

## Public Interest Disclosures 2020

<b>Department:</b> <i>Corporate and Organisational Development</i>	<b>First Implemented:</b> <i>November 2002</i> <b>Reviewed:</b> <i>19 February 2013</i> <i>31 March 2016</i> <i>21 January 2019</i> <i>19 February 2020</i>  <b>Effective From:</b> <i>xxx</i> <b>Review Date:</b> <i>XXX 2023</i> <b>Version:</b> <i>5</i> <b>Trim Reference:</b> <i>E513/2</i>	<b>Origin:</b> Responsible Officer: <i>Public Interest Disclosure Officer</i>  Authorising Officer: <i>For endorsement by Council</i>
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### PURPOSE/OBJECTIVE

The purpose of this policy is:

- to ensure Council is fully compliant with its obligations under the *Public Interest Public Interest Disclosures Act 2012 (Act)* and the *Independent Broad-based Anti-corruption Commission Act 2011 (IBAC Act)*; and
- to ensure there is an effective process for managing the receipt of public Interest disclosures, their assessment and notification; and

### POLICY STATEMENT

Council will not tolerate improper conduct by its people, nor the taking of reprisals against those who come forward to disclose such conduct.

Council recognises the value of transparency and accountability in its administrative and management practices, and supports the making of public interest disclosures that reveal corrupt or improper conduct, or the taking of reprisals against those who come forward to disclose such conduct. Council is committed to the aims and objectives of the Act.

This policy outlines the way in which any individual, including members of the public, staff and Councillors can disclose information which enables to prevention of fraud and corruption.

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

An essential element of this protection is to ensure that information connected to a public interest disclosure, including the identity of a discloser and the contents of that disclosure, are kept strictly confidential.



## DEFINITIONS

<b>PID Act:</b>	<i>Public Interest Disclosures Act 2012</i>
<b>Council:</b>	Mansfield Shire Council (organisation)
<b>Councillors:</b>	Mansfield Shire Council elected representatives
<b>Contractors:</b>	A person who is self-employed and provides a service specifically to Mansfield Shire Council
<b>CEO:</b>	Chief Executive Officer
<b>PDO:</b>	Public Interest Disclosures Officer
<b>IBAC:</b>	the Independent Broad-based Anti-Corruption Commission

## SCOPE

Mansfield Shire Council supports a workplace culture where the making of disclosures is valued by the organisation, and the right of any individual to make a disclosures is taken seriously.

This Policy applies to disclosures of improper conduct or detrimental action by Mansfield Shire Council employees, Councillors and contractors, made in accordance with the Act.

## RESPONSIBILITIES

All Council employees, contractors and Councillors are responsible for adhering to and implementing this policy.

Employees and Councillors are encouraged to report known or suspected incidences of corrupt or improper conduct in accordance with these procedures, whether such conduct or action has taken place, is suspected to have taken place, or is still occurring.

The individual managers will oversee adherence to the Public Interest Disclosures Policy, with any associated procedures implemented by the Governance Unit in consultation with the Public Interest Disclosure Officer (PDO) and CEO.

Council's Corporate and Organisational Development Manager has been appointed as the Council's PDO. The PDO is responsible for:

- ensuring these procedures are accessible to the public and to its employees, staff, officers and Councillors;
- receiving and assessing each disclosure;
- co-ordinating Council's reporting system; and
- in partnership with Council's Governance and Risk Co-ordinator, ensuring Council carries out its responsibilities under the Act, any regulations made pursuant to the Act and any guidelines issued by the IBAC.



The PDO is also Council's chief liaison with the IBAC.

The Governance unit is the owner of this Policy. Any reviews of this Policy must be made in consultation with the Public Interest Disclosure Officer and Governance and Risk Coordinator.

## REFERENCES / RELATED POLICIES

- *Public Interest Disclosures Act 2012*
- *Independent Broad-based Anti-Corruption Commission Act 2011*
- *Ombudsman Act 1973*
- *Victorian Inspectorate Act 2011*
- *Freedom of Information Act 1982*
- *Privacy and Data Protection Act 2014*
- Public Interest Disclosures Regulations 2013
- Guidelines for making and handling public Interest disclosures (IBAC – December 2019)
- Guidelines for public Interest disclosure welfare management (IBAC – December 2019)
- Mansfield Shire Council Staff Code of Conduct
- Mansfield Shire Councillor Code of Conduct and Councillor Charter 2017

## IMPLEMENTATION

This policy is effective once endorsed by Council.

## REVIEW DATE

Legislative changes necessitated this Policy to be reviewed prior to its previously endorsed review date.

This Policy is to be reviewed by XXX

Council reserves the right to review, vary or revoke this Policy at any time.

## AUTHORISATION TO IMPLEMENT POLICY

This Policy must be endorsed by the Council.

Signed: \_\_\_\_\_  
Councillor

Witnessed: \_\_\_\_\_  
Chief Executive Officer

Dated: XXX

**Mansfield Shire Council reserves the right to review, vary or revoke this Policy at any time.**



## PROCEDURES FOR MAKING AND HANDLING PUBLIC INTEREST DISCLOSURES

These procedures are designed to ensure Council is fully compliant with its obligations under the *Public Interest Public Interest Disclosures Act 2012* (PID Act) and the *Independent Broad-based Anti- corruption Commission Act 2011* (IBAC Act).

### SUPPORTING STATEMENT

Mansfield Shire Council (Council) supports the strengthening of the integrity of the Victorian public sector and the promotion of community confidence in public sector accountability. Further, Council support a workplace culture where the making of disclosures is valued by the organisation, and the right of any individual to make a disclosures is taken seriously.

### PURPOSE OF THESE PROCEDURES

The establishment of these procedures provides a system for reporting in accordance with the *Public Interest Disclosures Act 2012* (Act) and guidelines prepared by the Independent Broadbased Anti-Corruption Commission (IBAC). These procedures aim to:

- facilitate the making of disclosures of improper or corrupt conduct by public officers and public bodies;
- establish a system for the handling of disclosures and, where appropriate, for notification to the IBAC;
- ensure welfare management is provided to those included in the Public Interest Disclosure process.
- provide for the confidentiality of the content of disclosures and the identity of persons who make those disclosures.

It is important to note that Council can only deal with disclosures which concern Council, its employees, staff, contractors or officers.

Disclosures about improper conduct or detrimental action by Councillors must be made to the IBAC or to the Ombudsman. Those disclosures may not be made to Council officers.

### Misdirected Disclosures

Council commits to the 'no wrong door' provision with the Act and will ensure any Public Interest Disclosures made to the wrong receiving entity will be redirected to another appropriate receiving entity. In doing so, the discloser will not lose any of the protections available to them under the Act.



