



Organisational Procedure

Public Interest Disclosures Procedure

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Authorising Officer	Chief Executive Officer	Effective From	25 June 2024	TRIM Reference	E1533

1. Purpose

These procedures ensure that Mansfield Shire Council (Council) is fully compliant with its obligations under the *Public Interest Disclosures Act 2012* ("Act"), the *Independent Broad-Based Anti-Corruption Commission Act 2011* (IBAC Act) and the Guidelines published by the IBAC under s57 of the Act.

Council is required to establish and publish procedures under s58 of the Act and in accordance with the IBAC published Guidelines under s57 of the Act and ensure that these procedures are readily available to members of the public and internally to Councillors and Council staff.

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 disclosure is taken seriously.

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2. Definitions

Term	Definition
Act	<i>Public Interest Disclosure Act 2012</i>
Council	Mansfield Shire Council
Contractors	A person who provides a service specifically to Mansfield Shire Council and is not directly employed by Council
Detrimental action	Refer to Appendix A
PID	Public Interest Disclosure
Public Interest Disclosure	A person who provides a service specifically to Mansfield Shire Council and is not directly employed by Council
IBAC	Independent Broad-Based Anti-Corruption Commission
IBAC Act	<i>Independent Broad-Based Anti-Corruption Commission Act 2011</i>
Improper conduct	Refer to Appendix B
VO	Victorian Ombudsman

3. Making A Disclosure

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

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

- I. improper conduct of public bodies or public officers, and
- II. detrimental action that a public officer or public body has taken against a person in reprisal for them (or another person) having made a disclosure or cooperated with the investigation of a disclosure.

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

Any individual or group of people can make a disclosure about improper conduct or detrimental action to an organisation that is authorised to receive disclosures under the Act. Disclosures cannot be made by a company or business.

4.1.1 Improper Conduct must be either criminal conduct or other conduct specified under the Act. Examples include serious professional misconduct, intentional or reckless breach of public trust and conduct adversely affecting the honest performance of a public officer.

4.1.2 Detrimental Action includes harassment or discrimination, or other adverse action taken against the discloser in reprisal for having reported the alleged improper conduct.

3.2 Disclosures in accordance with the Act

A disclosure must be made in accordance with Division 2, Part 2 of the Act.

A requirement in Part 2 of the Act is that the disclosure has been made to a body authorised under the Act to receive the disclosure.

Mansfield Shire Council is only authorised to receive PIDs under the Act which relate to the Council and Council staff. PIDs about Councillors cannot be received by the Council and must be made to the IBAC or the VO.

The following table summarises disclosure that may be received by Council and the person to whom the disclosure may be made:

Subject of the Disclosure	Person/body to whom the Disclosure may be made
Council, an employee, or contractor of Council	<ul style="list-style-type: none"> ▶ Council's CEO; ▶ Public Interest Disclosure Officer ▶ Manager or supervisor of the Discloser ▶ Manager or supervisor of the person who is the subject of the Disclosure ▶ IBAC ▶ the Victorian Ombudsman

Subject of the Disclosure	Person/body to whom the Disclosure may be made
	<ul style="list-style-type: none"> ▶ the Victorian Inspectorate
Councillor	<ul style="list-style-type: none"> ▶ IBAC ▶ the Victorian Ombudsman

If the discloser does not want their complaint to be handled as a PID in accordance with the Act, they must advise that their disclosure is not a PID in writing at the time, or within 28 days, of making the disclosure.

3.3 How to make a disclosure to Mansfield Shire Council

Verbal disclosure

A verbal disclosure to Mansfield Shire Council must be:

- ▶ in private, meaning that only the following people (other than the discloser themselves) are present or able to listen to the conversation:
 - a lawyer representing the person making the disclosure (if any)
 - one or more people to whom a disclosure can be made under the Act or PID Regulations.

and

- ▶ in person, or
- ▶ by phone, including leaving a voicemail message.

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

- ▶ the PID Officer.
- ▶ the direct or indirect manager of the discloser, if the discloser is an employee of Mansfield Shire Council.
- ▶ the direct or indirect manager of the person to whom the disclosure relates, where that person is an employee of Mansfield Shire Council.

The person receiving the verbal disclosure will take notes at the time of the disclosure. This person can also record the conversation with prior warning to the discloser that the conversation will be recorded. The conversation will not be recorded if the discloser objects.

A verbal disclosure can be made anonymously where the person refuses to identify themselves.

