

# Public interest disclosure procedures

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# Introduction

## 1 Council commitment

- (1) A public interest disclosure is information provided about improper conduct or detrimental action in the public sector. This conduct is defined in the *What is a public interest disclosure?* section.
- (2) Public interest disclosures are vital to ensure integrity of the Victorian public service and fight corruption.
- (3) If a complaint made by a person shows or tends to show that a councillor or member of council staff or the council has engaged or proposes to engage in improper conduct or detrimental action, this could constitute a public interest disclosure.
- (4) Council encourages and supports reporting and prevention of improper conduct.
- (5) Council will take all appropriate steps to facilitate the making, handling, notification, and investigation of disclosures.
- (6) Council is committed to taking all reasonable steps to protect persons from detrimental action for making public interest disclosures in accordance with obligations under the *Public Interest Disclosures Act 2012* (PID Act).

## 2 Purpose

- (7) These procedures have been prepared to assist the reporting, handling and, where appropriate, the notification of public interest disclosures.
- (8) They outline how a disclosure:
  - (a) can be made about a Councillor or member of Council staff or the organisation.

- (b) is received and managed by Council.
  - (c) is assessed and notified under the PID Act by Council.
- (9) These procedures outline how Council will manage and protect a person making a public interest disclosure.
- (10) These procedures are also the Council procedures required by section 58 of the PID Act.

## 3 Limitations

- (11) These procedures do not replace the PID Act and should not be relied on as a replacement for legal advice.

## What is a public interest disclosure?

### 4 General

(12) A public interest disclosure is a disclosure by a natural person of information that shows or tends to show, or information that the person reasonably believes shows or tends to show:

- (a) a person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct; or
- (b) that a public officer or public body has taken, is taking or proposes to take detrimental action against a person.

(13) A public interest disclosure can relate to conduct or action that may have already taken place, may be occurring now or may happen in the future.

(14) A public interest disclosure may be made even if the person making the disclosure cannot identify the person or the body to whom or to which the disclosure relates.

(15) A disclosure may be a public interest disclosure even if it is a complaint, notification, or disclosure (however described) made under another Act.

### 5 Improper conduct

(16) Improper conduct includes corrupt conduct.

(17) Improper conduct includes conduct of a public officer or public body engaged in by the public officer or public body in their capacity as a public officer or a public body that constitutes:

- (a) a criminal offence; or
- (b) serious professional misconduct; or

- (c) dishonest performance of public functions; or
- (d) an intentional or reckless breach of public trust; or
- (e) an intentional or reckless misuse of information or material acquired during the performance of the functions of the public officer or public body; or
- (f) a substantial mismanagement of public resources; or
- (g) a substantial risk to the health or safety of one or more persons; or
- (h) a substantial risk to the environment; or

(18) Improper conduct includes 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.

(19) Improper conduct includes conduct of any person that is intended to adversely affect the 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) a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument that the person or associate would not have otherwise obtained; or
- (b) an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument that the person or associate would not have otherwise obtained; or
- (c) a financial benefit or real or personal property that the person or associate would not have

- otherwise obtained; or
- (d) any other direct or indirect monetary or proprietary gain that the person or associate would not have otherwise obtained.
- (20) For the purposes of clause (19), the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body may be adversely affected notwithstanding that the public officer or public body does not engage in any corrupt conduct or other misconduct in performing or exercising those functions or powers.
- (21) For the purposes of clause (19), an associate of a first person is:
- (a) a person or entity who has an agreement, arrangement or understanding with the first person or holds any relevant financial interest in any business of the first person
- (b) if the first person is a natural person, a person who is a relative of the first person
- (c) if the first person is a body corporate an entity of whom the first person is an associate within the meaning of section 11 of the Corporations Act
- (d) if the first person is a body corporate an employee or officer of a related body corporate within the meaning of the Corporations Act to the first person
- (22) For the purposes of subclause (21)(a) relevant financial interest includes any share in the capital of a business of the first person or any entitlement to receive any income or payment from a business of the first person.
- (23) For the purposes of subclause (21)(b) relative means:
- (a) the spouse or domestic partner of the first person
- (b) a parent, son, daughter, brother, sister, aunt, uncle, grandparent, cousin, nephew or niece of the first person
- (c) a step-father, step-mother, legal guardian, step-son, step-daughter, step-brother, step-sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law of the first person
- (d) a parent, son, daughter, brother, sister, aunt, uncle, grandparent, cousin, nephew or niece of the spouse or domestic partner of the first person
- (e) a step-father, step-mother, legal guardian, step-son, step-daughter, step-brother, step-sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law of the spouse or domestic partner of the first person
- (24) Improper conduct includes conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referred to in clauses (16), (17), (18), or (19).
- (25) Conduct that is trivial does not constitute improper conduct.