## CONTACTS

### Public Interest Disclosures Officer

Corporate and Organisational Development Manager (Mrs Sharon Scott)  
Mansfield Shire Council  
33 Highett Street  
MANSFIELD VIC 3722  
Telephone: 5775 8555  
[www.mansfield.vic.gov.au](http://www.mansfield.vic.gov.au)

### General Advice about the operation of the Act

Governance & Risk Co-ordinator (Ms Michelle Kain)  
Mansfield Shire Council  
33 Highett Street  
MANSFIELD VIC 3722  
Telephone: 5775 8555  
[www.mansfield.vic.gov.au](http://www.mansfield.vic.gov.au)

A disclosure about corrupt conduct or improper conduct by a Mansfield Shire Council Councillor or employee may also be made directly to the Ombudsman or IBAC. Disclosures relating to Councillors can only be made directly to the Ombudsman or IBAC.

### **IBAC**

Level 1, North Tower  
459 Collins Street  
Melbourne 3000  
Internet: [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)  
Telephone: 1300 735 135

### **Victorian Ombudsman**

Level 9, North Tower  
459 Collins Street,  
MELBOURNE VIC 3000  
Internet: [www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au)  
Email: [ombudvic@ombudsman.vic.gov.au](mailto:ombudvic@ombudsman.vic.gov.au)  
Telephone: (03) 613 6222  
Toll-free (regional only): 1800 806 314

## ABOUT IBAC

IBAC is Victoria's anti-corruption agency responsible for preventing and exposing public sector corruption and police misconduct by:

- investigating serious corruption and police misconduct.
- informing the public sector, police and the community about the risks and impacts of corruption and police misconduct, and ways in which it can be prevented.



## KEY TERMS, DEFINITIONS AND ABBREVIATIONS

<b>Assessable disclosure:</b>	Any disclosure either made directly to the Independent Broad-based Anti-corruption Commission (IBAC) or the Victorian Inspectorate (VI), or if received by Mansfield Shire Council is required under s21 of the Act to be notified by the Council to the IBAC for assessment.
<b>Corrupt Conduct:</b>	In accordance with S4 of the Independent Broad-Based Anti-corruption Commission Act 2011 (refer to attachment 1 of this Policy)
<b>Detrimental Action:</b>	(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
<b>Discloser:</b>	Person making a disclosure under the Act.
<b>IBAC:</b>	Independent Broad-based Anti-corruption Commission.
<b>IBAC Act:</b>	<i>Independent Broad-based Anti-corruption Commission Act 2011.</i>
<b>Improper conduct:</b>	In accordance with S4 of the Public Interest Disclosure Act 2012 (refer to attachment 2 of this Policy)
<b>Investigative entity:</b>	Any one of the following bodies authorised to investigate a public interest disclosure complaint: (a) the Independent Broad-based Anti-corruption Commission; (b) the Victoria Police (c) the Ombudsman (d) the Victorian Government Investigations and Compliance Inspectorate (e) the Chief Municipal Inspector (f) the Information Commissioner
<b>Misdirected disclosure</b>	A public interest disclosure made to an entity that is not an entity to which the disclosure may or must be made under the Act.
<b>PDO</b>	Public Interest Disclosure Officer.
<b>Procedures:</b>	This version of the procedures of Mansfield Shire Council, as established under s58 of the Act.
<b>Public Interest:</b>	A disclosure that has been determined under sections 26 or 31 to be a public interest
<b>Public bodies:</b>	Including a Council (established under the <i>Local Government Act 1989</i> ).



<b>Public Interest Disclosure</b>	A disclosure by a natural person of information that shows or tends to show, or information that the person reasonably believes shows or tends to show, improper conduct or detrimental action (where the particular disclosure relates to an earlier Public Interest Disclosure).
<b>Public officers:</b>	Includes local government Councillors and Council employees.
<b>Regulations:</b>	Public Interest Disclosure Regulations 2019.
<b>Specified Conduct:</b>	Conduct that would, if proved, constitute a criminal offence or reasonable grounds for dismissal
<b>VI:</b>	Victorian Inspectorate.

## THE REPORTING SYSTEM

Council has established a centralised reporting system for the receipt, assessment and investigation of public Interest disclosures.

The system ensures that these procedures, including detailed information about how disclosures may be made and to whom, are accessible on the Council website and available internally and externally to staff, employees, contractors and Councillors and any individual in the broader community.

### Roles and Responsibilities

#### **Public Interest Disclosure Officer**

Council's PDO has a central role in the internal reporting system, and maintains oversight of it.

The PDO is also responsible for monitoring the welfare of the person making a Public Interest Disclosure and to provide advice and support.

#### **Governance and Risk Co-ordinator**

Council's Governance and Risk Co-ordinator is the contact point for general advice about the operation of the Act for any person wishing to make a disclosure. The Governance and Risk Co-ordinator will assist and work in conjunction with the PDO in matters relating to:

- co-ordinating the reporting system used by the organisation;
- the provision of general advice about the operation of the Act and for integrity agencies such as the IBAC;
- liaise with the IBAC in regard to the Act.

#### **Direct and Indirect Supervisors and Managers**

Employees of the Council who wish to make a Public Interest Disclosure may make that disclosure to their direct or indirect supervisor or manager.

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



## CONFIDENTIALITY

Section 52 of the Act requires any person who receives information due to the handling or investigation of an assessable disclosure, not to disclose that information except in certain limited circumstances. These circumstances include:

- where exercising the functions of the public body under the Act;
- when making a report or recommendation under the Act;
- when publishing statistics in the annual report.

The Act prohibits:

- the disclosure of the content, or information about the content, of any disclosure that has been assessed as a public interest disclosure. This restriction applies to a person or body that receives a disclosure or is provided information about the disclosure by an investigating entity assessing or investigating. The restriction does not apply to the discloser;
- the disclosure of information that would be likely to lead to the identification of a person who has made a public interest disclosure. This restriction applies to any person or body, other than the discloser.

## MAKING A DISCLOSURE

### What is a disclosure and who can make a disclosure?

A disclosure may be made about two things under the Act:

- (i) corrupt conduct of public bodies or public officers; and
- (ii) detrimental action taken by public bodies or public officers in reprisal against a person for the making of a public Interest disclosure.

### How can a disclosure be made?

Verbally:

- Must be in private
- In person
- By telephone
- Voice mail message
- Any other form of electronic communication that does not require writing.
- May be made anonymously

In writing:

- Personal delivery to the office
- Mail addressed to the organisation or Public Interest ed Disclosure Officer (PDO)
- Email to the organisation or to the PDO
- IBAC and the Ombudsman can also receive disclosures via an online form.

### ***Facsimile is not an acceptable method***

If the disclosure comes from an e-mail address from which the identity of the person making the disclosure cannot be determined, the disclosure will be treated as an





anonymous disclosure.

Any person can submit an allegation or complaint.

### **About whom can a disclosure be made?**

Disclosures can be made about public bodies or public officers acting in their public role. This includes a Councillor and Council employee. Refer to the *Independent Broad-based Anti-corruption Commission Victoria – Guidelines for handling public Interest disclosures, January 2020* (p.4) for a complete definition.

### **To whom can a disclosure be made?**

The PID Act is very specific about who can receive disclosures depending on who is the subject of the disclosure.