Written disclosure

A written disclosure to Mansfield Shire Council must be:

- ▶ delivered personally to the Mansfield Shire Council Municipal Office at 33 Highett Street, Mansfield, Victoria;
- ▶ sent via post addressed to Council's PID Officer to Private Bag 100, Mansfield VIC 3724;
- ▶ sent by email to the office of Council at council@mansfield.vic.gov.au; or

- ▶ sent by email to the official email address of:
 - the PID Officer;
 - the direct or indirect manager of the discloser, if the discloser is an employee of Mansfield Shire Council; or
 - the direct or indirect manager of the person to whom the disclosure relates, where that person is an employee of Mansfield Shire Council.

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

If the disclosure comes from an email address where the identity of the person making the disclosure cannot be determined, the disclosure will be treated as an anonymous disclosure.

3.4 How to make a disclosure to the IBAC

To make a disclosure to the IBAC, visit <https://www.ibac.vic.gov.au/reporting-corruption/how-to-make-a-complaint>

3.5 How to make a disclosure to the Victorian Ombudsman

To make a disclosure to the VO, visit <https://www.ombudsman.vic.gov.au/Complaints/Make-a-Complaint#>

4. Handling Disclosures

Please note, this section relates only to disclosures made to Council. Disclosures made directly to the IBAC or another agency will be handled in accordance with their own adopted procedures and IBAC's guidelines and processes.

4.1 Assessing a disclosure

For an allegation or a report to be considered a PID, it must tend to show improper conduct or detrimental action.

When assessing if a disclosure is about improper conduct or detrimental action the standards that should be considered are:

- I. Does the information provided show or tend to show there is improper conduct or detrimental action?
- II. Does the discloser believe on reasonable grounds that improper conduct or detrimental action has occurred?

Assessments are undertaken by a Public Interest Disclosure Officer in consultation with the CEO. In the event that the CEO has a conflict of interest, in accordance with delegations approved by Council, the assessment will be undertaken in consultation with the General Manager Investment and Planning.

4.2 Notifications

4.2.1 If Council does not consider the disclosure a PID

If Council considers the disclosure is not a PID, Council's PID Officer will, within 28 days of receiving the disclosure, write to the discloser advising that:

- ▶ Council does not consider the disclosure to show improper conduct or detrimental action;
- ▶ The disclosure has not been notified for assessment under the Act; and
- ▶ The discloser's identity doesn't have to be kept confidential, but protections under Page 6 of the PIC Act do apply.

Under s12A(2) of the Act notifications required under the Act do not apply if the person makes the disclosure anonymously.

4.2.2 If Council considers the disclosure may be a PID

If Council considers the disclosure may be a PID under the Act, Council's PID Officer will, within 28 days of receiving the disclosure:

- ▶ notify IBAC of the disclosure that may be a PID for assessment under s21 of the Act, and provide relevant information; and
- ▶ notify the discloser that the PID has been sent to IBAC for assessment and that it is an offence to disclose that the disclosure has been notified to IBAC.

At the time of notifying IBAC or at any later time, Council may also provide IBAC with any information obtained regarding the disclosure during its enquiries.

4.3 Urgent Action

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

- ▶ Child protection worker allegedly assaulting children in care.
- ▶ Council worker allegedly lighting bushfires.
- ▶ A person threatening to poison the water supply.

In these cases, Council can take immediate action while considering if the disclosure must be notified to IBAC or while awaiting IBAC's decision on a notified matter.

It may also be necessary to report criminal conduct to Victoria Police for immediate investigation or take management action against an employee to prevent future conduct.

The Act allows Council to disclose content of the disclosure 'to the extent necessary for the purpose of taking lawful action' in relation to conduct that is the subject of a disclosure, including disciplinary process or action. This does not allow Council to reveal the identity of the discloser. There is also an exception in the Act that allows disclosure content and the discloser's identity to be shared with Victoria Police where an investigating entity has previously disclosed information to the Chief Commissioner of Police relating to actual or potential criminal conduct and the information is relevant to an investigation by Victoria Police of the criminal conduct.

5. IBAC Assessment

Once IBAC receives a notification, it must determine whether the disclosure is a public interest complaint. In making its assessment, IBAC may seek additional information from Council or from the discloser.

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

5.1 IBAC Determination

Once IBAC has determined whether a disclosure is a public interest disclosure, it:

- ▶ advises the relevant notifying entity of its determination, and
- ▶ advises the discloser of the determination and the action it intends to take (this applies to disclosers who have made their disclosures directly to IBAC and those who have had their disclosures notified to IBAC).

