



# PUBLIC INTEREST DISCLOSURE PROCEDURES

Moorabool Shire Council

*We embrace our natural environment and lifestyle options to create  
an inspiring place for everyone to live, work and play*

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## Introduction

Council is a public body under the Public Interest Disclosures Act 2012 (the Act). The purpose of the Act is to encourage and facilitate the making of disclosures of improper conduct by public officers and public bodies, including Council (as an organisation), Council officers, Councillors, providers and volunteers, and to ensure those disclosures are properly assessed and investigated.

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.

The Act has also established a new Integrity and Oversight Committee, which consolidates the oversight of a number of Victorian integrity agencies, including the Independent Broad-based Anticorruption Commission, the Victorian Ombudsman and the Office of the Victorian Information Commissioner.

## Purpose

This procedure establishes a system for reporting disclosures of improper conduct or detrimental action by the Council, councillors or employees. The system enables such disclosures to be made to Council's Public Interest Disclosure Coordinator to the Independent Broad-based Anti-Corruption Commission (IBAC). Disclosures may be made by any person, this includes members of the public, councillors or employees of Moorabool Shire Council, but not a legal entity like a corporate body.

The Act provides protections for people who make a disclosure, or those who may suffer detrimental action in reprisal for making a disclosure. An essential aspect of this protection is to ensure information connected to a public interest disclosure, including the identity of a discloser and the contents of the disclosure, is kept confidential.

The Public Interest Disclosures Procedure (Procedure) established under s.58 of the Act, sets out how Council will encourage and facilitate the making of disclosures, provide protection and support for disclosers and witnesses, and ensure confidentiality and appropriate reporting of disclosures.

Council respectfully acknowledges the Traditional Owners of the land, which include the Wurundjeri Woi Wurrung, Wadawurrung and Dja Dja Wurrung people. We pay our respects to the Elders past, present and emerging.

## Scope

This Procedure applies to Council (organisation), Council employees, Councillors, providers and volunteers, and members of the public, and as disclosers or witnesses.

## Commitment

Council supports a workplace culture where the making of disclosures is valued, and will:

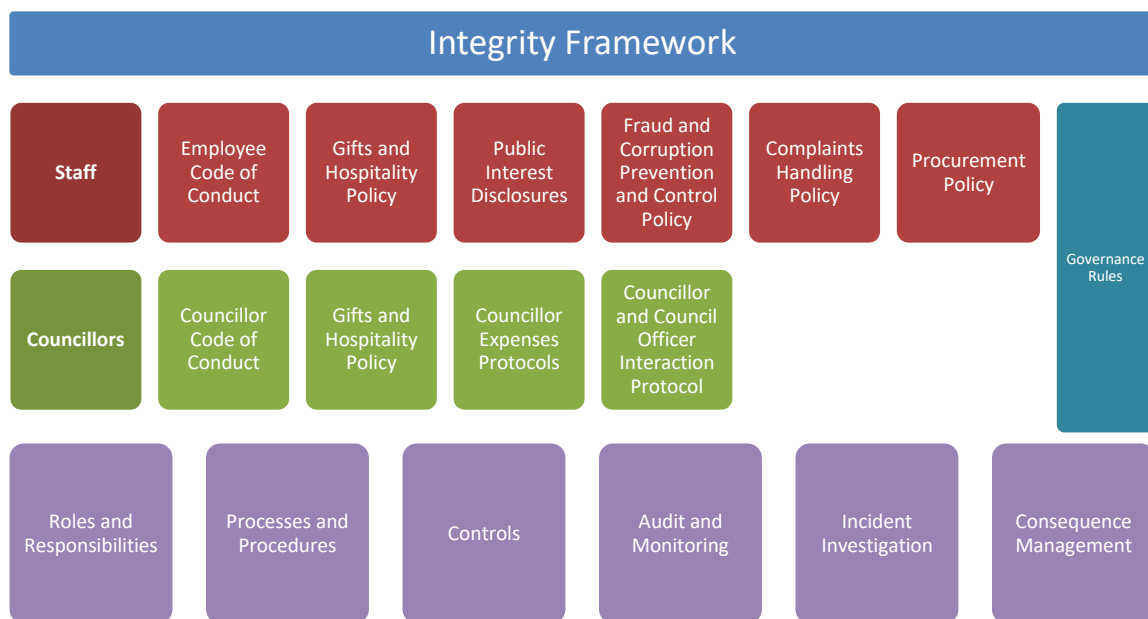
- ensure this Procedure, including information about how, and to whom, disclosures can be made, is publicly available on its website and promoted to Council employees, Councillors and providers
- ensure training is provided at all levels of the organisation to raise awareness of how a public interest disclosure can be made, and to take all reasonable steps to ensure Council employees, Councillors, providers and volunteers are familiar with Council's Public Interest Disclosures Policy and the Procedure, and relevant codes of conduct
- ensure its public interest disclosures reporting system is centralised and accessible only by appropriate Council officers, to provide confidentiality, protect identity and minimise the risk of reprisal against a discloser or witness
- not tolerate the taking of detrimental action in reprisal against any person for making a public interest disclosure, including taking reasonable steps to protect people from detrimental action
- afford natural justice and treat people fairly who are the subject of allegations in a disclosure
- take appropriate disciplinary and other action against any Council employee, Councillor, provider or volunteer, attempting to or taking detrimental action
- ensure relevant Council officers are trained to receive and manage disclosures appropriately.

## Integrity Framework

In addition to this procedure, Council has developed the following:

- **Fraud and Corruption Prevention and Control System** describing Council’s fraud management system and approach.
- **Fraud and Corruption Prevention and Control Policy** describing Council’s overarching commitment fraud management.
- **Fraud Reporting and Investigation Procedure** to guide Council officers in the process for reporting and conducting an internal investigation when an incident of suspected fraud or corruption is detected.
- **Public Interest Disclosures Policy (PID Policy)** establishing Council’s commitment to maintaining its integrity, supporting anyone disclosing information about improper conduct or detrimental action, and ensuring its compliance with the Act.