- If the subject of the disclosure is a Councillor, the disclosure must be made directly to the IBAC or the Victorian Ombudsman.
- Councillors can only receive disclosures that relate to themselves, officers, employees and contractors.

Refer to the *Independent Broad-based Anti-corruption Commission Victoria – Guidelines for handling public Interest disclosures, January 2020* (pp. 5-6) for a comprehensive list.

### **Misdirected Disclosures**

Council commits to the 'no wrong door' provision with the Act and will ensure any Public Interest Disclosures made to the wrong receiving entity will be redirected to another appropriate receiving entity. In doing so, the discloser will not lose any of the protections available to them under the Act.

### **What disclosures are not protected?**

Protection is not available for disclosures which:

- are made frivolously or vexatiously;
- primarily question the merits of government policy; or
- are made solely or substantially with the motive of avoiding dismissal or other disciplinary action.

**It is an offence to wilfully make a false or misleading statement when making a disclosure.**

## **WHAT CAN A DISCLOSURE BE MADE ABOUT?**

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



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

and

The information shows or tends to show that the improper conduct or detrimental action against a person has occurred, is occurring or is proposed to be engaged in by a person.

or

The discloser believes on reasonable grounds the information shows or tends to show the improper conduct or detrimental action against a person has occurred, is occurring or is proposed to be engaged in by a person.

### Definition of improper, conduct

Improper conduct encompasses the following:

- corrupt conduct
- criminal offence
- serious professional misconduct
- dishonest performance of public functions
- intentional or reckless breach of public trust
- intentional or reckless misuse of information
- substantial mismanagement of public resources
- substantial risk to health or safety of a person
- substantial risk to the environment
- conduct of any person that adversely affects the honest performance by a public officer of their functions
- conduct of any person that is intended to adversely affect the effective performance by a public officer of their functions for the benefit of the other person.
- Less serious or trivial conduct is excluded from the definition of improper conduct.

### ASSESSING A DISCLOSURE

For a disclosure to be considered assessable by IBAC it must meet all the requirements for a Public Interest Disclosure in Part 2 of the PID Act. If it does not meet all the requirements then it is not a Public Interest Disclosure and should be dealt with under Council's complaint handling process.

The requirements for a disclosure to be assessable are:

- made verbally in private or in writing by email or mail
- must not be made via fax
- must be made to the CEO, the PDO, the discloser's manager or the manager of the subject of the disclosure



- must be made about public officer or public body in the performance of their public functions
- must be made about alleged improper conduct or detrimental actions taken in reprisal for a Public Interest Disclosure
- A complaint about a Councillor cannot be taken by staff in the Council – it must go straight to IBAC or the Ombudsman

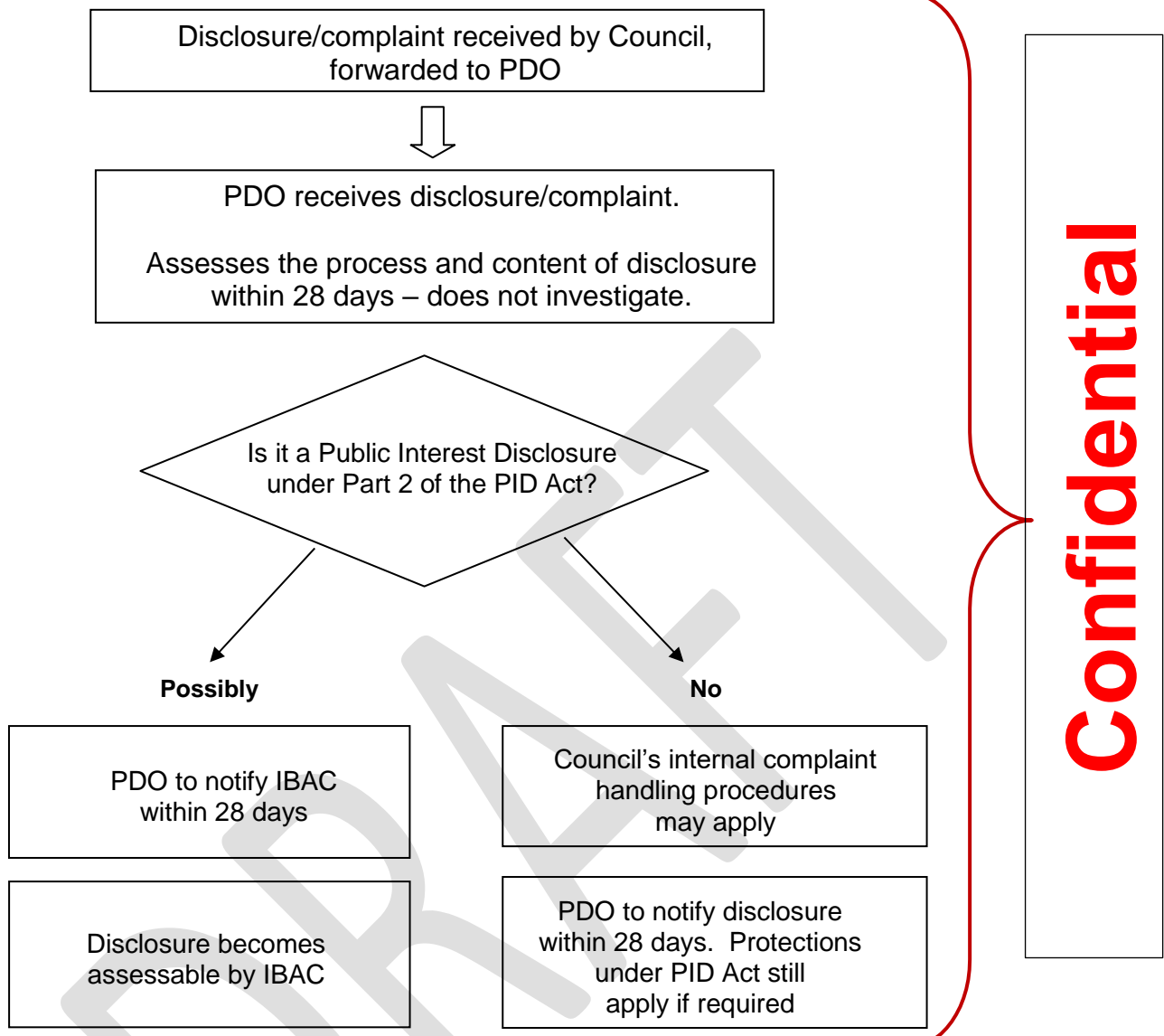
When a complaint or disclosure is received within Council, it should immediately be forwarded to the PDO for assessment to determine if it is required to be forwarded to IBAC for investigation.

The following diagram shows Council's internal procedure for dealing with public interest disclosures:

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## Internal procedure for dealing with disclosures



### Making a notification to IBAC

If the PDO decides that the disclosure is not a public interest then it becomes an assessable disclosure and IBAC must be notified within 28 days.

