

2020

# Public Interest Disclosure Procedures



Mildura Rural City Council

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## 1. Statement of support

The Mildura Rural City Council (Council) recognises the value of transparency and accountability in our administrative and management practices, and supports the making of disclosures that reveal improper conduct or the taking of detrimental action in reprisal against persons who come forward to report such conduct.

We also support the strengthening of the integrity of the Victorian public sector and the promotion of community confidence in public sector accountability.

We take seriously our responsibilities to those persons who may make a disclosure about improper conduct or detrimental action. We have established these procedures to ensure the confidentiality of the identity of the person making the disclosure and their welfare.

These procedures form an essential part of our commitment to the aims and objectives of the Act. We do not tolerate improper conduct by our organisation, employees, Councillors or contractors, nor the taking of reprisals against those who come forward to disclose such conduct.

## 2. About the Public Interest Disclosure Act

The Public Interest Disclosure Act aims to:

- encourage and assist people to report improper conduct and detrimental action taken in reprisal for making a public interest disclosure;
- provide certain protections for people who make a disclosure, or those who may suffer detrimental action in reprisal for a disclosure; and
- ensure that certain information about a disclosure is kept confidential – the identity of the person making the disclosure and the content of that disclosure.

## 3. Purpose of these procedures

These procedures have been published by Council, in compliance with Section 58 of the *Public Interest Disclosure Act 2012* and the Guidelines published by the Independent Broad-Based Anti-corruption Commission (IBAC) as at January 2020.

We are required to ensure these procedures are available for members of the public, as well as internally to all Councillors, employees and persons who are performing a public function on behalf of Council under contract (contractor).

Requests for hard copies and further information about our handling of complaints or disclosures may be obtained from Councils Public Interest Disclosure Officer, Charmaine Calis on 5018 8103 or by email to [charmaine.calis@mildura.vic.gov.au](mailto:charmaine.calis@mildura.vic.gov.au).

These procedures are a resource for disclosers and potential disclosers, whether a member of the public, Councillor, employee or contractor; essentially, any individual who wants to find out how to make a disclosure, receive the protections available under the Act, and how the discloser and their disclosure may be managed and handled by us.

## 4. Scope of procedures

These procedures cover:

- how disclosures may be made to us;
- how we manage the receipt of disclosures;
- how we assess disclosures in which we are able to receive under the Act;
- notifications we are required to make about disclosures, to both disclosers and to the IBAC;
- how we protect certain people, including from detrimental action being taken against them in reprisal for making a public interest disclosure, namely:
  - public interest disclosers;
  - persons who are the subject of a public interest disclosure and public interest disclosure complaint; and
  - other persons connected to public interest disclosures, such as witnesses or persons cooperating with an investigation

## 5. Council's Internal Reporting Structures

We support a workplace where the making of public interest disclosures are valued by the organisation and the right of any individual to make a public interest disclosure, and have it be taken seriously.

We will:

- ensure these procedures, including detailed information about how disclosures may be made and to who, are accessible on our website and available internally and externally to Councillors, employees, contractors and any individual in the broader community;
- ensure that appropriate training is provided to all levels of the organisation to raise awareness of how a public interest disclosure may be made, and to take all reasonable steps to ensure Councillors, employees and contractors are familiar with Councils public interest disclosure policy, procedures and any relevant codes of conduct;
- ensure our reporting system is centralised and accessible only by appropriately authorised officers, allowing the flow of information to be tightly controlled to enhance confidentiality and minimising risks of reprisals being taken against disclosers;
- ensure the reporting system protects the confidentiality of information received or obtained in connection with a public interest disclosure, in accordance with the Act;
- ensure the reporting system protects the identity of persons connected with a public interest disclosure in accordance with the Act;
- not tolerate the taking of detrimental action in reprisal against any person for making a public interest disclosure, including to take any reasonable steps to protect such persons from such action being taken against them;
- afford natural justice and treat fairly those who are the subject of allegations contained in disclosures;

- take the appropriate disciplinary and any other action against any Councillors, employees or contractors engaged in the taking of detrimental action;
- ensure any staff involved with handling public interest disclosures are trained to receive and manage public interest disclosures appropriately;
- ensure we as a whole, handle public interest disclosures consistently and appropriately in accordance with our obligations under the Act, the Regulations, IBAC's Guidelines and these procedures; and
- be visible, approachable, openly communicative and lead by example in establishing a workplace that supports the making of public interest disclosures.