This document is complementary to and is to be read in conjunction with the above suite of documents, and is intrinsically linked to Council’s other key ethical guidance policies and procedures as outlined in the following diagram:



## Definitions

Council has adopted the following definitions of fraud and corruption as set out in Australian Standard: Fraud and Corruption Control AS 8001:2021.

For the purposes of this document, the reference to fraud will refer to fraud and corruption collectively.

Term	Definition
<b>Assessable Disclosure</b>	Any report, complaint, concern, matter, allegation or disclosure (however described) purported to be made in accordance with Part 2 of the Act.
<b>Assets</b>	Includes money, property (land and buildings), materials, stock, vehicles, plant, equipment, furniture, chattels and all other similar possessions and items. Assets also include information and records including transactional records.
<b>Corruption</b>	<p>Corruption or corrupt conduct includes asking for, or receiving a benefit of any kind, the acceptance of a bribe, in any form, which is punishable under law by the Victorian common law offence of 'Bribery of a Public Official' and offences under the <i>Local Government Act 1989</i> (Vic).</p> <p>Section 4 (1) of the <i>Independent Broad-Based Anti-corruption Commission Act 2011</i> defines corrupt conduct as any conduct:</p> <ul style="list-style-type: none"><li>• 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; or</li><li>• of a public officer or public body that constitutes or involves the</li><li>• dishonest performance of his or her or its functions as a public officer or public body; or</li><li>• of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust; or</li><li>• 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</li></ul>
<b>Council personnel</b>	The Chief Executive Officer, members of Council staff, (permanent, temporary, agency, casual, full and part time), volunteers, trainees, students, Audit and Risk Committee members, Delegated Committee members and Community Asset Committee members.
<b>Councillor</b>	A person who holds the office of an elected representative of Moorabool Shire Council.
<b>Detrimental action</b>	action causing injury, loss or damage  intimidation or harassment  discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action
<b>Fraud</b>	A dishonest activity causing actual or potential financial loss to any person or entity including theft of moneys or other property by persons internal or external to the organisation and where deception is used at the time, immediately before or immediately following the activity. This also includes the deliberate falsification,

Term	Definition
	<p>concealment, destruction or use of falsified documentation used or intended for use for a normal business purpose or the improper use of information or position for personal financial benefit”</p> <p>The theft of property belonging to Council where deception is not used is also considered ‘fraud’ for the purposes of this policy. (Australian Standards AS8001-2021: Fraud and Corruption Control). Fraud is not restricted to tangible benefits only and includes intangibles such as information. A fraudulent act can also be committed by an act of omission, dishonesty or deceitful and misleading behaviour.</p>
<p><b>Improper Conduct</b></p>	<p>The Public Interest Disclosures Act 2012 captures fraudulent and corrupt behaviour and specifically the following conduct by a public officer or public body in their capacity as a public officer or public body:</p> <ul style="list-style-type: none"> <li>• Corrupt conduct and/or</li> <li>• Any of the following conduct by a public officer or public body in their capacity as a public officer or public body: <ul style="list-style-type: none"> <li>○ A criminal offence</li> <li>○ Serious professional misconduct*</li> <li>○ Dishonest performance of public functions</li> <li>○ An intentional breach or reckless breach of public trust</li> <li>○ An intentional or reckless misuse of public trust</li> <li>○ An intentional or reckless misuse of information or material acquired in the course of the performance of public functions</li> <li>○ A substantial mismanagement of public resources</li> <li>○ A substantial risk to the health or safety of one or more persons</li> <li>○ A substantial risk to the environment.</li> </ul> </li> </ul> <p>* The Act does not define serious professional misconduct</p>
<p><b>Natural Justice</b></p>	<p>A principle of Common Law that says a person has the right to be:</p> <ul style="list-style-type: none"> <li>• informed about the substance or the allegations against them</li> <li>• given the opportunity to answer the allegations before a final decision is made</li> <li>• informed about the substance of any adverse comment that may be included in an investigation report and have their defence fairly included in the report.</li> </ul>
<p><b>Public Interest Disclosure</b></p>	<p>Any complaint, concern, matter, allegation or disclosure (however described) determined to be made in accordance with Part 2 of the PID Act. A public interest disclosure is one which is made by a natural person or group of people who has reasonable grounds for the belief that a public officer or public body has engaged in or intends to engage in improper conduct in their official capacity, or detrimental action.</p>

## Responsibilities

### Employees, Councillors, providers and volunteers

Council employees, Councillors, providers and volunteers are encouraged to raise matters of concern, including reporting known or suspected incidences of improper conduct or detrimental action that has either taken place, is still occurring, or is suspected may occur.

Council employees, Councillors, providers and volunteers have an important role to play in supporting anyone who has made a legitimate disclosure under the Act. They will protect and maintain the confidentiality of a person they know (or suspect) to have made a disclosure. They will not take part in any action that is, or could be perceived to be, victimisation or harassment of a person who makes a disclosure or participates in an investigation.

### Direct and indirect Supervisors and Managers

- Direct or indirect (line) supervisor of the discloser
- Direct or indirect (line) supervisor of the subject of the disclosure

Employees can make a disclosure to their direct or indirect supervisor. If a person wishes to make a disclosure about a Council employee, they can make the disclosure to that employee's direct or indirect supervisor.

The officer receiving the disclosure will:

- receive a disclosure made verbally or in writing from a discloser
- make arrangements for a disclosure to be made privately and, if necessary, away from the workplace
- as soon as possible, confidentially advise the Public Interest Disclosures Coordinator of the disclosure (for further action in accordance with the Act)
- take necessary steps to ensure the information disclosed, including the identity of the discloser and any people involved, is secured and remains confidential
- offer to act as a support person for the discloser if meeting with the Public Interest Disclosures Coordinator
- undertake mandatory training on receiving a disclosure (in line with the Act and this Procedure).

### Public Interest Disclosures Coordinator

The Public Interest Disclosures Coordinator has the central role in coordinating the public interest disclosure process for Council.