The PDO must also notify the discloser in writing within 28 days that:

- The disclosure has been notified to IBAC for assessment
- That it is an offence to disclose that the disclosure has been notified to IBAC.



## **IBAC assessment**

IBAC undertakes an assessment to determine if the disclosure is a public interest disclosure complaint. IBAC may dismiss the complaint under section 68 of the IBAC Act.

Whether or not IBAC dismisses the disclosure, the protections under Part 6 of the PID Act apply to the discloser. Following IBAC's assessment it must notify Council of its determination and the actions it intends to take.

At the conclusion of its investigation, IBAC may provide information about the conduct and result of the investigation to Council but it must not provide any information that might lead to the identification of a discloser.

### ***Freedom of Information Act 1982***

Council will ensure the Records and Customer Service Coordinator is aware that the *Freedom of Information Act 1982* does not apply to any document that relates to a public interest disclosure, an assessable disclosure or that is likely to lead to the identification of a person who has made an assessable disclosure.

## **WELFARE MANAGEMENT**

Council will not tolerate any victimisation of a complainant or the subject of the public interest disclosure. If a person believes that he or she is the subject of victimisation, they should inform the PDO with sufficient information to enable an investigation of the complaint. The PDO will investigate and take any action required in respect of the complaint.

Part 6 of the Act sets out the public interest provisions provided to persons who may make a public interest disclosure.

The person making the disclosure will not be:

- subject to any civil or criminal liability or administrative action (including disciplinary action) for making the disclosure;
- committing an offence against the Constitution Act 1975 or any other Act that imposes obligations of confidentiality or any other restriction on the disclosure of information;
- breaching any other obligation (made by oath, rule of law or practice) requiring them to maintain confidentiality or otherwise restrict confidentiality;
- held liable for defamation in relation to information included in a public interest disclosure.

### **Limitation on protection**

If the person has made a false disclosure or provided false information, the person is not protected.

There is also no protection for a discloser against legitimate management action and the discloser will still be held liable for their own conduct.

Disclosers commit an offence against the PID Act if they make it publicly known that their



disclosure has been notified to IBAC and / or that their complaint has been determined by IBAC to be a PD.

## **Management of the Person against whom the Disclosure is made**

### ***Natural Justice***

Council will ensure that natural justice is adhered to in the receipt and management of a disclosure.

Employees, officers or members of the Council who are the subject of a disclosure will be provided with notification, in writing, of the disclosure, where that notification does not compromise the identity of the person making the disclosure or the investigation into the disclosure. The person will be given the opportunity to answer allegations before a final decision is made and informed about the substance of any adverse comment that may be included in any report arising from an investigation.

### ***Confidentiality***

Council will take all reasonable steps to ensure the confidentiality of the identity of the person against whom a disclosure has been made.

### ***Protection against reprisal***

Council's PDO will take responsibility for ensuring a person against whom a Public Interest Disclosure has been made, is protected from direct or indirect detrimental action. The PDO will also monitor the welfare of the person against whom a disclosure has been made and provide full support to the person where the allegations contained in a disclosure are clearly wrong or unsubstantiated.

## **REFERENCES**

- *Public Interest Disclosures Act 2012*
- *Independent Broad-based Anti-Corruption Commission Act 2011*
- *Ombudsman Act 1973*
- *Victorian Inspectorate Act 2011*
- *Freedom of Information Act 1982*
- *Privacy and Data Protection Act 2014*
- Public Interest Disclosures Regulations 2013
- Guidelines for making and handling public interest disclosures (IBAC – December 2019)
- Guidelines for Public Interest Disclosure welfare management (IBAC – December 2019)

## **ATTACHMENTS**

1. Definition of Corrupt Conduct (IBAC Act 2011)
2. Definition of Improper Conduct (PID Act 2012)
3. Disclosures Assessment Process (at a glance)



## ATTACHMENT 1

### Definition of Corrupt Conduct (Independent Broad-based Anti-corruption Commission Act 2011)

#### 4 Corrupt conduct

- (1) For the purposes of this Act, 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; or
  - (da) 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—
    - (i) a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument; or
    - (ii) an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument; or
    - (iii) a financial benefit or real or personal property; or
    - (iv) any other direct or indirect monetary or proprietary gain—  
that they would not have otherwise obtained; or
  - (e) that could constitute a conspiracy or an attempt to engage in any conduct referred to in paragraph (a), (b), (c), (d) or (da)— being conduct that would constitute a relevant offence.
- (1A) For the purposes of this Act, 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.
- (2) Conduct may be corrupt conduct for the purposes of this Act 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.
- (2A) For the purposes of section 4(1)(da), 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.
- (2B) For the purposes of section 4(1)(da), 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—
    - (i) an entity of whom the first person is an associate within the meaning of section 11 of the Corporations Act; or
    - (ii) an employee or officer of a related body corporate within the meaning of the Corporations Act to the first person.



(2C) For the purposes of subsection (2B)—

**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;

**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.

(3) 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**.

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## ATTACHMENT 2

### Definition of Improper Conduct (Public Interest Disclosures Act 2012)

#### 4 *Meaning of improper conduct*

- (1) For the purposes of this Act, improper conduct means—
  - (a) corrupt conduct; or
  - (b) 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—
    - (i) a criminal offence; or
    - (ii) serious professional misconduct; or
    - (iii) dishonest performance of public functions; or
    - (iv) an intentional or reckless breach of public trust; or
    - (v) an intentional or reckless misuse of information or material acquired in the course of the performance of the functions of the public officer or public body; or
    - (vi) a substantial mismanagement of public resources; or
    - (vii) a substantial risk to the health or safety of one or more persons; or
    - (viii) a substantial risk to the environment; or
  - (c) conduct of any person that—
    - (i) adversely affects the honest performance by a public officer or public body of their functions as a public officer or public body; or
    - (ii) is intended to adversely affect the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body and results in the person, or an associate of the person, obtaining—
      - (A) a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument; 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; or
      - (C) a financial benefit or real or personal property; or
      - (D) any other direct or indirect monetary or proprietary gain—  
that the person or associate would not have otherwise obtained; or
  - (d) conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referred to in paragraph (a), (b) or (c).
- (2) Despite subsection (1), conduct that is trivial does not constitute improper conduct for the purposes of this Act.
- (2A) For the purposes of section 4(1)(c)(ii), 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.
- (2B) For the purposes of section 4(1)(c)(ii), 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— (i) an entity of whom the first person is an associate within the meaning of section 11 of the Corporations Act; or (ii) an employee or officer of a related body corporate within the meaning of the Corporations Act to the first person.



