GPO Box 24234, Melbourne, VIC 3000; or
- sent by email to the official email address of a person specified above to whom an oral disclosure may be made (i.e., the Commissioner, the Deputy Commissioner, the CEO, or employee or staff referred to in s 35 of the IBAC Act); or
- submitted by an online form available on the IBAC website

### **Making a Disclosure to Ombudsman**

#### **Oral disclosures**

An oral disclosure to the Ombudsman **must** be made in private to an Ombudsman officer and **may** be made:

- in person;

- by telephone, to 9613 6222 or toll free (regional areas only) to 1800 806 314;
- by leaving a voicemail message on the telephone number of any Ombudsman officer; or
- by some other form of non-written electronic communication.

### **Written disclosures**

A written disclosure to the Ombudsman **must** be:

- delivered personally to the office of the Ombudsman, at Level 9, North Tower, 459 Collins Street, Melbourne, VIC 3001; or
- sent by post addressed to the office of the Ombudsman, as above; or
- sent by email to the office of the Ombudsman at: [ombudvic@ombudsman.vic.gov.au](mailto:ombudvic@ombudsman.vic.gov.au); or
- sent by email to the official email address of any Ombudsman officer; or
- submitted by an online form (if any) identified in the procedures established by the Ombudsman under s 58(1) of the Act.

## **4. HANDLING DISCLOSURES**

### **Receiving a Disclosure**

When the Council receives a complaint, report or allegation of improper conduct or detrimental action, the first step will be to ascertain whether it has been made in accordance with Part 2 of the Act.

The Public Interest Disclosure Coordinator or Public Interest Disclosure Officer must ask the following questions about the disclosure:

- Has a natural person or persons made the disclosure?
- Does the disclosure relate to the conduct of a Public Officer or Public Body acting in their official capacity?
- Does the alleged conduct constitute either improper conduct or detrimental action taken against a person?
- Does the person making a disclosure have reasonable grounds for believing the alleged conduct has occurred or may occur?

If the answer to one or more of the above elements is yes, the disclosure satisfies Part 2 of the Act, and the discloser is entitled to receive protections under Part 6 of the Act.

### **Assessing a Disclosure**

If the disclosure satisfies the requirements of Part 2 of the Act, the Council is required to determine whether the disclosure may be a public interest disclosure by going through the two step assessment process recommended by IBAC.

This will be the case even if the discloser does not refer to the Act or require the protections of the Act. The initial assessment is made on the nature of the information disclosed or on the belief that the discloser has about the nature of the information, and not the discloser's intention.

### **First step**

The first question the Public Interest Disclosure Coordinator/ Public Interest Disclosure Officer must answer is whether the information disclosed shows, or tends to show, that there is improper conduct or detrimental action taken in reprisal for the making of a public interest disclosure.

This requires the Public Interest Disclosure Coordinator/ Public Interest Disclosure Officer to ascertain whether the information satisfies the 'elements' of improper conduct or detrimental action, as defined in the Act and whether any of the relevant exceptions apply.

This may require the Public Interest Disclosure Coordinator/ Public Interest Disclosure Officer to:

- seek further information;
- conduct a discreet initial enquiry;
- seek (further) evidence from the discloser;
- ascertain whether there is sufficient supporting material to demonstrate that the conduct or actions covered by the Act have occurred, are occurring or are likely to occur.

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 Council will go on to the second step below.

## **Second step**

This requires the Public Interest Disclosure Coordinator/ Public Interest Disclosure Officer to ask whether the discloser believes on reasonable grounds that the information shows or tends to show there is improper conduct or detrimental action.

That is, does the person actually believe that the information shows, or tends to show, there is improper conduct or detrimental action? A reasonable belief requires the belief to be based on facts that would be sufficient to make a reasonable person believe there was improper conduct or detrimental action.

This reasonable belief does not have to be based on actual proof that the improper conduct or detrimental action in fact occurred, is occurring, or will occur, but there must be some information supporting this belief. The grounds for the reasonable belief can leave something to surmise or conjecture, but it must be more than just a reasonable suspicion, and the belief must be probable.