## 6 Corrupt conduct

- (26) Corrupt conduct must be conduct that would constitute a relevant offence.
- (27) Corrupt conduct means conduct:
- (a) 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
- (b) 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; or



- (c) of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust; or
  - (d) 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.
- (28) Corrupt conduct means conduct of a person (the first person) 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 result in the first person or an associate of the first person obtaining:
- (a) a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument that they would not have otherwise obtained; or
  - (b) an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument that they would not have otherwise obtained; or
  - (c) a financial benefit or real or personal property that they would not have otherwise obtained; or
  - (d) any other direct or indirect monetary or proprietary gain that they would not have otherwise obtained.
- (29) Corrupt conduct means conduct that could constitute a conspiracy or an attempt to engage in any conduct referred to in clauses (26) or (28).
- (30) For the purposes of clause (28), the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body may be adversely affected notwithstanding that the public officer or public body does not engage in any corrupt conduct or other misconduct in performing or exercising those functions or powers.
- (31) For the purposes of clause (28), an associate of a first person is:
- (a) a person or entity who has an agreement, arrangement or understanding with the first person or holds any relevant financial interest in any business of the first person.
  - (b) if the first person is a natural person, a person who is a relative of the first person.
  - (c) if the first person is a body corporate, an entity of whom the first person is an associate within the meaning of section 11 of the Corporations Act; or
  - (d) if the first person is a body corporate, an employee or officer of a related body corporate within the meaning of the Corporations Act to the first person.
- (32) For the purposes of subclause (31)(a) relevant financial interest includes any share in the capital of a business of the first person or any entitlement to receive any income or payment from a business of the first person.
- (33) For the purposes of subclause (31)(b) relative means:
- (a) the spouse or domestic partner of the first person includes any share in the capital of a business of the first person or any entitlement to receive any income or payment from a business of the first person.
  - (b) a parent, son, daughter, brother, sister, aunt, uncle, grandparent, cousin, nephew, or niece of the first person

- (c) a stepfather, step-mother, legal guardian, step-son, step-daughter, step-brother, step-sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law of the first person
  - (d) a parent, son, daughter, brother, sister, aunt, uncle, grandparent, cousin, nephew or niece of the spouse or domestic partner of the first person
  - (e) a stepfather, step-mother, legal guardian, step-son, step-daughter, step-brother, step-sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law of the spouse or domestic partner of the first person
- (34) In determining whether conduct would constitute a relevant offence, the IBAC may assume that the required state of mind to commit the relevant offence can be proven.
- (35) Conduct may be corrupt conduct if:
- (a) all or any part of the conduct occurs outside Victoria, including outside Australia; and
  - (b) the conduct would be corrupt conduct if it occurred in Victoria.
- action; or
  - (b) inciting someone else to take or threaten detrimental action; and
  - (c) can be against any person, not necessarily the person who made the disclosure
- (38) To be considered detrimental action, the person (or the person they have incited) must take or threaten the action, because of, or in the belief that the person or anyone else has:
- (a) Made, or intends to make the public interest disclosure; or
  - (b) Cooperated, or intends to cooperate with an investigation of the public interest disclosure
- (39) Examples of action that will not be detrimental action:
- (a) A manager taking management action against an employee who has made a public interest disclosure, in circumstances where the management action is not related to the public interest disclosure
  - (b) Action by a person against the person making a public interest disclosure is not detrimental action if the person making the public interest disclosure has made a false public interest disclosure or provided false further information relating to a public interest disclosure

## 7 Detrimental action

- (36) Detrimental action includes:
- (a) action causing injury, loss or damage
  - (b) intimidation or harassment
  - (c) discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action
- (37) Detrimental action includes:
- (a) a threat to carry out detrimental

## 8 Disclosures that are not public interest disclosures

- (40) This Act does not apply to any conduct of any person that can be considered by the Court of Disputed Returns in proceedings in relation to a petition under Part 8 of the *Electoral Act 2002*.
- (41) A disclosure regarding the conduct of, or actions taken by, any of the following is not a public interest disclosure:

- (a) the Office of the Special Investigations Monitor
  - (b) the Special Investigations Monitor
  - (c) a court
  - (d) an investigating panel
  - (e) a member of an investigating panel.
- (42) A disclosure is not a public interest disclosure if the person making the disclosure expressly states in writing
- that the disclosure is not a public interest disclosure.
- (43) A disclosure is not a public interest disclosure if the disclosure is made by an officer or employee of an investigating entity in the performance of the officer's or the employee's functions or duties under the Act under which the investigating entity is authorised to investigate public interest complaints.

## Protection of persons making a public interest disclosure

### 9 Confidentiality obligations

- (44) The confidentiality requirements, which are found under Part 7 of the PID Act, apply to disclosures that are made directly to IBAC, the Victorian Inspectorate, or the Integrity and Oversight Committee and those disclosures which are required to be notified to IBAC, the Victorian Inspectorate, or the Integrity and Oversight Committee for assessment under the PID Act (i.e., disclosures that are assessable as a PID).
- (45) Breaching confidentiality obligations, without lawful excuse, is an offence.
- (46) The confidentiality restrictions and their exceptions are set out in sections 52, 53 and 54 of the PID Act.