(2C) For the purposes of subsection (2B)—

**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, stepbrother, 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, stepbrother, 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;

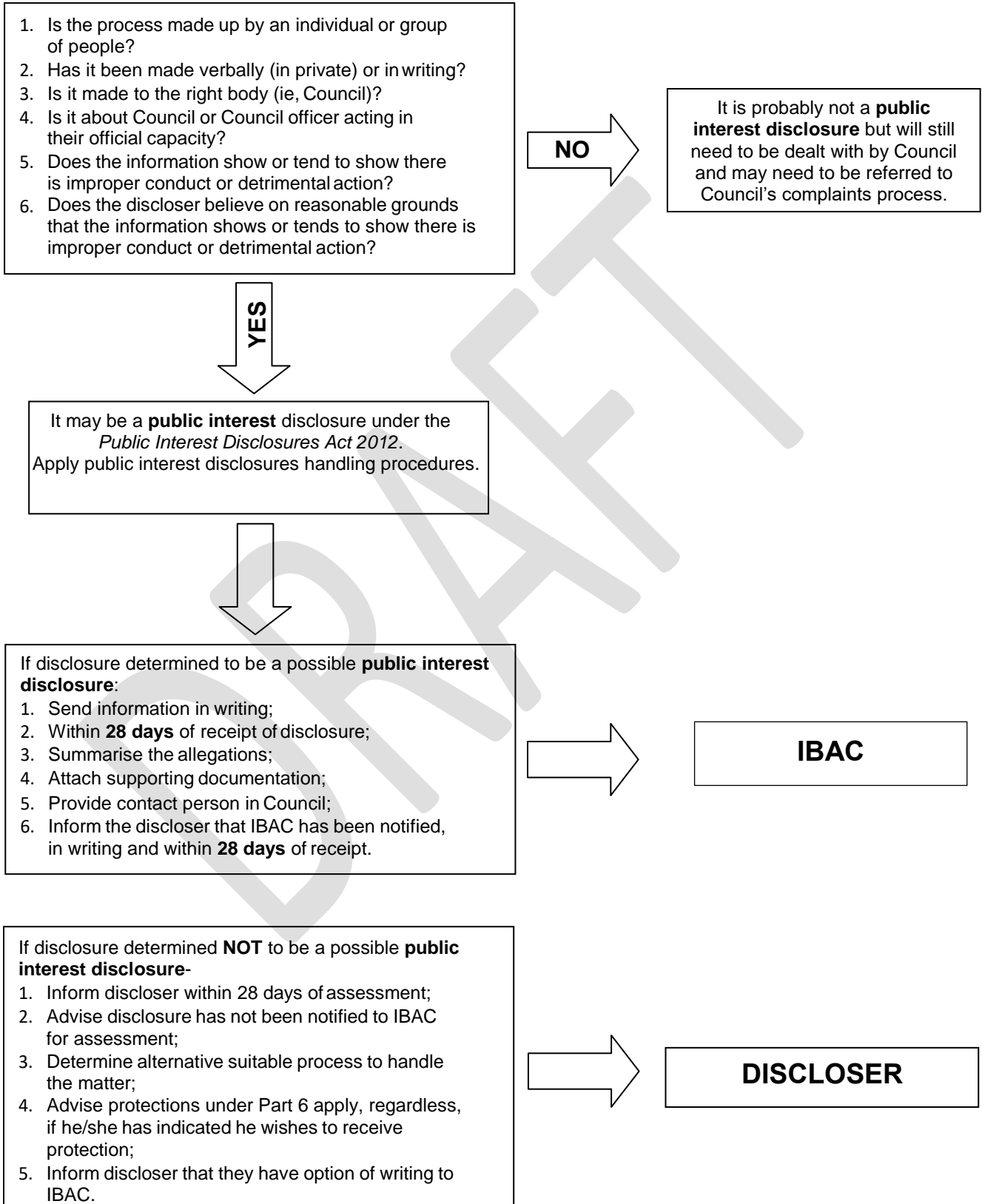
**relevant financial interest** includes any share in the capital of a business of the first person or any entitlement to receive any income or payment from a business of the first person.

- (3) 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.
- (4) This Act does not apply to a disclosure relating to any conduct that may constitute a criminal offence in relation to an alleged contravention under section 30 of the Members of Parliament (Standards) Act 1978 that must be referred by the Presiding Officer to the appropriate law enforcement agency under section 30(3) of that Act.



### ATTACHMENT 3

#### Disclosures Assessment Process (at a glance)



## Protected Disclosure 2019

<b>Unit:</b> <i>Governance</i>	<b>First Implemented:</b> <i>November 2002</i> <b>Reviewed:</b> <i>19 February 2013</i> <i>31 March 2016</i> <i>21 January 2019</i> <b>Effective From:</b> <i>19 March 2019</i> <b>Review Date:</b> <i>31 March 2023</i> <b>Version:</b> <i>5</i> <b>Trim Reference:</b> <i>E513</i>	<b>Origin:</b> Responsible Officer: <i>Protected Disclosure Officer</i> Authorising Officer: <i>Endorsed by Council 19 March 2019</i>
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### PURPOSE/OBJECTIVE

The purpose of this policy is:

- to ensure Council is fully compliant with its obligations under The *Protected Disclosure Act 2012 (Act)* and the *Independent Broad-based Anti-corruption Commission Act 2011 (IBAC Act)*; and
- to ensure there is an effective process for managing the receipt of protected disclosures, their assessment and notification; and
- to provide protection for those who make a disclosure and those who might be cooperating in a protected disclosure.

### POLICY STATEMENT

Council will not tolerate improper conduct by its people, nor the taking of reprisals against those who come forward to disclose such conduct.

Council recognises the value of transparency and accountability in its administrative and management practices, and supports the making of disclosures that reveal improper conduct or the taking of reprisals against those who come forward to disclose such conduct.

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



## DEFINITIONS

<b>PD Act:</b>	<i>Protected Disclosure Act 2012</i>
<b>Council:</b>	Mansfield Shire Council (organisation)
<b>Councillors:</b>	Mansfield Shire Council elected representatives
<b>Contractors:</b>	A person who is self-employed and provides a service specifically to Mansfield Shire Council
<b>CEO:</b>	Chief Executive Officer
<b>PDO:</b>	Protected Disclosure Officer
<b>IBAC:</b>	the Independent Broad-based Anti-Corruption Commission

## SCOPE

This Policy applies to disclosures of improper conduct or detrimental action by Mansfield Shire Council employees, Councillors and contractors, made in accordance with the Act.

## RESPONSIBILITIES

All Council employees, contractors and Councillors are responsible for adhering to and implementing this policy.

Employees and Councillors are encouraged to report known or suspected incidences of improper conduct or detrimental action in accordance with these procedures, whether such conduct or action has taken place, is suspected to have taken place, or is still occurring.

The individual managers will oversee adherence to the Protected Disclosure Policy, with any associated procedures implemented by the Governance Unit in consultation with the Protected Disclosure Officer (PDO) and CEO.

Council's Corporate and Organisational Development Manager has been appointed as the Council's PDO. The PDO is responsible for:

- receiving and assessing each disclosure;
- co-ordinating Council's reporting system; and
- in partnership with Council's Governance and Risk Co-ordinator, ensuring Council carries out its responsibilities under the Act, any regulations made pursuant to the Act and any guidelines issued by the IBAC.

The PDO is also Council's chief liaison with the IBAC.