According to IBAC, simply stating that improper conduct or detrimental action is occurring, without providing any supporting information, would not be a sufficient basis for having a reasonable belief. In IBAC's view, a belief cannot be based on a mere allegation or conclusion unsupported by any further facts or circumstances.

Other matters that IBAC suggests the Public Interest Disclosure Coordinator/ Public Interest Disclosure Officer can consider are:

- the reliability of the information provided by the discloser, even if it is second- or third-hand. For example, how would the discloser have obtained the information?
- the amount of detail that has been provided in the information disclosed; and
- the credibility of the discloser, or of those people who have provided the discloser with information.

When making a decision as to whether the event or behaviour shows or tends to show that there was improper conduct or detrimental action, the Public Interest Disclosure Coordinator/ Public Interest Disclosure Officer may seek guidance from IBAC.

## Urgent Action

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

Examples of this provided by IBAC include where the disclosure may be about:

- a child protection worker allegedly sexually assaulting children in care;
- a council worker allegedly lighting bush fires; or
- a person threatening to poison the water supply.

In these cases, the Council can take immediate action while considering whether or not it is an assessable disclosure that must be notified to IBAC or awaiting IBAC's decision on a notified matter.

It may also be necessary to report criminal conduct to Victoria Police for immediate investigation or take appropriate action against a staff member, in accordance with existing organisational policy and procedure, to prevent further improper conduct.

The Act allows the Council to disclose the content of the disclosure by a person or body "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 disciplinary process or action". However, IBAC notes that this does not allow the identity of the discloser to be revealed.

## Decision on Assessment

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

## Decision that Disclosure may be a Public Interest Disclosure

If the Public Interest Disclosure Coordinator/ Public Interest Disclosure Officer considers the disclosure may be a public interest disclosure under the Act, the Council will, within 28 days of receiving the disclosure:

- notify IBAC that:
  - the Council considers the disclosure may be a public interest disclosure; and
  - the Council is notifying the disclosure to IBAC for assessment; **and**
- notify the discloser that:
  - the disclosure has been notified to IBAC for assessment; and
  - it is an offence under s74 of the Act to disclose that the disclosure has been notified to IBAC for assessment under the Act.

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

## Decision that Disclosure may Not be a Public Interest Disclosure

If the Public Interest Disclosure Coordinator/ Public Interest Disclosure Officer determines the disclosure is not a public interest disclosure, and the discloser has indicated to the Council (or it otherwise appears to the 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 the Council receiving the disclosure, that:

- the Council considers the disclosure is not a public interest disclosure;
- the disclosure has not been notified to IBAC for assessment under the Act; and
- regardless of whether the disclosure is notified to IBAC for assessment under the Act, the protections under Part 6 of the Act apply.

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

## Protections for Public Officers

A public officer is given specific protections under the Act to provide information to other public officers or to IBAC in dealing with a disclosure they have received. When a public officer acts in good faith and in accordance with the Act, Regulations and IBAC's Guidelines, the public officer does not commit an offence under laws imposing a duty to maintain confidentiality or restricting the disclosure of information.

## 5. BAC ASSESSMENT

Once a disclosure has been notified to IBAC, it must determine whether it is a public interest disclosure complaint. Such a determination must be made within a reasonable time after the disclosure is notified to IBAC.

In making its assessment, IBAC may seek additional information from the Council or from the discloser if IBAC considers there is insufficient information to make a decision.

If IBAC is of the view that the assessable disclosure is not a public interest disclosure, then it is not a 'public interest disclosure complaint'. If IBAC is of the view that the assessable disclosure is a public interest disclosure, then it must determine that the public interest disclosure is a "public interest complaint".

IBAC must inform the Council of its determination as to whether or not the disclosure is a public interest disclosure complaint:

- in writing; and
- within a reasonable time after making the determination.

### If IBAC determines the Disclosure is Not a Public Interest Complaint

If IBAC determines the disclosure is not a public interest complaint, IBAC must advise the discloser in writing and within a reasonable time after the determination is made, that:

- IBAC has determined that the disclosure is not a public interest complaint; and
- as a consequence of that determination:
  - the disclosure will not be investigated as a public interest complaint; and
  - the confidentiality provisions under Part 7 of the Act no longer apply in relation to the disclosure; and
- regardless of whether IBAC has determined that the disclosure is a public interest complaint, the protections under Part 6 apply to a public interest disclosure.