## 6. Councillors, Employees and Contractors

Councillors, employees and contractors are encouraged to raise matters of concern in relation to our organisation, including about any Councillors, employees or contractors. In particular, Councillors, employees and contractors are encouraged to report known or suspected incidences of improper conduct or detrimental action in accordance with these procedures, whether such conduct or action has taken place, is suspected will take place, or is still occurring.

All Councillors, employees and contractors have an important role to play in supporting those who have made a legitimate disclosure in accordance with the Act. All persons must refrain from any activity that is, or could be perceived to be, victimisation or harassment of a person who makes a disclosure. Furthermore, they should protect and maintain the confidentiality of a person they know, or suspect to have made a disclosure.

Employees and contractors can make a public interest disclosure to:

- the Chief Executive Officer of Council;
- the direct or indirect supervisor of the person who is making the disclosure;
- an employee who directly or indirectly supervises or manages the person subject of the disclosure;
- a Public Interest Disclosure Officer; or
- the Public Interest Disclosure Coordinator.

**Important note: where a person seeks to make a disclosure about a Councillor, that disclosure must be made to the IBAC, we are not able to receive public interest disclosures that relate to the conduct of our Councillors.**

## 7. Direct and Indirect Supervisors and Managers

Employees of 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 disclosure **about** an employee of Council, that person may make the disclosure to that employee's direct or indirect supervisor or manager.

The supervisor or manager receiving the disclosure will:

- immediately bring the matter to the attention of a Public Interest Disclosure Officer or Coordinator for further action in accordance with the Act;
- commit to writing down any disclosures made orally;
- take all necessary steps to ensure the information disclosed, including the identity of the discloser and any persons involved, is secured, remains private and confidential; and
- ensures the information disclosed is only accessible by those with appropriate authority.

## 8. Public Interest Disclosure Officers

We have appointed Public Interest Disclosure Officers to receive disclosures and be a contact point for general advice about the operation of the Act for any person wishing to make a disclosure.

The Public Interest Disclosure Officers are available to receive disclosures made from either external or internal sources. For Council employees, they provide a confidential avenue of advice about the Act where employees wish to raise concerns about their line managers, colleagues or supervisors or about contractors engaged by us.

The Public Interest Disclosures Officer will:

- make arrangements for a disclosure to be made privately and discreetly and, if necessary, away from the workplace;
- receive any disclosure made orally or in writing from external or internal sources;
- commit to writing any disclosure made orally;
- forward all disclosures and supporting evidence to the Public Interest Disclosure Coordinator for further action in accordance with the Act;
- take all necessary steps to ensure the information disclosed, including the identity of the discloser and any persons involved, is secured, remains private and confidential;
- impartially assess the allegation and consider whether it is a disclosure required to be notified to the IBAC for assessment under s.21 of the Act;
- offer to remain a support person for the discloser in dealing with the Public Interest Disclosure Coordinator; and
- where appropriate, and in accordance with section 14 of these procedures, undertake the role of Welfare Manager to support a discloser and to protect them from any detrimental action taken in reprisal for making a public interest disclosure.

The Public Interest Disclosure Officers, and their contact details are:

Chris Parham

General Manager Corporate

108 Madden Avenue, MILDURA VIC 3500

Phone: 5018 8160

Email: [chris.parham@mildura.vic.gov.au](mailto:chris.parham@mildura.vic.gov.au)

Charmaine Calis

Governance & Risk Coordinator

108 Madden Avenue, MILDURA VIC 3500

Phone: 5018 8103

Email: [charmaine.calis@mildura.vic.gov.au](mailto:charmaine.calis@mildura.vic.gov.au)

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

## 9. Public Interest Disclosure Coordinator

We have also appointed a Public Interest Disclosure Coordinator who has a central role in the internal reporting system and maintains oversight over the system.