The Governance unit is the owner of this Policy. Any reviews of this Policy must be made in consultation with the Protected Disclosure Officer and Governance and Risk Co-ordinator.



## REFERENCES / RELATED POLICIES

- *Protected Disclosure Act 2012*
- *Independent Broad-based Anti-Corruption Commission Act 2011*
- Guidelines for making and handling protected disclosures (IBAC – January 2016)
- Guidelines for protected disclosure welfare management (IBAC – January 2016)
- *Freedom of Information Act 1982*
- Mansfield Shire Council Staff Code of Conduct
- Mansfield Shire Councillor Code of Conduct

## IMPLEMENTATION

This policy is effective once endorsed by Council.


## REVIEW DATE

This Policy is to be reviewed by 31 March 2023

Council reserves the right to review, vary or revoke this Policy at any time.

## AUTHORISATION TO IMPLEMENT POLICY

This Policy must be endorsed by the Council.

Signed:   
Councillor

Witnessed:   
Chief Executive Officer

Dated: 19 March 2019

**Mansfield Shire Council reserves the right to review, vary or revoke this Policy at any time.**



## PROCEDURES FOR MAKING AND HANDLING PROTECTED DISCLOSURES

These procedures are designed to ensure Council is fully compliant with its obligations under the *Protected Disclosure Act 2012* (PD Act) and the *Independent Broad-based Anti-corruption Commission Act 2011* (IBAC Act).

### SUPPORTING STATEMENT

Mansfield Shire Council (Council) supports the strengthening of the integrity of the Victorian public sector and the promotion of community confidence in public sector accountability.

### PURPOSE OF THESE PROCEDURES

The establishment of these procedures provides a system for reporting in accordance with the *Protected Disclosure Act 2012* (Act) and guidelines prepared by the Independent Broadbased Anti-Corruption Commission (IBAC). These procedures aim to:

- facilitate the making of disclosures of improper or corrupt conduct by public officers and public bodies;
- establish a system for the handling of disclosures and, where appropriate, for notification to the IBAC;
- provide protection from detrimental action to any person affected by a protected disclosure;
- provide for the confidentiality of the content of disclosures and the identity of persons who make those disclosures.

It is important to note that Council can only deal with disclosures which concern Council, its employees, staff, contractors or officers.

Disclosures about improper conduct or detrimental action by Councillors must be made to the IBAC or to the Ombudsman. Those disclosures may not be made to Council officers.



## CONTACTS

### **Protected Disclosure Officer**

Corporate and Organisational Development Manager (Mrs Sharon Scott)  
Mansfield Shire Council  
33 Highett Street  
MANSFIELD VIC 3722  
Telephone: 5775 8555  
[www.mansfield.vic.gov.au](http://www.mansfield.vic.gov.au)

### **General Advice about the operation of the Act**

Governance & Risk Co-ordinator (Ms Michelle Kain)  
Mansfield Shire Council  
33 Highett Street  
MANSFIELD VIC 3722  
Telephone: 5775 8555  
[www.mansfield.vic.gov.au](http://www.mansfield.vic.gov.au)

A disclosure about improper conduct or detrimental action by a Mansfield Shire Council Councillor or employee may also be made directly to the Ombudsman or IBAC. Disclosures relating to Councillors can only be made directly to the Ombudsman or IBAC.

### **IBAC**

Level 1, North Tower  
459 Collins Street  
Melbourne 3000  
Internet: [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)  
Telephone: 1300 735 135

### **Victorian Ombudsman**

Level 9 North Tower  
459 Collins Street,  
MELBOURNE VIC 3000  
Internet: [www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au)  
Email: [ombudvic@ombudsman.vic.gov.au](mailto:ombudvic@ombudsman.vic.gov.au)  
Telephone: (03) 613 6222;  
Toll-free (regional only): 1800 806 314

## ABOUT IBAC

IBAC is Victoria's anti-corruption agency responsible for preventing and exposing public sector corruption and police misconduct by:

- investigating serious corruption and police misconduct.
- informing the public sector, police and the community about the risks and impacts of corruption and police misconduct, and ways in which it can be prevented.





## KEY TERMS, DEFINITIONS AND ABBREVIATIONS

<b>Assessable disclosure:</b>	Any disclosure either made directly to the Independent Broad-based Anti-corruption Commission (IBAC) or the Victorian Inspectorate (VI), or if received by Mansfield Shire Council is required under s21 of the Act to be notified by the Council to the IBAC for assessment.
<b>Corrupt Conduct:</b>	Is conduct that would, if proved beyond reasonable doubt at trial, constitute and indictable offence or the common law offence of attempting to pervert the course of justice or bribery of a public official
<b>Detrimental Action:</b>	(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.
<b>IBAC:</b>	Independent Broad-based Anti-corruption Commission.
<b>IBAC Act:</b>	<i>Independent Broad-based Anti-corruption Commission Act 2011.</i>
<b>Improper conduct:</b>	Improper conduct means conduct by a public body or public official as defined in the IBAC Act and specified conduct as defined in the PD Act.  The conduct must be serious enough to constitute, if proved, a criminal offence or reasonable grounds for dismissal.
<b>Investigative entity:</b>	Any one of the four bodies authorised to investigate a protected disclosure complaint, being the IBAC, the Victorian Ombudsman, the Chief Commissioner of Police and the VI.
<b>PDO</b>	Protected Disclosure Officer.
<b>Procedures:</b>	This version of the procedures of Mansfield Shire Council, as established under s58 of the Act.
<b>Protected disclosure:</b>	A report made by a person about improper conduct of public officers or public bodies
<b>Protected disclosure complaint:</b>	A protected disclosure which has been determined and assessed by the IBAC to be a protected complaint
<b>Public bodies:</b>	Include a Council (established under the <i>Local Government Act 1989</i> ).
<b>Public officers:</b>	Include local government Councillors and Council employees.
<b>Regulations:</b>	Protected Disclosure Regulations 2013.
<b>Specified Conduct:</b>	Conduct that would, if proved, constitute a criminal offence or reasonable grounds for dismissal
<b>VI:</b>	Victorian Inspectorate.



## THE REPORTING SYSTEM

Council has established a centralised reporting system for the receipt, assessment and investigation of protected disclosures.

The system ensures that these procedures, including detailed information about how disclosures may be made and to whom, are accessible on the Council website and available internally and externally to staff, employees, contractors and Councillors and any individual in the broader community.

### Roles and Responsibilities

#### ***Protected Disclosure Officer***

Council's PDO has a central role in the internal reporting system, and maintains oversight of it.

The PDO is also responsible for monitoring the welfare of the person making a protected disclosure and to provide advice and support.

#### ***Governance and Risk Co-ordinator***

Council's Governance and Risk Co-ordinator is the contact point for general advice about the operation of the Act for any person wishing to make a disclosure. The Governance and Risk Coordinator will assist and work in conjunction with the PDO in matters relating to:

- co-ordinating the reporting system used by the organisation;
- the provision of general advice about the operation of the Act and for integrity agencies such as the IBAC;
- liaise with the IBAC in regard to the Act.