- receive a disclosure made verbally or in writing from a discloser
- make arrangements for a disclosure to be made privately and, if necessary, away from the workplace
- take detailed notes of any disclosure made verbally



- if appropriate, make discreet enquiries - including accessing system data - to attempt to obtain any additional evidence in relation to a disclosure. This will not include an 'investigation' of a disclosure (which is determined and directed by IBAC)
- receive all disclosures and supporting evidence forwarded from Officers
- consider each disclosure impartially, and determine whether it may be a public interest disclosure and should be notified to IBAC for assessment under the Act
- take necessary steps to ensure information disclosed, including the identity of the discloser, the subject of an allegation, and any witnesses, is secured and remains confidential
- be a central contact for integrity agencies such as IBAC and the Victorian Inspectorate, and act as chief liaison with IBAC or an investigating agency for any public interest complaints and matters
- provide general advice about the Act, relevant regulations and guidelines, and Council's policies and procedure
- arrange appropriate welfare support for the discloser, including appointing a Welfare Manager to support the discloser
- advise the discloser (appropriately and in accordance with the Act) of the stage the disclosure is at, for example, whether it has been notified to IBAC for assessment, or whether the disclosure has not met the Act requirements and is being dealt with through Council's internal procedures
- establish and manage a confidential filing system for disclosures
- coordinate Council's disclosure reporting system, including statistics on disclosures for the annual report
- coordinate awareness training for Council officers, including specialist training for Executives and Managers

The Public Interest Disclosures Coordinator appointed by Council is the Executive Manager Democratic Support & Corporate Governance. Phone 5366 7100 or email [governance@moorabool.vic.gov.au](mailto:governance@moorabool.vic.gov.au)

## Chief Executive Officer

The Chief Executive Officer will:

- be responsible for ensuring Council carries out its responsibilities under the Act and Guidelines, including appointing a Public Interest Disclosures Coordinator
- liaise with IBAC (or referred authority) in regard to cooperating with any investigations
- be responsible for actioning any investigation outcomes, and providing relevant information to the Public Interest Disclosures Coordinator for reporting requirements
- be responsible for instigating and overseeing any actions in response to concerns about detrimental actions or reprisals for a person making a disclosure
- establish and manage a confidential filing system (hard copy and electronic) for any relevant matters relating to a disclosure or investigation
- take necessary steps to ensure information disclosed, including the identity of the discloser, the subject of an allegation, and any witnesses, is secured and remains confidential.

## Making a disclosure

### What can a disclosure be made about?

A disclosure is a report about:

- the improper conduct of public bodies or public officers; and
- detrimental action that a public body or public officer takes against a person in reprisal for them having made a public interest disclosure or cooperated with the investigation of a public interest disclosure.

The disclosure can relate to conduct or action that:

- may have already taken place
- may be occurring now, or
- may happen in the future.

### Improper Conduct

A disclosure may be made about improper conduct by the Council, a Council employee or a Councillor, in the performance of their functions as a public body or public officer.

Central to the notion of improper conduct is the concept of “public trust”: the expectation that members of the community can rely on and trust their public bodies and officers to serve, protect and advance the interests of the public, and act honestly and with integrity. 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.

The Public Interest Disclosures Coordinator needs to identify that there is a link between the alleged improper conduct of a person or organisation, and their function as a public officer or a public body.

Improper conduct is defined in the Act to mean:

- a) corrupt conduct; or
- b) conduct of a Council, Council employee or a Councillor in their capacity as a Council, Council employee or Councillor that constitutes:
  - i. a criminal offence
  - ii. serious professional misconduct
  - iii. dishonest performance of public functions
  - iv. an intentional or reckless breach of public trust
  - v. an intentional or reckless misuse of information or material acquired in the course of the performance of the functions of the Council, Council employee or a Councillor
  - vi. a substantial mismanagement of public resources
  - vii. a substantial risk to the health or safety of one or more persons
  - viii. a substantial risk to the environment; or
- c) conduct of any person that:
  - i. adversely affects the honest performance by Council, Council employee or a Councillor of their functions as a public officer or public body; or

- ii. is intended to adversely affect the effective performance or exercise by Council, Council employee or a Councillor of their functions and results in them, or an associate, obtaining:
  - a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument; or
  - an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument; or
  - a financial benefit or real or personal property; or
  - any other direct or indirect monetary or proprietary gain—

that the person or associate would not have otherwise obtained; or

- d) conduct that could constitute a conspiracy or an attempt to engage in any of the conduct referred to above.

It should be noted the risk in relation to mismanagement or public health and safety or the environment must be “substantial”, requiring significant or considerable mismanagement, or significant or considerable risks to public health, safety or the environment.

Conduct that is trivial does not constitute improper conduct for the purposes of the Act.

### Detrimental Action

There are two essential components of detrimental action:

- whether there is detrimental action as defined by the Act; and
- whether the action is being taken in reprisal against a person for making or being connected with 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. The action need not 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 a person’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 person 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.

### Action taken in reprisal for a public interest disclosure

The person must take or threaten to take the detrimental action (as described above), 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 cooperated or intends to cooperate with an investigation of the disclosure.

### What is not a public interest disclosure?

The following are not public interest disclosures under the Act:

- a disclosure that has not been made in accordance with the requirements of Part 2 of the Act and the procedures in the Protected Disclosure Regulations 2013 (Regulations)
- a disclosure made by a discloser who 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 their duties, unless the person states in writing that it is a disclosure made in accordance with Part 2 of the Act.
- A complaint or allegation that is already in the public domain such as in the media or social media will not normally be a public interest disclosure.

If Council receives any disclosures that do not meet all of the requirements of Part 2 of the Act, Council will 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 so the person has the opportunity to receive any protections available to them under the Act.

Council will also consider whether a disclosure that does not meet the requirements of the Act should be treated as a complaint and addressed through other Council internal processes such as complaint handling or Fraud Reporting and Investigation Procedure.

### Who can make a disclosure?

Anyone can make a disclosure about improper conduct or detrimental actions including Council employees, providers, volunteers and members of the public.