The Public Interest Disclosure Coordinator:

- is contactable by external and internal persons making disclosures and has authority to make enquiries of officers within Council;
- receives all disclosures, forwarded from Council's Public Interest Disclosure Officers or other employees authorised to receive a public interest disclosure;
- is the contact point for general advice about the operation of the Act, and for integrity agencies such as the IBAC;
- is responsible for ensuring we carry out our responsibilities under the Act, any regulations made pursuant to the Act and any guidelines issued by the IBAC;
- is our chief liaison with the IBAC in regard to the Act;
- is responsible for coordinating our reporting system;
- takes all necessary steps to ensure information received or obtained in connection with a disclosure, including the identities of the discloser and the person(s) to whom the disclosure relates, are kept secured, private and confidential at all times;
- is required to consider each disclosure impartially to determine whether it should be notified to the IBAC for assessment under the Act;

- is responsible for arranging any necessary and appropriate welfare support for the discloser, including appointing a Welfare Manager to support the discloser and to protect them from any reprisals;
- where appropriate and in accordance with section 14 of these procedures, undertakes the role of the Welfare Manager to support the discloser and to protect them from any reprisals;
- advises the discloser, appropriately and in accordance with the Act, the progress of the disclosure and the stage reached at a given time (where it has been notified to the IBAC for assessment etc);
- is to establish and manage a confidential filing system;
- is to collate statistics on disclosures made; and
- is to liaise with the CEO of Council.

The Public Interest Disclosure Coordinator is:

Richard Sexton

Manager Corporate Administration

108 Madden Avenue, MILDURA VIC 3500

Phone: 5018 8189

Email: [richard.sexton@mildura.vic.gov.au](mailto:richard.sexton@mildura.vic.gov.au)

## 10. Confidentiality

The Act requires any person who receives information due to the handling or investigation of an assessable disclosure, not to disclose that information, except:

1. Where necessary for the purpose of the exercise of functions under the Act;
2. By an investigating entity, or an officer of an investigating entity, where necessary for the purpose of the exercise of functions under the Act, or part of the Act, under which the investigating entity, or the officer of the investigating entity, is authorised to investigate a public interest complaint; or
3. To 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.



## 10.1. Confidential electronic and paper filing

To prevent breaches of confidentiality requirements, and to minimise the possibility of detrimental action, we have established a secure electronic and paper filing system.

The system will ensure that:

- all paper and electronic files are secure and can only be accessed by authorised officers;
- all printed material is kept in files that are clearly marked as a public interest disclosure matter and include a prominent warning on the front of the file that criminal penalties apply to any unauthorised divulging of information concerning a public interest disclosure;
- any electronic files saved are password protected and have limitations on access rights;
- any other material, such as tapes from interviews, are stored securely with access only by authorised officers; and
- there is security of communication e.g. sensitive information or documents are not e-mailed or faxed to a machine which staff have general access.

## 10.2. Exemption from the Freedom of Information Act 1982 (FOI Act)

The FOI Act provides a general right of access for any person to seek documents in our possession.

However, the FOI Act provides that certain information related to public interest disclosures as contained in documents in our possession will be exempt from the application of the FOI Act.

Such information excluded from the operation of the FOI Act includes:

- any information relating to a disclosure made in accordance with the Act;
- any information relating to a disclosure notified to the IBAC by us under s.21 of the Act for assessment; and
- any information that is likely to lead to the identification of a discloser.

We are required to contact the IBAC prior to providing any document originating from the IBAC or relating to a public interest disclosure, if that document is sought under the FOI Act.

## 11. Making a Disclosure

### 11.1. What is a Public Interest Disclosure?

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

1. improper conduct of public bodies or public officers (such as corrupt conduct); and
2. detrimental action that a public officer or public body has taken against a person in reprisal for them (or another person) having made a public interest disclosure or cooperated with the investigation of a public interest 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.

The term disclosure is interpreted under the Act in the ordinary sense of the word, for example as a “revelation” to the person receiving it. The IBAC considers that a complaint or allegation that is already in the public domain will not normally be a public interest disclosure. Such material would, for example, include matters which have already been subject to media or other public commentary.

### 11.2. Who can make a disclosure?

Anyone can make a disclosure about improper conduct or detrimental action – both members of the public and employees of a public body. However, to fall within the scheme, disclosures must be made to an organisation that is authorised to receive disclosures.

Disclosures can be made by individuals or a group of people. A company or business cannot make a disclosure – but its officers or employees can.

### 11.3. Making a disclosure

To be assessed as public interest disclosure, a disclosure must meet the following criteria:

1. A natural person (that is, an individual person rather than a corporation) has made the disclosure;
2. The disclosure has been made verbally (in private) to either Councils Public Interest Disclosure Officer or Public Interest Disclosure Coordinator in writing;
3. The disclosure relates to conduct of Council or a public officer acting in their official capacity;
4. The alleged conduct is either improper conduct or detrimental action taken against a person in reprisal for making a public interest disclosure; or
5. The person making the disclosure has reasonable grounds for believing the alleged conduct has occurred.