Information IBAC will provide to a discloser following its determination

(Source: IBAC Guidelines for Handling Public Interest Disclosures)

If it is a public interest complaint	If it is NOT a public interest complaint
<p>IBAC must advise the discloser of the determination and the action it will take. This includes advising the discloser whether IBAC has decided to investigate or refer the complaint or take no further action.</p> <p>If IBAC decides to take no further action it must give reasons for its decision.</p> <p>If IBAC decides to investigate or refer the complaint it must provide a written statement advising the discloser that it is an offence to disclose IBAC's action.</p> <p>IBAC must notify the discloser in writing and within a reasonable time. However, IBAC may decide not to notify the discloser or the entity that has notified the disclosure if it considers that notifying would have one of the adverse consequences set out in subsection 59(4) of the IBAC Act. These adverse consequences include putting a person's safety at risk or prejudicing an investigation under the IBAC Act.</p>	<p>IBAC must advise the discloser in writing within a reasonable time, that:</p> <ul style="list-style-type: none"> ▶ IBAC has determined their disclosure is not a public interest complaint; ▶ the disclosure will not be investigated as a public interest complaint; and ▶ their identity does not have to be kept confidential. <p>IBAC will advise the notifying entity of its determination.</p> <p>IBAC may also consider treating the disclosure as a complaint under the IBAC Act which engages its powers to refer the matter to a more appropriate agency to investigate, including the agency the complaint is about. IBAC will consult with the discloser prior to doing so.</p>

To understand other important information about how IBAC may process your complaint visit <https://www.ibac.vic.gov.au/what-happens-our-investigations>

5.2 Referring a Complaint

IBAC may refer a public interest complaint to another investigating entity:

- ▶ Complaints about the conduct of a member of Victoria Police may be referred to the Chief Commissioner of Police.
- ▶ Other complaints may be referred to the Victorian Ombudsman, or depending on the nature of the complaint, the Judicial Commission, the Chief Municipal Inspector, the Racing Integrity Commissioner, or the Information Commissioner. If there is another public body that may be more suited to investigating a complaint (for example, a council or Victorian Government department), IBAC may refer the complaint to that body if the person who made the complaint gives their consent.

5.3 No further action

If IBAC dismisses a public interest complaint, it must do so for reasons set out in s68 of the Act, for example if the complaint:

- ▶ lacks substance or credibility.
- ▶ is vexatious or trivial.
- ▶ is about a matter that neither IBAC or a body specified in the IBAC Act may investigate.

6. Welfare Management

Council is committed to the protection of Disclosers against Detrimental Action taken in reprisal for the making of Public Interest Disclosures.

The Public Interest Disclosure Officer's are responsible for ensuring Disclosers are protected from direct and indirect detrimental action, and that the culture of the workplace is supportive of Public Interest Disclosures being made.

The Public Interest Disclosure Officer's will ensure the Discloser is kept informed of action taken in relation to their Disclosure, and the time frames that apply.

6.1 Welfare Manager

Council will consider appointing a welfare manager when a person has made a public interest disclosure or is cooperating, or intending to cooperate, with the investigation of a disclosure.

A welfare manager is responsible for:

- ▶ examining the discloser's and / or witness' immediate welfare and protection needs and, where that person is an employee, fostering a supportive work environment,
- ▶ providing practical advice and support,
- ▶ advising the discloser and / or witness of the protections available under the Act,
- ▶ receiving and responding to any disclosures of detrimental action in reprisal for making the disclosure (for example, harassment, intimidation, or victimisation),
- ▶ ensuring that the discloser's and / or witness' expectations of the process and outcomes are realistic,
- ▶ maintaining confidentiality, and
- ▶ operating discreetly to protect the discloser and / or witness from being identified as being involved in a public interest disclosure.

6.2 Protections for persons making a PID

Disclosures protected by the Act are:

- ▶ Any disclosure assessed as public interest disclosure (where the assessment has been made by an organisation that is authorised to receive disclosures). The protections apply even if the public body receiving the disclosure does not notify IBAC.
- ▶ Any notification that IBAC receives and determines to be a public interest complaint.

How a discloser is protected:

- ▶ cannot be fired, disciplined or bullied for making a disclosure.
- ▶ is not subject to any civil or criminal liability for making a disclosure.
- ▶ is not 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.
- ▶ is not breaching any other obligation (made by oath, rule of law or practice) requiring them to

maintain confidentiality or otherwise restrict confidentiality.