A disclosure can:

- only be made by a natural person or a group of individuals making joint disclosures, (disclosures cannot be made by a company or an organisation)
- be made anonymously
- be made even when the discloser is unable to identify the individual or the organisation the disclosure relates.

## Who can a disclosure be made to?

The disclosure must be made to a body authorised to receive it.

Council can only deal with disclosures which concern Council, its employees, providers and volunteers, and must be made in accordance with the procedures established by Council (Public Interest Disclosures Procedure). Disclosures about improper conduct or detrimental action by Council's Councillors must only be made to IBAC or the Victorian Ombudsman.

If a disclosure made to the Council concerns another public body or employees or staff of that other public body, the Council will take reasonable steps to direct the discloser to the other body which is able to receive a disclosure about that person or body under the Act (unless the allegation received is made from an anonymous source). A disclosure made to the wrong body will have protections under Part 6 of the Act.

Where in doubt, a discloser should make their disclosure to IBAC.

## How can a disclosure be made?

A disclosure must be made in accordance with Part 2 of the Act. Part 2 of the Act permits disclosures to be made anonymously, verbally or in writing, and does not need to identify the person or organisation involved in the allegation.

A disclosure made by email from an email address that does not identify the discloser, will be treated as an anonymous disclosure.

Disclosures **cannot** be made by fax.

### Verbal Disclosures

A verbal disclosure to the Council must be made in private and may be made:

- in person
- by telephone to one of the persons authorised to receive disclosures, including by leaving a voicemail message
- by some other form of non-written electronic communication.

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

- the Public Interest Disclosures Coordinator
- to the manager or director of the discloser, if the discloser is an employee of the Council or
- to the manager or director of the person to whom the disclosure relates, if that person is an employee of the Council
- the Chief Executive Officer

If the disclosure is made verbally, the person receiving the disclosure will make notes at the time to record the disclosure.

## Written Disclosures

A written disclosure to the Council must be either:

- delivered personally to Council offices located at:
  - 15 Stead Street, Ballan or
  - 182 Hallett's Way, Darley, or
- sent by post addressed to the Public Interest Disclosures Coordinator, Moorabool Shire Council, PO Box 18, Ballan, Victoria 3342, or
- sent by email to the Public Interest Disclosures Coordinator (the Executive Manager Democratic Support & Corporate Governance) at [governance@moorabool.vic.gov.au](mailto:governance@moorabool.vic.gov.au), or
- sent by email to the official email address of either:
  - the of the discloser, if the discloser is a Council employee
  - the of the person to whom the disclosure relates, where that person is a Council employee
  - the Chief Executive Officer [dmadden@moorabool.vic.gov.au](mailto:dmadden@moorabool.vic.gov.au)

Council recommends a discloser include wording in the address and/or subject line of a written disclosure to identify its confidential nature e.g. "Confidential: Public Interest Disclosure" or similar.

## How to make a disclosure to IBAC

### Verbal Disclosures

A verbal disclosure to IBAC must be made in private and may be made:

- in person
- by telephone on 1300 735 135
- by leaving a voicemail message on the telephone number of one of the specified individuals below and to whom a verbal disclosure can be made
- by some other form of non-written electronic communication

A verbal 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 IBAC Act
- Any staff referred to in s 35(2) of IBAC Act

### 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
- Sent by post address to the office of IBAC, at GPO Box 24234, Melbourne, VIC 3001

- Sent by email to the official email address of a person specified above to whom a verbal disclosure may be made (i.e. Commission, Deputy Commissioner, CEO, or employee or staff referred to in s 35 of IBAC Act)
- submitted by an online form on IBAC website.

### Disclosures about other public bodies or public officers

Disclosures relating to improper conduct or detrimental action involving other public bodies or officers who are not employees, providers or volunteers of the Council may be made to the various other bodies specified in s 13 of the Act.