If one or more of the above criteria has not been satisfied, the person has not made an assessable disclosure under Part 2 of the Act.

**The following are *not* public interest disclosures under the Act:**

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

If we receive any disclosures which do not meet all of the requirements of Part 2 of the Act or the prescribed procedures in the Regulations, we will not be required to consider whether it is a public interest disclosure under the Act.

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

## 11.4. What improper conduct includes

### **Corrupt conduct**

Conduct of a public officer of public body engaged in their capacity as a public officer or a public body that constitutes:

- a criminal offence;
- serious professional misconduct (see more information below on page 12);
- dishonest performance of public functions;
- an intentional or reckless breach of public trust;
- an intentional or reckless misuse of information or material acquired in the course of the performance of the functions of the public officer or public body;
- a substantial mismanagement of public resources;
- a substantial risk to health or safety of one or more person's
- a substantial risk to the environment.

Conduct of any person that:

- adversely affects the honest performance by a public officer of public body of their public functions;
- is intended to adversely affect the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body and results in the person, or an associate of the person, obtaining:
  - a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument;

- an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument;
- a financial benefit or real or personal property;
- any other direct or indirect monetary or proprietary gain, that the person or associate would not have otherwise obtained.

Conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referred to above.

### **Serious Professional Misconduct**

Serious professional misconduct is not defined in the Act, a way to think about it is where there is a serious failure to exhibit the skills and experience required to perform the responsibilities of the office, as well as a serious breach of professional conduct expected in the workplace.

To identify whether serious professional misconduct has occurred, we will consider if:

- the person has behaved in a way that is inconsistent with the expectations, skills and responsibilities of their office;
- the behaviour the person engaged in was in their capacity as a public officer;
- the misconduct was serious.

Factors we will consider when assessing whether misconduct is serious are:

- persistent, repeated or premeditated behaviour;
- risks posed to others or the consequences of the behaviour (including for the public officer and others)
- the level of public trust and responsibility attached to the public office;
- the amount of money involved in the wrongdoing;
- how the conduct is perceived by the person's peers;
- whether the conduct would result in significant disciplinary or potentially criminal penalties;
- the size of the discrepancy between what the person should have done and what they did;
- whether it should have been apparent to the person that they were wrong.

## 11.5. How a disclosure can be made

In accordance with the Act, and the IBAC Guidelines, a public interest disclosure can be made by any of the following ways:

<p><b>Private verbal disclosure</b></p>	<p>Disclosures can be made in person, by phone or by leaving a voice mail message.</p> <p>Verbal disclosures must be made in private. This means the person making the disclosure must reasonably believe that only the following people (other than themselves) are present or able to listen to the conversation:</p> <ul style="list-style-type: none"> <li>• a lawyer representing the person making the disclosure (if any)</li> <li>• one or more people to whom a disclosure can be made under the PID Act or PID Regulations.</li> </ul> <p>This does not preclude a group of individuals from making a joint disclosure.</p> <p>If the disclosure is made verbally, the person receiving the disclosure should make notes at the time. This person can also record the conversation, but should give prior warning that the conversation will be recorded. The conversation should not be recorded if the discloser objects.</p>
<p><b>Written disclosure</b></p>	<p>A written disclosure can be provided to the relevant organisation by:</p> <ul style="list-style-type: none"> <li>• delivering it in person to the office of the organisation</li> <li>• mailing it to the office of the organisation</li> <li>• emailing to the email address of the office of the organisation, or to the official email address of a person nominated to receive a disclosure in the organisation's procedures or in the PID Regulations</li> <li>• completing the online form available on the IBAC and the Victorian Ombudsman websites.</li> </ul> <p>A disclosure cannot be made by fax.</p>
<p><b>Anonymous disclosure</b></p>	<p>A person doesn't need to identify themselves to make a disclosure.</p> <p>An anonymous disclosure can be made by using unverifiable email addresses, through anonymous phone calls, or in a face-to-face conversation or meeting where the person refuses to identify themselves (provided the meeting or conversation takes place in private in accordance with the PID Regulations).</p> <p>If the disclosure comes from an email address where the identity of the person making the disclosure cannot be determined, the disclosure should be treated as an anonymous disclosure.</p>

### **Who can a disclosure be made to?**

A person must make a disclosure to the appropriate person or body for that disclosure to be assessed as a public interest disclosure under the Act.