#### ***Direct and Indirect Supervisors and Managers***

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

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

## CONFIDENTIALITY

Section 52 of the Act requires any person who receives information due to the handling or investigation of an assessable disclosure, not to disclose that information except in certain limited circumstances. These circumstances include:

- where exercising the functions of the public body under the Act;
- when making a report or recommendation under the Act;
- when publishing statistics in the annual report.



The Act prohibits:

- the inclusion of particulars in any report or recommendation that is likely to lead to the identification of the person making a protected disclosure;
- the disclosures of particulars in an annual report and other reports to Parliament that might lead to the identification of a person against whom a protected disclosure is made.

## **MAKING A DISCLOSURE**

### **What is a disclosure and who can make a disclosure?**

A disclosure may be made about two things under the Act:

- (i) corrupt conduct of public bodies or public officers; and
- (ii) detrimental action taken by public bodies or public officers in reprisal against a person for the making of a protected disclosure.

### **How can a disclosure be made?**

Verbally:

- Must be in private
- In person
- By telephone
- Voice mail message
- Any other form of electronic communication that does not require writing.
- May be made anonymously

In writing:

- Personal delivery to the office
  - Mail addressed to the organisation or Protected Disclosure Officer (PDO)
  - Email to the organisation or to the PDO
  - IBAC and the Ombudsman can also receive disclosures via an online form.
- 
- Facsimile is not an acceptable method

If the disclosure comes from an e-mail address from which the identity of the person making the disclosure cannot be determined, the disclosure will be treated as an anonymous disclosure.

Any person can submit an allegation or complaint.

### **About whom can a disclosure be made?**

- Disclosures can be made about public bodies or public officers acting in their public role. This includes a Councillor and Council employee. Refer to the *Independent Broad-based Anti-corruption Commission Victoria – Guidelines for making and handling protected disclosures, 2013* (p.10) for a complete definition.



## To whom can a disclosure be made?

The PD Act is very specific about who can receive disclosures depending on who is the subject of the disclosure.

- If the subject of the disclosure is a Councillor, the disclosure must be made directly to the IBAC or the Victorian Ombudsman.
- Councillors can only receive disclosures that relate to themselves, officers, employees and contractors.

Refer to the *Independent Broad-based Anti-corruption Commission Victoria – Guidelines for making and handling protected disclosures, 2013* (pp.11-12) for a comprehensive list.

## What disclosures are not protected?

Protection is not available for disclosures which:

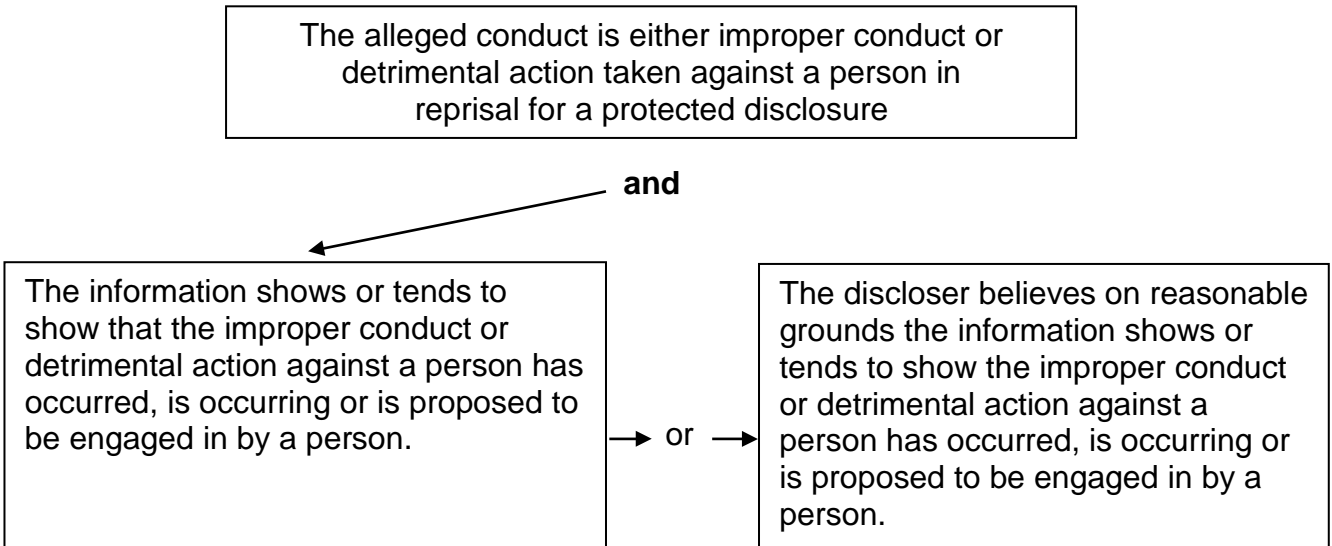
- are made frivolously or vexatiously;
- primarily question the merits of government policy; or
- are made solely or substantially with the motive of avoiding dismissal or other disciplinary action.

**It is an offence to wilfully make a false or misleading statement when making a disclosure.**



## WHAT CAN A DISCLOSURE BE MADE ABOUT?

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



### Definition of improper, corrupt or specified conduct by public officers or entities

Improper conduct can be either corrupt or specified conduct and be either criminal conduct or conduct serious enough to result in a person’s dismissal.

- Dishonest performance of a public officer
- Knowingly breaching public trust by a public officer
- Misuse of information obtained by a public officer in that capacity
- Conspiracy to commit or attempt to commit any of the above
- Conduct that implies:
  - Substantial (level determined per case) mismanagement of public resources
  - Substantial (level determined per case) risk to public health or safety
  - Substantial (level determined per case) risk to the environment



## ASSESSING A DISCLOSURE

For a disclosure to be considered assessable by IBAC it must meet all the requirements for a protected disclosure in Part 2 of the PD Act. If it does not meet all the requirements then it is not a protected disclosure and should be dealt with under Council's complaint handling process.