#### 9.1 Content of a disclosure must be kept confidential

- (47) The PID Act prohibits the disclosure of the content, or information about the content, of any disclosure that is assessable as a PID.
- (48) This confidentiality obligation applies to a person or body that receives a PID, or that is provided with information about a PID by an investigating entity who is assessing or investigating the disclosure.
- (49) This restriction does not apply to the person making the public interest disclosure.

### 10 The identity of the person making a disclosure must be kept confidential

- (50) The PID Act prohibits the disclosure of information that would be likely to lead to the identification of a person who has

made a disclosure that is assessable as a PID.

- (51) This restriction applies to any person or body, other than the discloser.

### 11 Exceptions to the confidentiality obligations

- (52) These confidentiality obligations do not apply where:
  - (a) a person or body discloses the confidential information for the purposes of exercising its functions under the PID Act
  - (b) the confidential information is disclosed by an investigating entity for the purpose of the exercise of functions under the Act that authorises that investigating entity to investigate the public interest disclosure
  - (c) IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee determines that the disclosure is not a public interest complaint
  - (d) the disclosure of confidential information is made by an investigating entity to Victoria Police where relevant to a Victoria Police investigation of criminal conduct
  - (e) the disclosure of confidential information is for the purpose of a proceeding for an offence or a disciplinary process under a relevant Act
  - (f) the disclosure of confidential information is necessary for the discloser to obtain legal advice or representation, interpretive services, the advice of a parent or guardian (for disclosers under 18

years), the advice of an independent person (for disclosers who are illiterate or have mental or physical impairments)

- (g) the disclosure of confidential information is for the purpose of assisting the discloser to seek advice or support from a registered health practitioner or trade union or employee assistance program
- (h) the disclosure of the confidential information is to WorkCover for a workers compensation claim or for an application to the Fair Work Commission
- (i) the content, or information about the content, of a public interest disclosure is disclosed in accordance with a direction or authorisation from the investigating entity that is investigating the public interest disclosure after it has been determined to be a public interest complaint
- (j) the content, or information about the content of a public interest disclosure is disclosed for the purpose of taking lawful action (including a disciplinary process) in relation to the conduct that is subject of the disclosure
- (k) where the discloser gives prior written consent to disclose information that would be likely to lead to their identification as the person who made the public interest disclosure

## 12 Protections under the PID Act

### 13 Immunity from liability

- (53) A person who makes a public interest disclosure is not subject to any civil or criminal liability or any liability arising by

way of administrative process (including disciplinary action) for making the disclosure.

### 14 Confidentiality provisions do not apply

- (54) A person who makes a public interest disclosure does not by doing so:
  - (a) commit an offence under section 95 of the *Constitution Act 1975* or a provision of any other Act that imposes a duty to maintain confidentiality with respect to a matter or any other restriction on the disclosure of information; or
  - (b) breach an obligation by way of oath or affirmation or rule of law or practice or under an agreement requiring him or her to maintain confidentiality or otherwise restricting the disclosure of information with respect to a matter.

### 15 Protection from defamation action

- (55) In any proceeding for defamation there is a defence of absolute privilege in respect of the making of a public interest disclosure.

### 16 Protection from reprisal

- (56) It is an offence for a person to take detrimental action against another person in reprisal for a public interest disclosure.
- (57) A person who takes detrimental action against another person in reprisal for a public interest disclosure is liable in damages for any injury, loss or damage to that other person.
- (58) Where a person is found guilty of the offence of detrimental action an order can be made for damages or compensation for any injury, loss or damage or reinstatement or re-

employment of a person in their former position or, if that position is not available, in a similar position.

- (59) The Supreme Court may order a remedy or grant an injunction, including interim orders and injunctions, to remedy or prevent detrimental action.
- (60) An employee of a public service body or a public entity who has made a public interest disclosure and who believes on reasonable grounds that detrimental action will be, is being or has been taken against him or her in contravention of section 45 of the PID Act may request a transfer of employment permanently or for a fixed term:
- (a) on terms and conditions of employment that are no less favourable overall, and
  - (b) where the employee requests or consents to the transfer, and
  - (c) where the public service body Head or the public entity Head (as the case may be) has reasonable grounds to suspect that detrimental action will be, is being or has been taken against the employee, and
  - (d) where the public service body Head or the public entity Head (as the case may be) considers that the transfer of the employee will avoid, reduce or eliminate the risk of detrimental action being taken against the employee; and
  - (e) the Head of the public service body or public entity to which it is proposed to transfer the employee consents to the transfer, as the case may be to either
  - (f) within another public service body; or
  - (g) within a public entity; or
  - (h) within a different area of the same public service body, or

- (i) within a public service body; or
- (j) within a different area of the same public entity

## 17 Vicarious liability of public body

- (61) If a person in the course of employment with, or while acting as an agent of, a public body takes detrimental action against another person in reprisal for a public interest disclosure:
- (a) the public body and the employee or agent (as the case may be) are jointly and severally civilly liable for the detrimental action; and
  - (b) a proceeding under section 47 of the PID Act may be taken against either or both.
- (62) It is a defence to a proceeding against a public body under section 47 of the PID Act if the public body proves, on the balance of probabilities, that it took reasonable precautions to prevent the employee or agent from taking detrimental action against the other person in reprisal for the public interest disclosure.