# Handling Disclosures

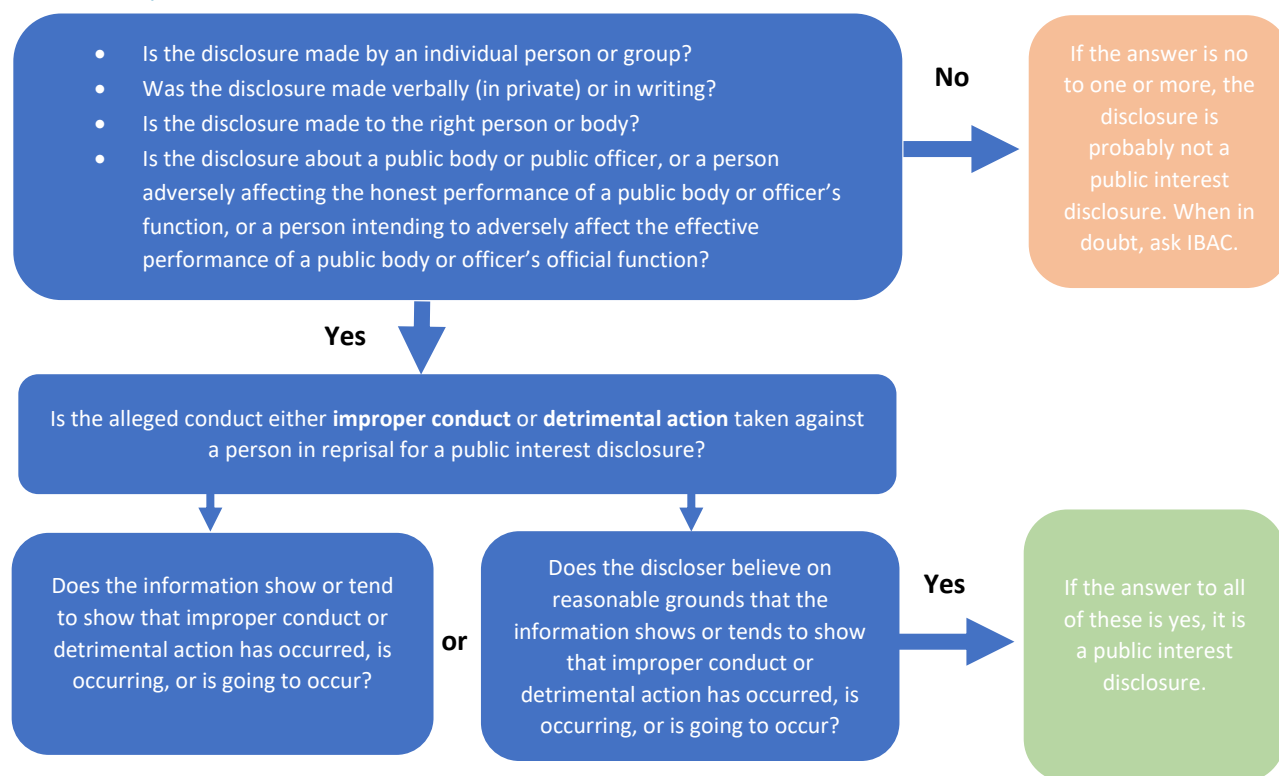
## Receiving a disclosure

When the Public Interest Disclosures Coordinator (or any one of the other authorised persons described in this Procedure) receives a report, complaint or allegation about improper conduct or detrimental action by Council, an employee, provider or volunteer, the first step is to determine whether it has been made in accordance with Part 2 of the Act. If it has, the discloser is entitled to receive protections under Part 6 of the Act.

## Assessing a disclosure

If the disclosure meets the requirements of Part 2 of the Act, the Public Interest Disclosures Coordinator needs then to assess whether the disclosure may be a public interest disclosure. This is the case even if the discloser does not refer to the Act. The disclosure must satisfy one of two tests.

### Is this a public interest disclosure?



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

The first question the Public Interest Disclosures Coordinator must answer is whether the information disclosed shows, or tends to show, there is improper conduct or detrimental action.

This requires the Public Interest Disclosures Coordinator to determine whether the information provided meets the threshold or requirements of improper conduct or detrimental action, as defined in the Act.



This may require the Public Interest Disclosures Coordinator to:

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

In assessing whether there is improper conduct or detrimental action, Council will look 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 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?

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 Public Interest Disclosures Coordinator will move to Test 2.

[Test 2 - Does the discloser believe on reasonable grounds 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. Reasonable belief does not have to be based on actual proof of the improper conduct or detrimental action, but there must be some information supporting this belief. The grounds for the reasonable belief must be more than just a reasonable suspicion, and the belief must be probable.

Simply stating that improper conduct or detrimental action is occurring, without providing any supporting information, is not a sufficient basis for having a reasonable belief.

Other matters IBAC suggests Council consider when assessing a disclosure 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
- the credibility of the discloser or of those people who have provided the discloser with information.

[If urgent action is required while an assessment is still being made](#)

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

In such circumstances Council can take urgent action to ensure health and safety, while the public interest disclosures process is underway, including reporting criminal conduct to the Police, or taking management action against the subject of the disclosure in order to prevent future conduct.

However, Council can only disclose the content of the disclosure to the extent necessary for the purpose of taking lawful, urgent action in relation to the conduct, including a disciplinary process. The identity of the discloser is not permitted to be revealed.

The reporting of suspected fraud and misconduct is governed by IBAC Act which must be complied with before any internal investigation of a suspected incident can commence.

Council will notify IBAC of any urgent action undertaken.

### Assessment decisions and notifications by Council

At the conclusion of the assessment, the Public Interest Disclosures Coordinator will decide whether they consider the disclosure is a public interest disclosure. If they decide it may be a public interest disclosure, they must notify IBAC of the disclosure. If they do not consider it to be a public interest disclosure, then it may be a matter that Council otherwise deals with through other relevant internal complaint or grievance management processes.

The Public Interest Disclosures Coordinator will document their assessment and decision and notify the discloser.

### If Council does not consider the disclosure to be a public interest disclosure

If the Public Interest Disclosures Coordinator does not consider the disclosure to be a public interest disclosure, and the discloser has indicated to the Council that they wish to receive the protections that apply to a public interest disclosure under the Act, then Council will notify the discloser in writing, within 28 days of the Council receiving the disclosure, that:

- the disclosure has not been notified to IBAC for assessment under the Act
- regardless of whether the disclosure is notified to IBAC, the protections under Part 6 of the Act will apply
- the discloser may appeal the decision with IBAC directly
- Council has referred the matter to its internal complaints or Fraud Reporting and Investigation Procedure for action and response.

Council will not need to provide a response notification to an anonymously-made disclosure.

### If Council considers the disclosure may be a public interest disclosure

If the Public Interest Disclosures Coordinator considers the disclosure may be a public interest disclosure, they will, within 28 days of Council 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 s 21 of the Act, and