In addition, if IBAC is of the view that the disclosure, although not a public interest complaint, may be able to be dealt with by another entity, IBAC may advise the discloser that:

- the matter which is the subject of the disclosure may be able to be dealt with by that entity other than as a public interest complaint; and
- if the discloser wishes to pursue the matter, to make a complaint directly to that entity.

If this is the case, IBAC will also advise the relevant notifying entity that the discloser has been given this advice.

IBAC is also able to consider whether it wishes to treat the assessable disclosure as a notification made to IBAC under the IBAC Act.

### If IBAC determines the Disclosure is a Public Interest Complaint

#### Notification to Discloser

If IBAC determines the disclosure is a public interest complaint, IBAC must advise the discloser in writing and within a reasonable time after the determination is made, that:

- IBAC has determined that the disclosure is a public interest complaint;

- the protections available to a discloser of a public interest disclosure under Part 6 of the Act apply;
- the discloser has rights, protections and obligations under the Act as contained in ss 72, 74 and Parts 6 and 7 of the Act, including an explanation of the effect of those sections and Parts of the Act; and
- it is an offence under s 74 of the Act to disclose that IBAC has determined that the disclosure is a public interest complaint.

Once IBAC has determined that a disclosure is a public interest complaint, the discloser cannot withdraw that disclosure. However, under the IBAC Act, IBAC can decide not to investigate a public interest complaint if the discloser requests that it not be investigated.

### **Further Actions IBAC may take**

Once IBAC has established whether or not the assessable disclosure is a public interest complaint, then it decides what action it might take under the IBAC Act. IBAC may **dismiss**, **investigate**, or **refer** the matter.

- If it **dismisses** a public interest complaint, then it must do so on one of the grounds specifically set out in the IBAC Act.
- It may choose to **investigate** the alleged conduct if it is reasonably satisfied that it is “serious corrupt conduct”.
- It may also choose to **refer** the public interest complaint to another appropriate and relevant investigating entity.

If IBAC determines that the disclosure is not a public interest disclosure, it may advise the discloser that they should make a complaint directly to the relevant public body.

At the conclusion of its investigation, IBAC must provide the discloser with information about the results of its investigation, including any action taken by IBAC and any recommendation by IBAC that action or further action be taken (subject to certain exceptions).

IBAC may provide written information about the commencement, conduct or result of an investigation, including any actions taken and any recommendation made that any action or further action be taken to the relevant principal officer. However, IBAC must not provide any information that is likely to lead to the identification of a discloser.

## **6. WELFARE MANAGEMENT**

### **Welfare Obligations**

The 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 are also entitled to have their welfare protected.

The Council must endeavour to ensure disclosers and co-operators are protected from direct and indirect detrimental action being taken against them in reprisal for the public interest disclosure. The 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 (e.g., Councillors and staff) or external members of the public.

However, different legislative responsibilities apply to persons internal to the organisation, and to persons who may be clients or users of the 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 Staff Codes of Conduct; 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, the Council will ensure a supportive work environment and respond appropriately to any reports of intimidation or harassment against these persons. For external persons, the Council will take reasonable steps to provide appropriate support. The Council will discuss reasonable expectations with all persons receiving welfare management in connection with a public interest disclosure.

## **Support available to Disclosers and Co-operators**

The 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 the Council, details about results of the action known to the 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 the 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 the 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 the 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 in the 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 monitor 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 thorough and complete records of all aspects of the case management of the person, including all contact and follow-up action.

## Appointment of Welfare Manager

In appropriate circumstances, the Council will appoint a suitable Welfare Manager to protect a discloser or a co-operator. The Welfare Manager may be sourced externally where disclosures are made by staff to avoid any potential conflicts of interest and to ensure an impartial, third party view is provided.