## 18 Types of disclosures to which protections apply

- (63) Protections apply to the following disclosures:
- (a) a public interest disclosure made in accordance with Division 2 of Part 2 of the PID Act
  - (b) a misdirected disclosure
  - (c) an external disclosure made in accordance with section 38A of the PID Act

## 19 External disclosures

- (64) An external disclosure is a public interest disclosure made to a person or body who is not an entity to whom a public interest disclosure may be made

under Division 2 of Part 2 of the PID Act if:

- (a) the person making the external disclosure has previously made a public interest disclosure in accordance with Division 2 of Part 2 (the original disclosure ) and the original disclosure was not made anonymously; and
- (b) the original disclosure was determined under Division 2 of Part 3 to be a public interest complaint and the person has been notified of that determination; and
- (c) the subject matter of the external disclosure is substantially the same as the subject matter of the original disclosure; and
- (d) the person has not been notified by the investigating entity about any action taken in relation to the original disclosure within 6 months after being notified that the original disclosure has been determined to be a public interest complaint; and
- (e) the person has requested advice on the progress of the public interest complaint from the investigating entity and has not received a response within 30 days after that request, or
- (f) an investigation of the public interest complaint has not been completed within 12 months after the person was notified that the original disclosure has been determined to be a public interest complaint; and
- (g) the person has requested advice on the progress of the public interest complaint from the investigating entity; and
- (h) the person has not received a response within 30 days after the request; or

- (i) the person received a response within 30 days after the request advising that the investigation is still ongoing but has not been advised that the investigation has been completed within 6 months after that response.

(65) An external disclosure is not a disclosure made in accordance with this section if it contains information that:

- (a) may prejudice a criminal investigation, criminal proceeding or other legal proceeding of which the person making the external disclosure is aware; or
- (b) is likely to lead to the disclosure of any investigative method used by the IBAC.

(66) Despite being taken to be a public interest disclosure for the purposes of protections for persons making a public interest disclosure, the confidentiality provisions of Part 7 of the PID Act do not apply to an external disclosure

## 20 When do protections apply

(67) Protections apply to a public interest disclosure made in accordance with Division 2 of Part 2 of the PID Act, or a misdirected disclosure, from the time the disclosure is made:

- (a) whether or not the entity to which the disclosure was made has notified the disclosure to the IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee; and
- (b) whether or not the IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee has determined that the disclosure is a public interest complaint.

## 21 Protections and further information about a disclosure

- (68) Any further information relating to a public interest disclosure provided by the person who made the disclosure is to be treated as if it were a public interest disclosure. This applies to the case of public interest disclosure made in accordance with Division 2 of Part 2 of the PID Act to:
- (a) the entity to which the disclosure was made; or
  - (b) IBAC; or
  - (c) Victorian Inspectorate; or
  - (d) Integrity and Oversight Committee; or
  - (e) an investigating entity that is investigating the disclosure; or
  - (f) person engaged by the Integrity and Oversight Committee to investigate a public interest disclosure.

## 22 When protections do not apply

- (69) Protections afforded by the PID Act do not apply where:
- (a) the person making a public interest disclosure knowingly provides information that is false or misleading in a material particular, intending that the information be acted on as a public interest disclosure, or
  - (b) the person making a public

interest disclosure provides further information, relating to that public interest disclosure, that the person knows is false or misleading in a material particular.

- (70) A person's liability for their own conduct is not affected by the person's disclosure of that conduct under the PID Act.

## 23 Management action not prevented

- (71) Nothing in the PID Act is intended to prevent a manager from taking management action in relation to an employee who has made a public interest disclosure.
- (72) A manager may take management action that is detrimental action in relation to an employee who has made a public interest disclosure only if the fact that the employee has made the public interest disclosure is not a reason for the manager taking the action.
- (73) Without limiting the management action that may be taken in relation to an employee who has made a public interest disclosure, such management action includes any action that may or is required to be taken:
- (a) in respect of performance development (including training), conditions of employment or discipline; or
  - (b) to ensure the safety of the workplace.



## Making a public interest disclosure to IBAC or the Ombudsman

### 24 Disclosures made to IBAC or the Ombudsman

- (74) Unless required to be made to another entity under section 14 or 17 of the PID Act, a public interest disclosure may be made to:
- (a) IBAC; or
  - (b) the Ombudsman.
- (75) Public interest disclosures about councillors can only be made to IBAC or the Ombudsman.
- (76) Sections 25 and 26 provide information about reporting disclosures to IBAC or the Ombudsman.

### 25 Reporting to IBAC

- (77) Fill out the secure online form at [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)
- (78) If there is difficulty accessing the online form, call IBAC on 1300 735 135.
- (79) For help with translation, call the Translating and Interpreting Service on 13 14 50 or visit [www.ibac.vic.gov.au/general/accessibility/tr](http://www.ibac.vic.gov.au/general/accessibility/tr)
- (80) Be aware of what disclosures IBAC can and can't accept.
- (81) If the disclosure isn't about corruption or misconduct, IBAC may refer the person making the disclosure to another agency, such as the Ombudsman.
- (82) IBAC requests that disclosures are clear about who and what the disclosure is about and that as much information or evidence is provided as possible.