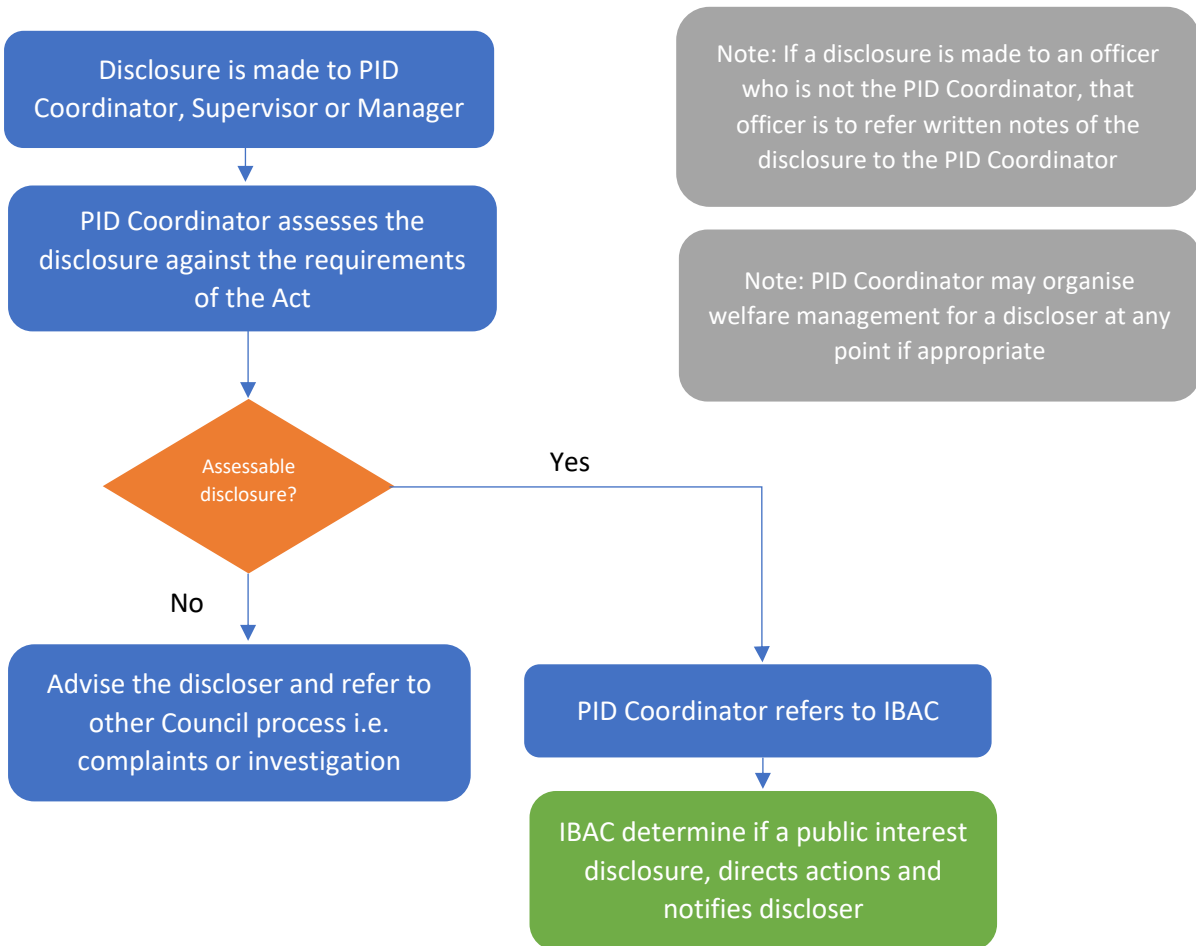
- notify the discloser that:
  - the disclosure has been notified to IBAC for assessment under the Act.

At the time of notifying IBAC, or at any later time, the Public Interest Disclosures Coordinator will also provide IBAC with any information or evidence obtained relating to the assessable 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 the Guidelines, the public officer does not commit an offence under laws imposing a duty to maintain confidentiality or restricting the disclosure of information.

## Assessment Process



## Assessment decisions and notifications by IBAC

Once a disclosure has been notified to IBAC, IBAC must determine whether it is a public interest complaint.

IBAC must inform Council of its determination of whether an assessable disclosure is a public interest complaint and will do so in writing and within a reasonable time after making the determination.

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

#### If IBAC determines the disclosure is not a public interest complaint

Before determining that a notified disclosure is not a public interest complaint, IBAC must consult with the notifying entity and, unless the disclosure was made anonymously, obtain the consent of the person who made the disclosure for the disclosure to be dealt with other than as a public interest complaint.

If IBAC determines the disclosure is not a public interest complaint, IBAC will advise the discloser in writing that:

- IBAC has determined the disclosure is not a public interest complaint and reasons why; 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
  - the protections under Part 6 of the Act still apply.

If IBAC is of the view the disclosure, although not a public interest complaint, may be able to be dealt with by another entity, IBAC will advise the discloser of their options.

#### If IBAC determines the disclosure is a public interest disclosure complaint

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 discloser has rights, protections and obligations under the Act as contained in section 72 and Parts 6 and 7 of the Act, including an explanation of the effect of those sections and Parts of the Act.

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

#### IBAC must dismiss, investigate or refer the matter

Under IBAC Act, IBAC must dismiss, investigate or refer a public interest complaint. IBAC may also conduct preliminary inquiries in accordance with IBAC Act before determining whether to dismiss, investigate or refer a public interest complaint.

If IBAC dismisses a public interest complaint, then it must do so on one of the grounds set out in IBAC Act. IBAC may choose to investigate the alleged conduct if it is reasonably satisfied that it is serious corrupt conduct. IBAC may also choose to refer the public interest complaint to other appropriate investigative entities.

Depending on the action decided to be taken by IBAC, IBAC must also provide information to the discloser and the notifying entity.

## IBAC may defer decision pending investigation by other person or body

IBAC may defer their decision to dismiss, investigate or refer a matter for up to 90 days after receiving the complaint or notification, if the matter is being investigated by a person or body specified in section 73(2) of IBAC Act. In deciding whether to defer taking action, IBAC may consult with the person or body conducting the investigation.

## Conducting investigations of a public interest disclosure

IBAC or another investigative entity is conducting an investigation of a public interest disclosure, it may be in contact with Council or the person about which the disclosure has been made. Council or the person will be able to disclose information about the public interest complaint to the investigative entity without breaching the confidentiality requirements of the Act.

The investigative entity may also disclose the identity of the discloser and the content of the disclosure, if necessary for the purpose of the investigation. Council or the person to whom the information has been disclosed, is bound by the confidentiality requirements of Part 7 of the Act. In addition, if Council is advised of the identity of the discloser, it will be required to look after the welfare of the discloser and provide protection against possible detrimental action.

## Providing information at the conclusion of an investigation

At the conclusion of its investigation, the investigative entity must generally provide the discloser with information about the results of its investigation, including any action taken, or recommendations.

The investigative entity may provide written information about the commencement, conduct or result of an investigation, including actions taken and any recommendations, to Council's Principal Officer (Chief Executive Officer).

## Welfare management

Council is committed to protecting disclosers and witnesses against detrimental action taken in reprisal for making or participating in a public interest disclosures process.

Council will provide appropriate support for people involved in a disclosure - whether they are internal or external to the organisation. To ensure natural justice, Council will also provide appropriate support for people who are the subject of allegations in a disclosure.