The following matters will be taken into consideration by the 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 the Council can or will take the discloser or co-operator seriously and will be able to treat them with respect?
- whether the Council will give the discloser or co-operator effective support, including keeping the discloser informed of the status of the disclosure?
- can the 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 is 'yes' then IBAC recommends the appointment of a dedicated Welfare Manager. If the answer to the first question is 'no' and the 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 the Council will be assessed on its own merits.

In particular, a Welfare Manager will be appointed where the Council believes that one is required to ensure that the appropriate support can be provided to the discloser or co-operator.

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

- 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 CEO;
- 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; and
- ensure the expectations of the discloser are realistic and reasonable, and that the discloser or co-operator understands the limits of the support the Council is able to reasonably provide in the particular circumstances.

## **Welfare Management of Persons Subject of Public Interest Disclosure**

The Council recognises that persons against whom disclosures are made must also be supported and afforded natural justice. It is important to remember that until a public interest complaint is resolved, the information about the person is only an allegation.

The 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. It is possible that 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. The 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 the purpose of 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 for the purposes of conducting that investigation, or any actions that they propose to take as a result of the investigation.

### **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 the Council. Alternatively, the Public Interest Disclosure Coordinator/Public Interest Disclosure Officer will provide support and advice to a person the subject of a disclosure, particularly in relation to their rights and obligations under the Act, the Council's internal reporting system as set out in these procedures, and any other relevant law or code of conduct.

The Council will consider each matter on a case by case basis, taking into account the particular circumstances of the person and the public interest complaint.

### **Natural Justice**

The 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.

### **If the Allegations are Wrong or Unsubstantiated**

The Council will provide support to a person who is the subject of a disclosure where the allegations contained in a disclosure have been found to be wrong or unsubstantiated.

In those circumstances, the 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 the Council and the subject is a Councillor or staff of the Council.

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

### **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, Public Interest Disclosure Coordinator or Public Interest Disclosure Officer must record details of the incident and advise the person of their rights under the Act.

Detrimental action taken against another person in reprisal for a public interest disclosure is:

- when 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.

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, the 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 the 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, the Council will also

consider reporting the matter to the 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 also:

- take civil action against the person who took detrimental action against the discloser and seek damages;
- take civil action against the 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 the Council; and
- apply for an order or an injunction from the Supreme Court.

## Protections available to Disclosers

Part 6 of the Act sets out the protections provided to persons who make a disclosure that is a 'public interest disclosure'.

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 the 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.

## Limits on Protection

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

- knowingly provides false or misleading information
- claims that a matter is the subject of a public interest disclosure knowing the claim to be false.

The Act also specifically states that a person is still liable for their own conduct even if they disclose that conduct.

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

Where a discloser is implicated in improper conduct, the Council will protect the discloser from reprisals in accordance with the Act, IBAC's guidelines and these procedures. The Council acknowledges that the act of making a disclosure does not exclude the person making the disclosure from being subject to reasonable consequences flowing from any involvement in improper conduct.

In some circumstances, an admission may be a mitigating factor when considering disciplinary or other action.

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 CEO will make the final decision as to whether disciplinary or other action will be taken against a discloser. Where disciplinary or other action relates to conduct that is the subject of the disclosure, the disciplinary or other action will only be taken after the disclosed matter has been appropriately dealt with.

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

- the decision to proceed with disciplinary action is not causally connected to the making of the disclosure (as opposed to the content of the disclosure or other available information);
- there are good and sufficient grounds that would fully justify action against any other person not making a disclosure in the same circumstances;
- there are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

The 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 be informed of any mitigating factors that have been taken into account.

## **7. CONFIDENTIALITY**

### **Confidentiality Obligations**

Consistent with the Council's confidentiality obligations under the Act the fact that a disclosure has been made, whether it has been notified to IBAC for assessment, any information received from IBAC or another investigative entity and the identities of persons involved will not be divulged.

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

Maintaining confidentiality in relation to public interest disclosure matters is crucial in ensuring reprisals are not made against a discloser.

## Exceptions

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, include circumstances such as:

- where disclosure is required by the Council (or one of its staff) in the exercise of functions of the 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 VI has determined that the assessable disclosure is not a public interest disclosure and the discloser or the 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;
- in disciplinary actions or legal proceedings for certain offences in the Act or other specified Acts.