### 26 Reporting to the Ombudsman

- (83) The Ombudsman can investigate:

- (a) Most Victorian public organisations, their employees, and contractors.
  - (b) Employees of Victorian local councils and Councillors.
- (84) The Ombudsman refers all reports they consider to be potential public interest disclosures to IBAC.
- (85) For a confidential conversation, the Ombudsman may be contacted on (03) 9613 6222. A disclosure may be made based on advice from this conversation:
- (a) in writing by post
  - (b) in writing by email
  - (c) by telephone
  - (d) in person
- (86) The Ombudsman requests that disclosures include the following information:
- (a) What is the alleged improper conduct?
  - (b) Who was involved?
  - (c) When and where did it happen?
  - (d) Has anyone else been told?
  - (e) Why do you believe this conduct has occurred?
  - (f) Copies of any supporting documentation.

## Making a public interest disclosure to Council

### 27 Who can make a disclosure?

- (87) Anyone can make a public interest disclosure to Council that Council is able to receive.
- (88) A company or business cannot itself make a public interest disclosure, but its officers or employees can.
- (89) A public interest disclosure can be made as an individual or with a group of individuals who are making joint disclosures.
- (90) Only the person making the public interest disclosure will receive the protections provided under the PID Act (even if making a disclosure as a representative of a company or trust).

### 28 Who can the disclosure be about?

- (91) Public interest disclosures made to Council can only be about the conduct of:
  - (a) the organisation
  - (b) a body that is performing a public function on behalf of the organisation
  - (c) members of Council staff
  - (d) any other person in the service of the organisation
  - (e) a person that is performing a public function on behalf of the organisation whether under contract or otherwise, such as contractors, consultants, volunteers, or members of Council committees
- (92) Public interest disclosures about councillors can only be made to IBAC or the Ombudsman.

### 29 Keeping the disclosure confidential

- (93) For the protections of the PID Act to apply, a disclosure must be made confidentially so it is imperative that the public interest disclosure is only made to the persons or bodies authorised to receive public interest disclosures as set out in these procedures.
- (94) If a disclosure is made to someone who is not authorised to receive it, the disclosure may not be a public interest disclosure and the protections under the Act may not apply.
- (95) Where in doubt, a public interest disclosure should be made directly to IBAC.

### 30 How to make a disclosure

- (96) A disclosure can be made anonymously.
- (97) A disclosure may be made even if the person making the disclosure cannot identify the person or the body to whom or to which the disclosure relates.
- (98) A disclosure may be made verbally by telephoning 03 5261 0600 and requesting to speak with a person permitted to receive public interest disclosures on behalf of Council.
- (99) A disclosure may be made verbally in person by telephoning 03 5261 0600 to arrange a private appointment with a person permitted to receive public interest disclosures on behalf of Council.
- (100) A disclosure may be made verbally in person by attending Council's offices at 1 Merrijig Drive, Torquay, Victoria and requesting to see a person permitted to receive public interest disclosures on behalf of Council.
- (101) A disclosure may be made in writing:

- (a) sealed in an envelope and marked – *Private and Confidential Public Interest Disclosure*
  - (b) addressed to Council or a person permitted to receive public interest disclosures on behalf of Council, and
  - (c) sent by post to PO Box 350 Torquay Victoria 3228, or
  - (d) sent electronically to an appropriate email address, or
  - (e) by completing the online public interest disclosure form, or
  - (f) delivered to, or left at, Council's office at 1 Merrijig Drive, Torquay, Victoria
- (102) Persons wishing to make a disclosure to a particular member of Council staff can contact Council on 03 5261 0600 for assistance.
- (b) a brief description of the improper conduct or detrimental action
  - (c) dates and locations the improper conduct or detrimental action occurred or may occur
  - (d) names of persons or entities involved
  - (e) details of the function, role or responsibility of the persons or bodies involved
  - (f) copies of, or a description of, any documents or written material that support the public interest disclosure
  - (g) vehicle registrations and types of vehicles involved
  - (h) any other evidence that supports the disclosure
  - (i) name, address, telephone number and email address of any witnesses together with a description of what was witnessed

### 31 Who can receive a disclosure?

- (103) The following persons can receive disclosures:
- (a) The Chief Executive Officer
  - (b) The Public Interest Disclosure Coordinator appointed by the CEO
  - (c) The Public Interest Disclosure Officer appointed by the CEO
- (104) In the case of a public interest disclosure made by a person who is a member, officer, or employee of Council, a direct or indirect manager or supervisor of that person may receive that public interest disclosure.