A disclosure must be made to the public body that the complaint relates to, or to the IBAC.

We can only receive disclosures that relate to the conduct of:

1. Our own officers or employees; or
2. A person/s whose actions relate to our own officers or employees

**Important note: where a person seeks to make a disclosure about a Councillor, that disclosure must be made to the IBAC, we are not able to receive public interest disclosures that relate to the conduct of our Councillors.**

### **Not necessary to identify person or body which the public interest disclosure relates**

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

### **Misdirected disclosures**

If we receive a disclosure about an employee, officer or member of another public body, we will advise the person making the disclosure of the correct person or body to whom the disclosure must be made.

### **Can a discloser ask their complaint not be dealt with as a public interest disclosure?**

A discloser can advise they do not want the disclosure treated as a public interest disclosure by stating so in writing at the time of making the disclosure or within 28 days of making the disclosure.

## **11.6. Protections for Public Officers**

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

## 11.7. How to make a disclosure to the Mildura Rural City Council

### Oral disclosures

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

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

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

- Council's CEO;
- one of the Public Interest Disclosure Officers identified in section 8 of these procedures;
- the Public Interest Disclosure Coordinator identified in section 9 of these procedures;
- the direct or indirect supervisor of the discloser, if the discloser is an employee of Council;
- the direct or indirect supervisor of the person to whom the disclosure relates, if that person is an employee of Council.

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

### Written disclosures

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

- delivered personally to one of our offices, located at 108 Madden Avenue, Mildura; 76 Deakin Avenue, Mildura; or 79 Oke Street, Ouyen; or
- sent by post to PO Box 105 MILDURA VIC 3502 – clearly labelled **Public Interest Disclosure**
- sent by email to the Public Interest Disclosure Officer or Coordinator clearly titled **Public Interest Disclosure**; or
- sent by email to the official email address of one of the following:
  - the direct or indirect supervisor of the discloser, if the discloser is an employee of Council;
  - the direct or indirect supervisor of the person to whom the disclosure relates, where that person is an employee of Council.

## 11.8. Receiving a disclosure

Disclosures must be received by one of the following positions:

1. Public Interest Disclosure Coordinator; or
2. Public Interest Disclosure Officer.

The Public Interest Disclosure Coordinator or Officer will determine whether the disclosure has been made to the right body and then whether the matter falls under the Act.

The Act provides that a disclosure made by a person who is a member, officer or employee of Council may be made to a direct or indirect manager or supervisor of that person, or the person the subject of the disclosure. The Chief Executive Officer is also able to receive Public Interest Disclosures.

A disclosure received by a direct or indirect manager, or the Chief Executive Officer will be referred to the Public Interest Disclosure Coordinator or Officer for further action.

There may be situations where we receive an allegation of improper conduct or detrimental action, however the person making the allegation has not referred to the Act, if an allegation raises issues that may fall within the provision of the Act, the allegation will be assessed in terms of the Act.

## 11.9. Assessing a disclosure

Where we receive information relating to the conduct of our organisation, employee or contractor, we will assess whether the disclosure meets the criteria of the Act to be a public interest disclosure.

For an allegation or a report to be considered a public interest disclosure, it must tend to show improper conduct or detrimental action. When assessing allegations of improper conduct, we need to identify there is a link between the conduct and the official function of a public officer or public body.

Where it is determined the disclosure falls under the Act, the following will apply:

1. We will establish contact with the person making the disclosure (if that person has provided their identity and details);
2. We will advise the Chief Executive Officer of the disclosure, if they have not received the disclosure;
3. We will establish a confidential file relating to the disclosure;
4. We will advise the IBAC of the disclosure **within 28 days** of receiving the disclosure;
5. We will advise the person making the disclosure **within 28 days** of notifying the IBAC.