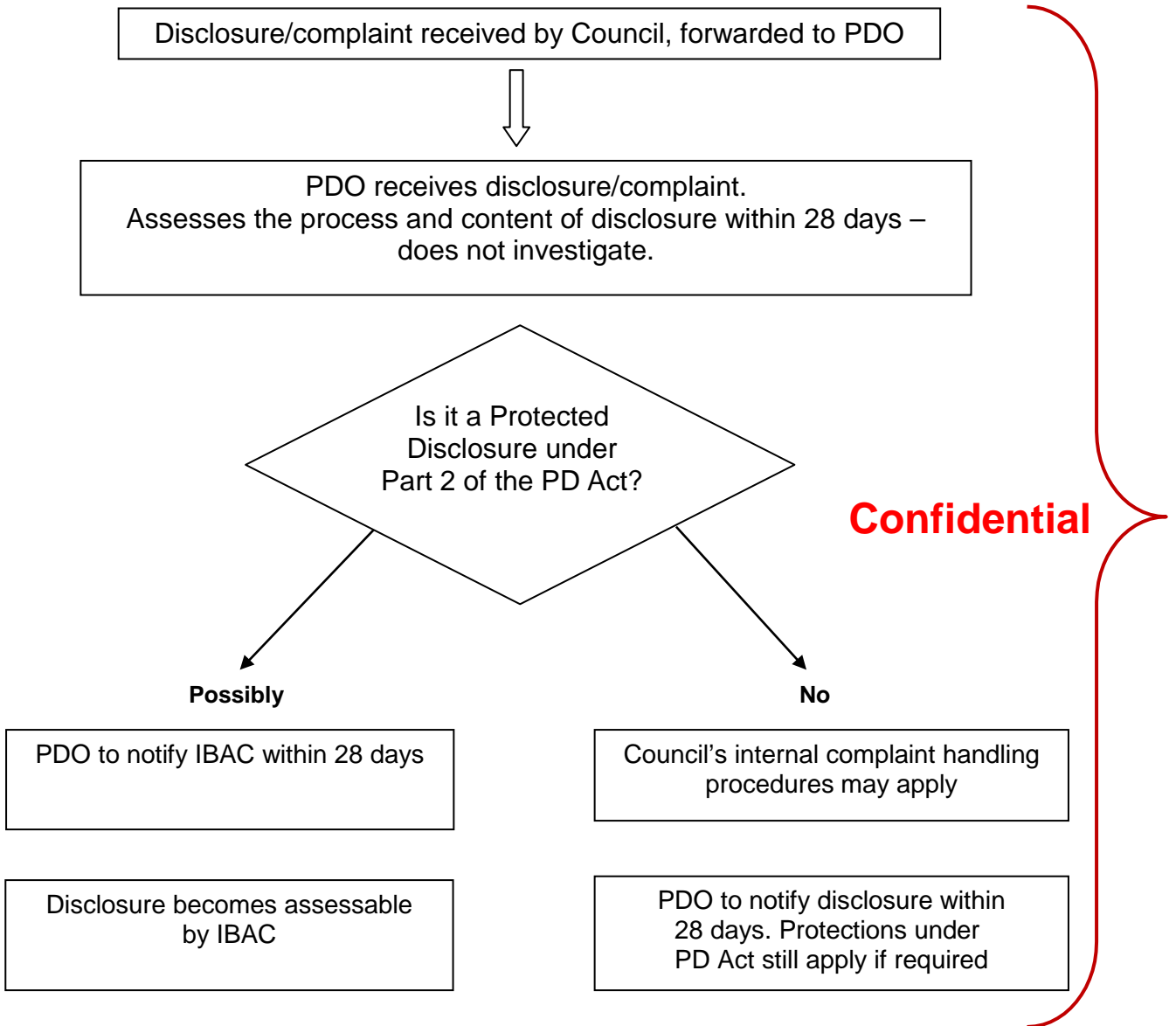
The requirements for a disclosure to be assessable are:

- made verbally in private or in writing by email or mail
- must not be made via fax
- must be made to the CEO, the PDO, the discloser's manager or the manager of the subject of the disclosure
- must be made about public officer or public body in the performance of their public functions
- must be made about alleged improper conduct or detrimental actions taken in reprisal for a protected disclosure
- A complaint about a Councillor cannot be taken by staff in the Council – it must go straight to IBAC or the Ombudsman

When a complaint or disclosure is received within Council, it should immediately be forwarded to the PDO for assessment to determine if it is required to be forwarded to IBAC for investigation.



**Figure 2 - Internal procedure for dealing with disclosures.**



**Making a notification to IBAC**

If the PDO decides that the disclosure may be protected then it becomes an assessable disclosure and IBAC must be notified within 28 days.

The PDO must also notify the discloser in writing within 28 days that:

- The disclosure has been notified to IBAC for assessment
- That it is an offence to disclose that the disclosure has been notified to IBAC.



## **IBAC assessment**

IBAC undertakes an assessment to determine if the disclosure is a PD complaint. IBAC may dismiss the complaint under section 68 of the IBAC Act.

Whether or not IBAC dismisses the disclosure the protections under Part 6 of the PD Act apply to the discloser. Following IBAC's assessment it must notify Council of its determination and the actions it intends to take.

At the conclusion of its investigation, IBAC may provide information about the conduct and result of the investigation to Council but it must not provide any information that might lead to the identification of a discloser.

## ***Freedom of Information Act 1982***

Council will ensure the Records Coordinator is aware that the *Freedom of Information Act 1982* does not apply to any document that relates to a protected disclosure, an assessable disclosure or that is likely to lead to the identification of a person who has made an assessable disclosure.

## **WELFARE MANAGEMENT**

Council will not tolerate any victimisation of a complainant or the subject of the protected disclosure. If a person believes that he or she is the subject of victimisation, they should inform the PDO with sufficient information to enable an investigation of the complaint. The PDO will investigate and take any action required in respect of the complaint.

Part 6 of the Act sets out the protections provided to persons who may make a protected disclosure.

The person making the disclosure will not be:

- subject to any civil or criminal liability or administrative action (including disciplinary action) for making the disclosure;
- committing an offence against the Constitution Act 1975 or any other Act that imposes obligations of confidentiality or any other restriction on the disclosure of information;
- breaching any other obligation (made by oath, rule of law or practice) requiring them to maintain confidentiality or otherwise restrict confidentiality;
- held liable for defamation in relation to information included in a protected disclosure.

## **Limitation on protection**

If the person has made a false disclosure or provided false information, the person is not protected.

There is also no protection for a discloser against legitimate management action and the discloser will still be held liable for their own conduct.





Disclosers commit an offence against the PD Act if they make it publicly known that their disclosure has been notified to IBAC and / or that their complaint has been determined by IBAC to be a PD.

## **Management of the Person against whom the Disclosure is made**

### ***Natural Justice***

Council will ensure that natural justice is adhered to in the receipt and management of a disclosure.

Employees, officers or members of the Council who are the subject of a disclosure will be provided with notification, in writing, of the disclosure, where that notification does not compromise the identity of the person making the disclosure or the investigation into the disclosure. The person will be given the opportunity to answer allegations before a final decision is made and informed about the substance of any adverse comment that may be included in any report arising from an investigation.

### ***Confidentiality***

Council will take all reasonable steps to ensure the confidentiality of the identity of the person against whom a disclosure has been made.

### ***Protection against reprisal***

Council's PDO will take responsibility for ensuring a person against whom a protected disclosure has been made, is protected from direct or indirect detrimental action. The PDO will also monitor the welfare of the person against whom a disclosure has been made and provide full support to the person where the allegations contained in a disclosure are clearly wrong or unsubstantiated.

## **REFERENCES**

*Protected Disclosure Act 2012*

IBAC Guidelines for Making and Handling Protected Disclosures

IBAC Guidelines for Protected Disclosure Welfare Management

## **ATTACHMENTS**

1. Disclosures Assessment Process (at a glance)



## Attachment 1 - Disclosures Assessment Process (at a glance)