### 32 Helpful information to have when making a disclosure

- (105) Depending on the type of conduct, information that may be helpful to the assessment of the disclosure includes:
- (a) contact details of the person making the disclosure

### 33 Misdirected disclosures

- (106) A public interest disclosure made to Council, which Council is not able to receive is a misdirected disclosure if the person who made the disclosure honestly believed that Council was an appropriate entity to which to make the disclosure.

### 34 A complaint may be a disclosure

- (107) All complaints are assessed to see if they look like they could be public interest disclosures.
- (108) A person making a complaint that looks like it could be a public interest disclosure will be asked if they want their complaint assessed as a public interest disclosure.
- (109) If a person making a complaint did not think it should be assessed as a public interest disclosure, but Council

disagrees and thinks it could fit the criteria for a public interest disclosure, Council will write and ask the person if they want it to be considered as public interest disclosure.

- (110) The person making the complaint must expressly state to Council in writing that they do not wish the complaint to be considered as a public interest disclosure no later than 28 days after the complaint is made.

# How Council handles disclosures

## 35 Acknowledging receipt

(111) Upon receiving a disclosure, Council will acknowledge its receipt to the person who made the disclosure.

## 36 Reviewing the disclosure

(112) The disclosure must be forwarded to the Public Interest Disclosure Coordinator for review, or if the Public Interest Disclosure Coordinator is not the appropriate person to assess the disclosure, the disclosure is forwarded to the Public Interest Disclosure Officer for review.

(113) The disclosure must be reviewed to:

- (a) determine whether Council is the appropriate body to receive the disclosure; and
- (b) to consider whether the disclosure is a public interest disclosure that must be notified to IBAC.

(114) The disclosure will be considered to be a public interest disclosure if the disclosure:

- (a) is made in accordance with Division 2 of Part 2 of the PID Act, or
- (b) is a misdirected disclosure; and
- (c) Council considers that the disclosure may be a disclosure that shows or tends to show a person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct; or
- (d) Council considers that the disclosure may be a disclosure that shows or tends to show a public officer or public body has taken, is taking or proposes to

take detrimental action against a person, or

(e) Council considers that the disclosure may be a disclosure that the person who made the disclosure believes on reasonable grounds shows or tends to show a person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct, or

(f) Council considers that the disclosure may be a disclosure that the person who made the disclosure believes on reasonable grounds shows or tends to show a public officer or public body has taken, is taking or proposes to take detrimental action against a person

(115) A reasonable belief:

(a) 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.

(b) 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.

(c) can leave something to surmise or conjecture, but it must be more than just a reasonable suspicion, and the belief must be probable.

(d) cannot be based on a mere allegation or conclusion unsupported by any further facts or circumstances

(116) Council must determine whether the information provided satisfies the elements of improper conduct or

detrimental action, as defined in the PID Act and whether any of the relevant exceptions apply.

- (117) To determine whether the disclosure is a public interest disclosure that must be notified to IBAC, Council may need to:
- (a) seek further information from Council records
  - (b) make discreet enquiries
  - (c) seek further information from the person making the disclosure
  - (d) consider the reliability of the information provided
  - (e) review the amount of detail in the information that has been provided
  - (f) understand credibility of the discloser, or of those people who have provided the discloser with information

### 37 Misdirected disclosures

- (118) If Council is not the appropriate body to receive and deal with the disclosure, where possible, it will:
- (a) advise the person who made the disclosure of the appropriate body to make the disclosure to, or
  - (b) if appropriate, treat the disclosure as a misdirected disclosure and notify it to IBAC.

### 38 Ensuring confidentiality

- (119) Council will take all reasonable steps to protect the confidentiality of a disclosure, including the identity of the person who made the disclosure, including:
- (a) providing regular training to Council officers who can receive disclosures, so that they comply with the confidentiality requirements under the PID Act
  - (b) limiting the persons who can be made aware of information that

could identify the person making a disclosure to the person receiving the disclosure, the person who assesses the disclosure and notifies IBAC and any persons involved in the management of the welfare of the person making the disclosure.

- (c) Receiving, storing, assessing, and notifying disclosures using a secure electronic or paper filing system, including the use of permissions protected email accounts, permissions protected records management system folders and physically secure paper filing storages.
  - (d) Conducting confidentiality breach risk assessments for each disclosure received.
- (120) In addition to the above steps, Council officers are also bound by confidentiality requirements under the *Local Government Act 2020* and Council's Staff Code of Conduct.
- (121) Under section 78 of the PID Act, documents in Council possession are exempt from freedom of information laws to the extent that they contain information that relates to an assessable disclosure or a public interest disclosure or is likely to lead to the identification of a person who has made a public interest disclosure.

### 39 Notifying IBAC

- (122) If the disclosure is considered to be a public interest disclosure or misdirected disclosure, Council must notify the disclosure to IBAC (or other appropriate entity), no later than 28 days after the disclosure is made, for assessment.
- (123) In notifying a public interest disclosure to IBAC (or other appropriate entity), Council will notify all information disclosed to Council in the course of determining that the disclosure is a

disclosure that must be notified, including the name and contact details of the person making the public interest disclosure, where provided.