Council will ensure a supportive work environment and respond appropriately to any reports of intimidation or harassment. For external people, Council will take reasonable steps to provide appropriate support. Council's Public Interest Disclosures Coordinator or Welfare Manager (if appointed) will discuss reasonable expectations with all people receiving welfare management in connection with a public interest disclosure.

## Support available to disclosers and witnesses

The Council will support disclosers and witnesses by:

- Keeping them informed, by providing:
  - confirmation that the disclosure has been received
  - the legislative or administrative protections available to the person
  - the stage in the process the disclosure is at (for example, being assessed)

- Providing support by:
  - acknowledging them for having come forward
  - discussing their support needs and making an appropriate offer of support
  - assuring them all reasonable steps will be taken to protect them
  - giving them an undertaking to keep them informed (as Council is reasonably able to)
- Managing their expectations by having 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 other people cannot infer the identity of the discloser or witness
  - reminding the discloser or witness not to reveal themselves or any information that would enable others to identify them as a discloser or witness
  - ensuring hard copy and electronic files relating to the disclosure are accessible only to those who are involved in managing disclosures at Council
- Protecting the discloser or witness by:
  - proactively assessing the risk of detrimental action being taken in reprisal (actively monitor the workplace, and deal with issues before they develop, if possible)
  - listening and responding to any concerns the person may have about detrimental action and assessing whether the concerns might be due to other causes
  - preventing the spread of rumours about a public interest disclosure by reminding involved persons of the confidentiality requirements and penalties under the Act
  - Keeping records of the case management of the person, including all contact and follow-up action.
  - Appointing a Welfare Manager

In appropriate circumstances, Council will appoint a Welfare Manager to support a discloser or a witness. Generally, Council will only appoint a Welfare Manager if it is believed one is required, based on the circumstances and needs of the discloser or witness.

If required to be appointed, the Welfare Manager will:

- make initial, and then regular, confidential contact with the discloser or witness to provide support (in accordance with this Procedure, but not discuss any confidential aspects of the disclosure or investigation)
- ensure all meetings between the Welfare Manager and the discloser or witness are conducted discreetly to protect the person from being identified as being involved in the public interest disclosure

- arrange access to Council's Employee Assistance Program for internal disclosers and witnesses, if needed (not disclosing the details of the matter, beyond that it is for a public interest disclosure)
- speak to the discloser or witness about realistic expectations, and ensure they understand. Attempt to ensure the expectations of the witness are realistic, including the limits of support Council is able to reasonably provide, and that their efforts to maintain confidentiality around the matter will assist in ensuring them the protections of the Act.
- not divulge any details relating to the welfare management or disclosure matter other than to the Public Interest Disclosures Coordinator or the Chief Executive Officer
- advise the discloser or witness of the legislative and administrative protections available, including providing practical advice
- listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making a disclosure, and notify the Public Interest Disclosures Coordinator or Chief Executive Officer as appropriate
- take necessary steps to ensure information disclosed, including the identity of the discloser, the subject of an allegation, and any witnesses, is secured and remains confidential
- establish and manage a confidential filing system (hard copy and electronic) for disclosers or witnesses that are appointed welfare management
- undertake training on receiving a disclosure and providing welfare management (in line with the Act and this Procedure)

### Welfare management of persons who are the subject of public interest complaints

The Council will also provide welfare management for a person who is the subject of a public interest complaint.

It is important to remember that until a public interest complaint is resolved, the information about the person is only an allegation. It is possible 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 Council can only give information about the disclosure to the person who is 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 person who is the subject of the public interest complaint in the course of their investigation, for the purpose of conducting the investigation, or any actions it proposes to take as a result of the investigation.

### Welfare services

A person who is aware they are the subject of a public interest complaint, may have a welfare manager appointed by Council, or be referred to Council's EAP for welfare assistance. 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

A person who is the subject of a public interest complaint is entitled to natural justice, at the appropriate time as determined by the investigating entity (but before a decision is made about their conduct).

The person is entitled to:

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

### If the allegations are wrong or unsubstantiated

In circumstances where the allegations in a disclosure are wrong or unsubstantiated, the Council and any investigative entity involved will ensure there are no adverse consequences - arising out of the disclosure or the investigation - for the person who was the subject of the disclosure.

### Confidentiality

Council will take all reasonable steps to protect the identity of a discloser during any assessment and any ensuing investigation. The Act requires any person who receives a disclosure, or participates in an investigation, not to disclose that information except in certain limited circumstances.

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

### If detrimental action is reported

If any person reports an incident of harassment, discrimination or adverse treatment that may have been in reprisal for a disclosure, the Welfare Manager or Public Interest Disclosures Coordinator will record details of the incident and advise the person of their rights under the Act.

The Welfare Manager or Public Interest Disclosures Coordinator will then confidentially raise the issue with Chief Executive Officer to determine action required. The Chief Executive Officer and/or Welfare Manager will meet with the person in private to discuss the matter and proposed action, including the initiation of disciplinary action against an employee involved in taking detrimental action.

It is a criminal offence to take detrimental action against another person in reprisal for a public interest disclosure under the Act and can be grounds for a person to make a further disclosure (of detrimental action).

Council officers will be careful about making preliminary enquiries or gathering information concerning an allegation of detrimental action, to protect the integrity of any evidence that may be later needed in a criminal prosecution.



Where the detrimental action is of a serious nature, 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 and seek damages
- take civil action against Council to seek damages if the person who took detrimental action against the discloser was a Council employee or Councillor
- apply for an order or an injunction from the Supreme Court.

## Protections for persons making a public interest disclosure

### Part 6 protections available to disclosers

Part 6 of the Act sets out the protections provided to people who make a disclosure that is a public interest disclosure. The protections mainly relate to immunity from any civil or criminal liability for making a disclosure, including that by doing so a person does not breach confidentiality obligations relating to their role, and is protected from defamation action.