- ▶ cannot be held liable for defamation in relation to information included in a public interest disclosure.

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

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

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

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

6.3 Natural Justice

Council will afford natural justice to the subject of a disclosure prior to any decision being made about the allegations.

The IBAC has noted natural justice means the person has the right to:

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

If the matter has been investigated, the investigating entity (e.g. IBAC) is responsible for carrying out this consultation.

6.4 Wrong or Unsubstantiated Allegations

Council will ensure that there are no adverse consequences for the person arising out of the disclosure or its investigation if the subject of allegations that are wrong or unsubstantiated.

This is particularly crucial in a situation where there has been publicly disclosed information identifying the person, but also where such information has become well-known across Council and the subject is Council staff.

7. Confidentiality

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

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

If you repeat your disclosure to someone other than those listed within these guidelines or permitted by the Act, you may lose the protections provided under the Act. If you are considering sharing information about your disclosure, you may wish to seek advice from the Public Interest Disclosure Officer's or your welfare manager, and / or obtain legal advice first.

Council will only disclose information about you or your disclosure in accordance with the law, including the Act. The Act also prohibits disclosing information that is likely to lead to your identification, unless permitted to do so in accordance with the Act.

Confidentiality **doesn't apply** if the discloser gives written consent.

7.1 Information Management

Council will ensure all files, paper or electronic, are kept securely in accordance with Council's Information Security Policy. Files will be accessible only by the PID Officer/s involved in a particular matter. Where necessary, a Welfare Manager may be able to gain access to related welfare matters if one has been appointed in relation to a particular PID or an individual.

7.2 Exceptions to Confidentially Requirements

It is a crime to disclose information connected with a PID. However, the Act provides limited exceptions to the general prohibition on disclosing information connected to PIDs, these include circumstances such as:

- ▶ when a body is exercising its functions under the Act.
- ▶ it is disclosed by an investigating entity for the purpose of the exercise of functions under the Act that authorises that investigating entity to investigate a public interest complaint.
- ▶ IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee determines the disclosure is not a public interest complaint.
- ▶ it is for the purpose of a proceeding or for a disciplinary process under a relevant Act.
- ▶ the disclosure 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).
- ▶ the disclosure is for the purpose of assisting the discloser to seek advice or support from a registered health practitioner, trade union or employee assistance program.
- ▶ to the Victorian WorkCover Authority for a workers compensation claim or to the Fair Work

Commission for an application.

Additional exceptions to confidentiality of the content of a public interest disclosure

Confidentiality doesn't apply if:

- ▶ it is in accordance with a direction or authorisation from the investigating entity that is investigating the public interest complaint.
- ▶ the disclosure is necessary for taking lawful action in relation to the conduct that is the subject of the disclosure.

7.3 Freedom of Information Act

The Act provides exemptions from the Freedom of Information Act 1982 (FOI Act).

The FOI Act does not apply to a document that is in the possession of any person or body, to the extent that the document discusses information that –

- a) related to a public interest disclosure; or
- b) related to an assessable disclosure; or
- c) is likely to lead to the identification of a person who made a public interest disclosure.

8. Staff Training

Mansfield Shire Council will:

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

9. Collating and Publishing Statistics

Council is required to publish certain statistics about the Act in its annual reports. That information relates mainly to the number of disclosures notified to the IBAC for assessment under s21 of the Act during the financial year.

The PID Officer's will establish a secure confidential register that will contain the following information:

- a) the number of Disclosures made to Council during the financial year.
- b) the number of Disclosures referred by Council to IBAC for assessment and investigation during the financial year.
- c) the number of disclosed matters that Council has assessed as not being Public Interest Disclosures.
- d) the number of disclosed matters that were substantiated by IBAC upon investigation and the action taken by Council on completion of IBAC's investigation.
- e) any recommendations made by IBAC that relate to Council.

The register will not record any information that may identify the discloser.

10. References

- ▶ *Public Interest Disclosures Act 2012*
- ▶ *Freedom of Information Act 1982*
- ▶ IBAC Guidelines for handling public interest disclosures (January 2020)
- ▶ IBAC Guidelines for handling public interest disclosures welfare management (January 2020)
- ▶ Mansfield Shire Council Information Management Policy
- ▶ Mansfield Shire Council Complaints Handling Policy
- ▶ Mansfield Shire Council Fraud and Corruption Control Policy and Plan

Appendix A: 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**.

Appendix B: 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.