- (124) Information may be provided to the notified entity at the time of the notification of the public interest disclosure or at any later time.
- (125) Once the public interest disclosure is notified to IBAC it is known as an assessable disclosure.
- (126) A public officer is given specific protections under the PID Act to provide information to other public officers or to IBAC in dealing with a disclosure they have received.
- (127) When a public officer acts in good faith and in accordance with the PID Act, regulations and guidelines, the public officer does not commit an offence under laws imposing a duty to maintain confidentiality or restricting the disclosure of information.

#### **40 Notifying the person making the disclosure**

- (128) If the disclosure is notified to IBAC (or other appropriate entity), Council must advise the person who made the disclosure that the disclosure has been notified to the IBAC (or other appropriate entity) for assessment under the PID Act.
- (129) If the disclosure is not notified to IBAC (or other appropriate entity), Council must advise the person who made the public interest disclosure that:
  - (a) Council considers that the disclosure does not show and does not tend to show a person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct, or
  - (b) Council considers that the disclosure does not show and does not tend to show a public

officer or public body has taken, is taking or proposes to take detrimental action against a person, and

- (c) consequently, the disclosure has not been notified for assessment under the PID Act; but
  - (d) the protections under Part 6 of the PID Act apply to the disclosure.
- (130) Notifications must be:
- (a) in writing; and
  - (b) given no later than 28 days after the disclosure is made.
- (131) If the disclosure is not notified to IBAC, Council will deal with the matter under the complaints handling policy.
- (132) Council is not required to advise the person under clause (129) unless the person has indicated to Council, or it otherwise appears to Council, that the person wishes to receive the protections that apply to a public interest disclosure under the PID Act.

#### **41 If urgent action is required**

- (133) In some situations, the disclosure may be about conduct that may pose an immediate threat to the health and safety of individuals, preservation of property or may consist of serious criminal conduct.
- (134) Examples could include a public officer lighting bush fires or threatening to poison the water supply or a child protection worker allegedly sexually assaulting children in care.
- (135) In these urgent situations, Council can take immediate action while considering whether the disclosure should be notified to IBAC or where IBAC is assessing the disclosure.
- (136) Appropriate action could include reporting the content of the disclosure to Victoria Police for immediate investigation or taking management

action against an employee to prevent future conduct.

- (137) The PID Act allows Council to disclose the content of the disclosure *“to the extent necessary for the purpose of taking lawful action in relation to the conduct that is the subject of the assessable disclosure including a disciplinary process or action”*. The identity of the discloser must remain confidential.



## IBAC assessment of notified disclosures

### 42 IBAC review

- (138) IBAC reviews the assessable disclosure to decide whether the disclosure is a public interest complaint.
- (139) IBAC will determine that the disclosure is a public interest complaint if the IBAC considers that:
- (a) the disclosure shows or tends to show a person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct, or a public officer or public body has taken, is taking or proposes to take detrimental action against a person; or
  - (b) the person who made the disclosure believes on reasonable grounds that the disclosure shows or tends to show a person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct, or a public officer or public body has taken, is taking or proposes to take detrimental action against a person.
- (140) In making its assessment, IBAC may ask for more information about the disclosure.
- (141) Protections under Part 6 of the PID Act continue to apply regardless of whether the IBAC determines the disclosure to be a public interest complaint.
- (142) IBAC must make its determination of whether an assessable complaint is a public interest complaint within a reasonable time after the disclosure is made, or notified, to the IBAC.

### 43 Requirement to consult

- (143) Before determining that a notified disclosure is not a public interest complaint IBAC must:
- (a) consult with the notifying entity; and
  - (b) 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.

### 44 Actions IBAC may take

- (144) Once IBAC has assessed the disclosure it will also decide what action it might take, such as:
- (a) Dismiss – the disclosure for any of the reasons outlined in section 68 of the IBAC Act
  - (b) Investigate – the public interest complaint if it suspects on reasonable grounds that the conduct constitutes improper conduct or detrimental action
  - (c) Refer – the public interest complaint to a relevant investigating entity.

### 45 Advice to Council

- (145) If a disclosure has been notified to the IBAC as a public interest disclosure by Council, IBAC must advise Council of its determination as to whether the disclosure is a public interest complaint:
- (a) in writing; and
  - (b) given within a reasonable time after the determination is made.
- (146) If IBAC determines that an assessable

disclosure is not a public interest complaint, the matter will be dealt with by Council as a complaint in accordance with Council's complaints handling policy.

#### **46 Disclosure is a public interest complaint - advice to person who made disclosure**

(147) If IBAC determines that a disclosure is a public interest complaint, IBAC must advise the person who made the disclosure that:

- (a) IBAC has determined that the disclosure is a public interest complaint; and
- (b) the protections under Part 6 of the PID Act apply to the disclosure.

(148) The advice must:

- (a) be in writing; and
- (b) be given within a reasonable time after the determination is made; and
- (c) include a written statement containing the prescribed matters relating to the rights, protections and obligations under the PID Act of a person who has made a public interest disclosure.