The protections apply:

- to a disclosure made in accordance with Part 2 of the Act
- from the time the disclosure is made by the discloser
- even if Council does not notify the disclosure to IBAC
- even if IBAC determines the disclosure is not a public interest complaint
- when further information about the disclosure is provided by the discloser verbally or in writing to any of the following:
  - the entity to which the disclosure was made
  - IBAC
  - An investigative entity investigating the public interest disclosure

### Limitations on protections

A discloser is not protected if they commit an offence under sections 72 or 73 of the Act:

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

## Disciplinary action against a disclosure or witness

A discloser or witness is not protected from reasonable consequences flowing from their own conduct in a matter they disclose as part of making a public interest disclosure i.e. a discloser will still be held liable for their own conduct that they disclose as part of making a public interest disclosure. These consequences include legitimate management action being taken in relation to them under the Employee Code of Conduct.

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 still handle the disclosure and protect the discloser from reprisals in accordance with the Act and this Procedure.

The Chief Executive Officer will make the final decision, with the advice of the Public Interest Disclosures Coordinator, as to whether disciplinary or other action will be taken against a discloser or witness. They will be able to use discretion in considering any mitigating factors.

Where disciplinary or other action relates to conduct that is the subject of the disclosure, the action will only be taken after the disclosed matter has been appropriately dealt with. In all cases, the Chief Executive Officer will ensure:

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

The Chief Executive Officer will take reasonable steps to document their decision-making process, including reasons why the disciplinary or other action is being taken, and the reason why the action is not in retribution for making the disclosure.

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

## Confidentiality

Council will take all reasonable steps to protect the identity of a discloser, witnesses and the subject of, and content of a disclosure. Maintaining confidentiality in relation to public interest disclosure matters is crucial in ensuring reprisals are not made against a discloser, and to afford natural justice and procedural fairness to all involved.

## Information management

Council will ensure all hard copy or electronic files are kept securely. Those files will be accessible only by the Public Interest Disclosures Coordinator.

Where necessary, a 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 Disclosures Coordinator or an investigator authorised under the Act or IBAC Act.

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

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.

Electronic files will be produced and stored in a secure file with restricted access. All other materials in connection with a public interest disclosure will also be stored securely with the public interest disclosures files.

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.

### [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 requires that certain information related to public interest disclosures will be exempt from the application of the FOI Act. Council is required to contact IBAC prior to providing any document relating to a public interest disclosure, if that document is sought under the FOI Act.

### [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, and include circumstances such as:

- Where disclosure is required by Council (or one of its officers) in the exercise of functions of Council under the Act
- In accordance with a direction or authorisation given by the investigating entity
- To the extent necessary for taking lawful action in relation to the conduct, including a disciplinary process or action
- 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
  - where a person is suffering a disability and is not able to understand, to an independent person.

### [Penalties apply for unauthorised disclosure of confidentiality](#)

The Act includes criminal offences relating to unauthorised disclosure of information by disclosers or employees who have received a disclosure. The penalties for breaching confidentiality include imprisonment and fines. Civil penalties exist for anyone found guilty of detrimental action.

### [Civil and criminal penalties](#)

A full list of civil and criminal penalties can be found at **Attachment 1**

## Training and education

Council will:

- ensure Council employees, Councillors, providers and the public have access to this Procedure on Council's website
- conduct fraud awareness and public interest disclosures training as part of its mandatory induction program for new Council employees
- conduct mandatory fraud awareness and public interest disclosures training for all Council employees every four years, and refresher sessions every two years, as part of the biennial fraud awareness program. The training module will include specific training for specified officers on how to receive a disclosure
- provide information to Councillors and providers about the procedures, and their rights and obligations under the Act
- provide additional training and assistance to:
  - Executives, Management, and Welfare Managers
  - Customer Support, Records Management and Governance employees, to ensure any potential disclosures received from external sources are dealt with consistently and in accordance with the Act and this Procedure.

## Reporting

Council is required to publish statistics about the Act in its annual reports. The high-level information relates mainly to how this Procedure can 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 Disclosures Coordinator will maintain a secure register to record this information and will be responsible for collating statistics for the Annual Report.

## Attachment 1 – Civil and Criminal Penalties

Specific Offences	Penalties
<b>Criminal Offences</b>	
<b>Detrimental action</b>	
<p>It is an offence for a person to take or threaten action in reprisal when:</p> <ul style="list-style-type: none"> <li>• another person has made or intends to make a public interest disclosure</li> <li>• the person believes another person has made or intends to make a public interest disclosure</li> <li>• another person has cooperated or intends to cooperate with the investigation of a public interest disclosure</li> <li>• the person believes another person has cooperated or intends to cooperate with the investigation of a public interest disclosure</li> </ul>	<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)</p> <p>Civil penalty: Order of court for offender to pay appropriate level of damages to compensate for injury, loss or damage</p>
<b>Disclosure of content of assessable disclosure</b>	
<p>A person/body must not disclose content of assessable disclosure or information about its content</p>	<p>120 penalty units or 12 months' imprisonment or both (person)</p> <p>600 penalty units (body corporate)</p>
<b>Disclosure of identity of person making assessable disclosure</b>	
<p>A person/body must not disclose information likely to lead to the identification of a person who has made a disclosure</p>	<p>120 penalty units or 12 months' imprisonment or both (person)</p> <p>600 penalty units (body corporate)</p>

Specific Offences	Penalties
<b>Criminal Offences</b>	
<b>Making false disclosure or providing false further information</b>	
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	120 penalty units or 12 months' imprisonment or both
<b>Falsely claiming a disclosure is a public interest disclosure</b>	
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	120 penalty units or 12 months' imprisonment or both
<b>Civil Offences</b>	
<b>Detrimental action</b>	
A person who takes detrimental action may be subject to proceedings in tort in any court of competent jurisdiction. Injunction or interim injunction can be granted by the Supreme Court if the Court is satisfied that a person has taken or intends to take detrimental action against another person in reprisal for a public interest disclosure	Civil penalty: Court order for damages for any injury, loss or damage, including exemplary damages

*(Source: IBAC: Guidelines for Handling Public Interest Disclosures – January 2020)*