It is important to note that the Act prohibits the inclusion of any details, in any report or recommendation that is 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.

## Offences

The Act contains a number of offence provisions relating to unauthorised disclosure of information by either disclosers or persons who have received disclosures. The relevant penalties include imprisonment, financial payments or both.

The criminal offences set out in the Act relating to confidentiality include:

- divulging information obtained in connection or as a result of the handling or investigation of a public interest disclosure without legislative authority. Maximum penalty: 60 penalty units, six months imprisonment, or both.
- disclosing that a disclosure has been notified to IBAC for assessment under the Act. Maximum penalty: 60 penalty units, six months imprisonment, or both.
- disclosing that a disclosure has been assessed by IBAC or VI to be a public interest complaint under the Act. Maximum penalty: 60 penalty units, six months imprisonment, or both.
- A person must not take detrimental action against another person in reprisal for a public interest disclosure. Penalty: 240 penalty units or 2 years imprisonment or both.

## 8. RECORDS MANAGEMENT

The Council will ensure all files, whether paper or electronic, are kept securely. Those files will be accessible only by the Public Interest Disclosure Coordinator, Public Interest Disclosure Officer and CEO. A Welfare Manager may be able to gain access (where appropriate) to related welfare matters. A Welfare Manager may be provided with information relevant to a welfare issue he or she is managing whenever it is in the interests of the supported officer for that to occur.

All printed material will be kept in files that are clearly marked as a 'Public Interest Disclosure Matter' and warn of the criminal penalties that apply to any unauthorized divulging of information concerning a public interest disclosure.

All electronic files will be either password protected, stored separately or secured. All materials relevant to an investigation, such as tapes from interviews, will also be stored securely with access only by authorised officers, as listed above.

All phone calls and meetings will be conducted in private. Transmission of files containing sensitive information will not be sent to devices that have general staff access.

A person cannot obtain information about a public interest disclosure by application under the Freedom of Information Act 1982 (the 'FOI Act'). Although the FOI Act provides a general right of access for any person to seek documents in the possession of the Council, it provides that certain information related to public interest disclosures as contained in documents in the possession of the 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 disclosure made in accordance with the Act;
- any information relating to a disclosure notified to IBAC by the Council under s21 of the Act for assessment; and
- any information that is likely to lead to the identification of a discloser.

The 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.

## 9. TRAINING for COUNCILLORS and STAFF

The Council will:

- ensure that Councillors and staff have access to a copy of these procedures in hard or soft copy;
- incorporate into its induction procedures training about the Council's general obligations under the Act and the rights and obligations of all Councillors and staff;
- introduce periodic refresher courses for Councillors and staff about their rights and obligations under the Act;
- provide additional training and assistance to:
  - o any staff of the Council with specific responsibilities and functions to handle and manage public interest disclosures under the Act, including the Public Interest Disclosure Coordinator, Public Interest Disclosure Officer and people involved in welfare management;
  - o its complaint handling staff to ensure that any complaints received will be dealt with consistently and in accordance with the Act as required;

- any staff with functions and duties under the FOIA 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 FOIA Act; and
- all staff dealing with customers to ensure any potential disclosures received from external sources can be handled appropriately in accordance with the Act and these procedures.

## **10. GOVERNANCE**

### **Review**

This procedure will be reviewed every three years or upon significant change to the Act, the Regulations or IBAC's guidelines to ensure they comply with the requirements of the Act, the Regulations and IBAC's guidelines.

From time to time, circumstances may change leading to the need for minor administrative changes to this procedure. Where an update does not materially alter this procedure, such a change may be made administratively.

Examples of minor administrative changes include changes to Council personnel, change to names of Government departments and agencies or a minor amendment to legislation that does not have material impact. Where any change or update may materially change the intent of this procedure, it must be considered by the Council.

### **Compliance Responsibility**

The 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 s 21 of the Act during the financial year.

The Public Interest Disclosure Coordinator will establish a secure register to record such information, and to generally keep account of the status of disclosures made under the Act.