#### **47 Disclosure is not a public interest complaint - advice to person who made disclosure**

(149) If IBAC determines that a disclosure is not a public interest complaint, the IBAC must advise the person who made the disclosure that:

- (a) IBAC has determined that the disclosure is not a public interest complaint; and
- (b) as a consequence of that determination the disclosure will not be investigated as a public interest complaint; and

(c) the confidentiality provisions under Part 7 of the PID Act no longer apply in relation to the disclosure; but

(d) the protections under Part 6 of the PID Act apply to the disclosure.

(150) The advice must:

- (a) be in writing; and
- (b) state the reasons why IBAC has determined that the disclosure is not a public interest complaint; and
- (c) be given within a reasonable time after the determination is made.

(151) If the disclosure was made by a person to IBAC, IBAC is not required to advise the person under clause (149) unless the person has indicated to IBAC, or it otherwise appears to IBAC, that the person wishes to receive the protections that apply to a public interest disclosure under the PID Act.

(152) If IBAC determines that a disclosure is not a public interest complaint but considers that the matter which is the subject of the disclosure may be able to be dealt with by another entity, IBAC may advise the person who made the disclosure that:

- (a) 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
- (b) if the person wishes to pursue the matter, the person should make a complaint directly to that entity.

## Public interest complaint investigations

### 48 Cooperating with investigations

- (153) Whilst investigating a public interest complaint, IBAC (or other investigating entity) may contact Council or the person who made the disclosure.
- (154) Council, a person who made a disclosure and others who can assist with a public interest complaint investigation must cooperate with the investigating entity.

### 49 Confidentiality obligations and investigations

- (155) Council or the person who made the disclosure will be able to disclose information about the public interest disclosure complaint to IBAC (or other investigating entity) without breaching the confidentiality requirements of the PID Act.
- (156) IBAC (or other investigating entity) are able to disclose the identity of the person who made the disclosure and the content of the disclosure if necessary as part of the investigation.

## Supporting the welfare of persons

### 50 Basic welfare support for persons making a disclosure or assisting assessment or investigation

- (157) Council's Public Interest Disclosure Coordinator and Public Interest Disclosure Officer are available to provide basic welfare support to members of Council staff and others that make a public interest disclosure and to other members of Council staff and others who may cooperate with the review of an assessable disclosure or an investigation of a public interest complaint.
- (158) This support is subject to the confidentiality obligations imposed by the PID Act and may include:
- (a) assessing, monitoring, and managing the risks of detrimental action being taken against the person making the disclosure
  - (b) providing advice to the person making the disclosure about the operation of the PID Act and the handling of the disclosure
  - (c) assisting the person making the disclosure to seek support from various support services, including from a registered medical practitioner, an employee assistance program, a trade union or a Victorian WorkCover Authority
  - (d) assisting the person making the disclosure in seeking a transfer of employment or other work arrangements, where the discloser believes detrimental action has or will be taken against them

- (e) as appropriate, appointing a welfare manager for the person making the disclosure and others involved in the assessment or investigation of a disclosure

### 51 Appointing a welfare manager

- (159) In most circumstances, a welfare manager will only be required where a public interest complaint proceeds to investigation, but each public interest disclosure will be assessed on its own merits.
- (160) A welfare manager will be appointed where Council believes it is required to ensure that the appropriate support can be provided to a person.
- (161) The following will be considered in deciding whether a welfare manager is appointed:
- (a) Are there any real risks of detrimental action against the person, considering their particular circumstances?
  - (b) Can Council ensure a person will be effectively supported without a dedicated welfare manager?
  - (c) Can Council protect the person from detrimental action?
  - (d) Can Council respond swiftly effectively to allegations of detrimental action without a dedicated welfare manager?

### 52 Welfare manager role

- (162) If appointed, a welfare manager will, in addition to providing general support:
- (a) examine the immediate welfare and protection needs of a person making a disclosure and seek to foster a supportive work environment

- (b) advise the discloser or co-operator of the legislative and administrative protections available
- (c) listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making a disclosure
- (d) not divulge any details relating to the public interest disclosure to any person other than the Public Interest Disclosure Coordinator, Public Interest Disclosure Officer or the Chief Executive Officer, as appropriate
- (e) ensure all meetings between the welfare manager and the discloser or co-operator are conducted discreetly to protect persons from being identified as being involved in the public interest disclosure process
- (f) keep contemporaneous records of all aspects of the welfare management of persons, including contact and follow up actions
- (g) ensure the expectations of the discloser or co-operator are realistic and reasonable, and that there is an understanding of the limits of support Council is able to reasonably provide in the circumstances

substantiated, Council will ensure that there are no adverse consequences for the subjects of the disclosure.

- (165) Council will also take all reasonable steps to ensure that the allegations, the fact of the investigation, the outcome, and the identity of the subjects remain confidential.

### 53 Supporting subjects of disclosures

- (163) Council recognises that members of Council staff and others who are the subjects of a disclosure must also be supported during the handling and investigation of disclosures, and will provide welfare support to as the circumstances require and in accordance with the confidentiality obligations imposed by the PID Act.
- (164) Where a disclosure is dismissed or not