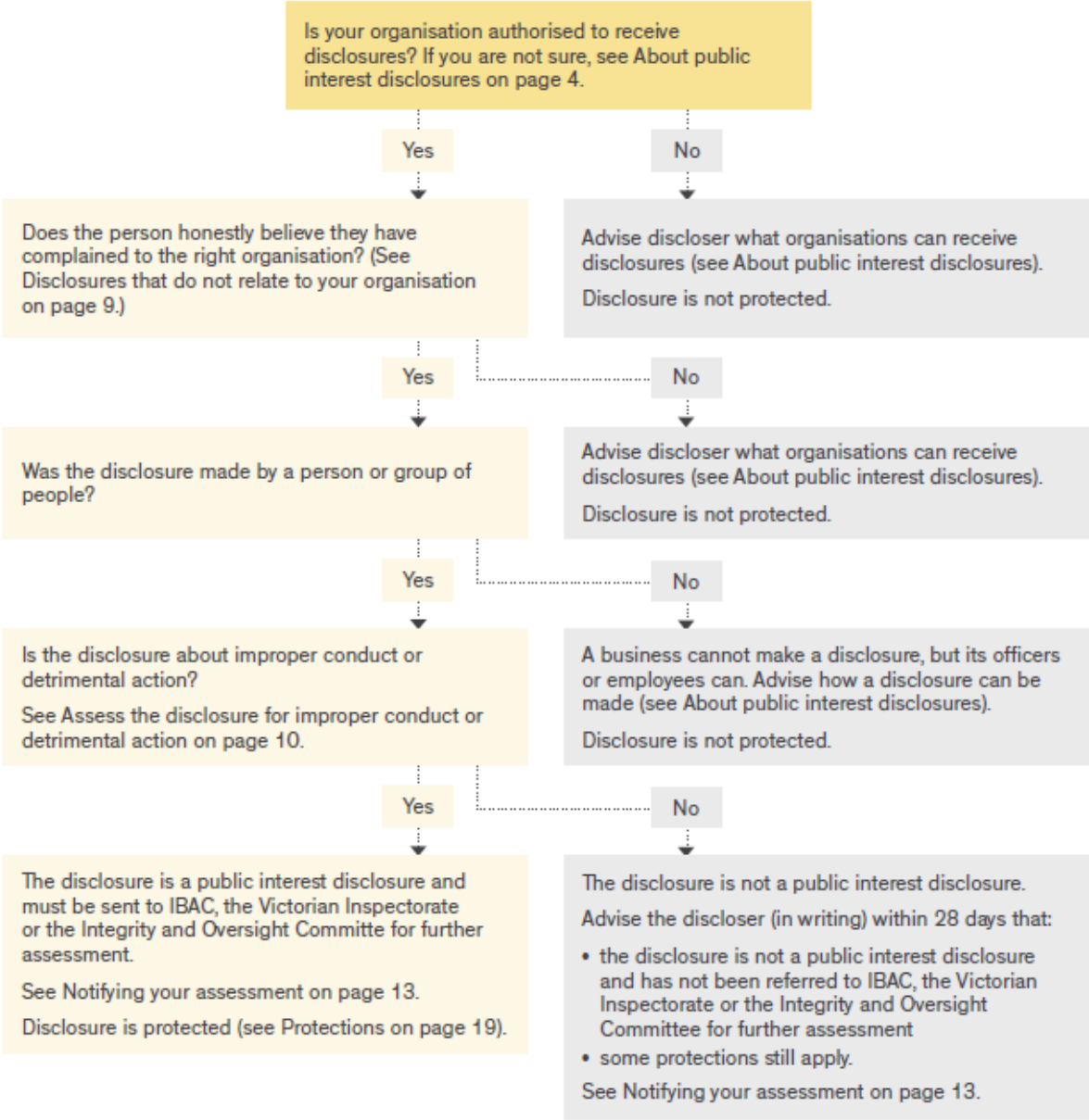
Where we determine the disclosure is not an assessable disclosure under the Act, we will advise the person making the disclosure and either:

1. Refer the discloser to the IBAC; or
2. Advise the discloser that the matter will be addressed by Council through its complaints process.



**Important note: once a disclosure has been notified to the IBAC, and that information has been assessed as a Public Interest Disclosure, the disclosure cannot be withdrawn.**

The following flowchart has been sourced from the Guidelines published by the IBAC.



## 11.10. Assessment by the IBAC

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

The IBAC will inform us of their determination as to whether or not the disclosure is a public interest disclosure complaint.

In making their assessment, the IBAC may seek additional information from us or from the discloser if they consider there is insufficient information to make a decision.

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

## 12. Urgent action while a disclosure is being assessed

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.

We will take immediate action while considering whether or not it is a disclosure that must be notified to the IBAC.

We can also take immediate action 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.

## 13. What is detrimental action?

It is an offence for a person to take, threaten to take or allow another person to take detrimental action against another person in reprisal for making a public interest disclosure.

Detrimental action includes:

- Action causing injury, loss or damage;
- Intimidation or harassment; or
- Discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action.

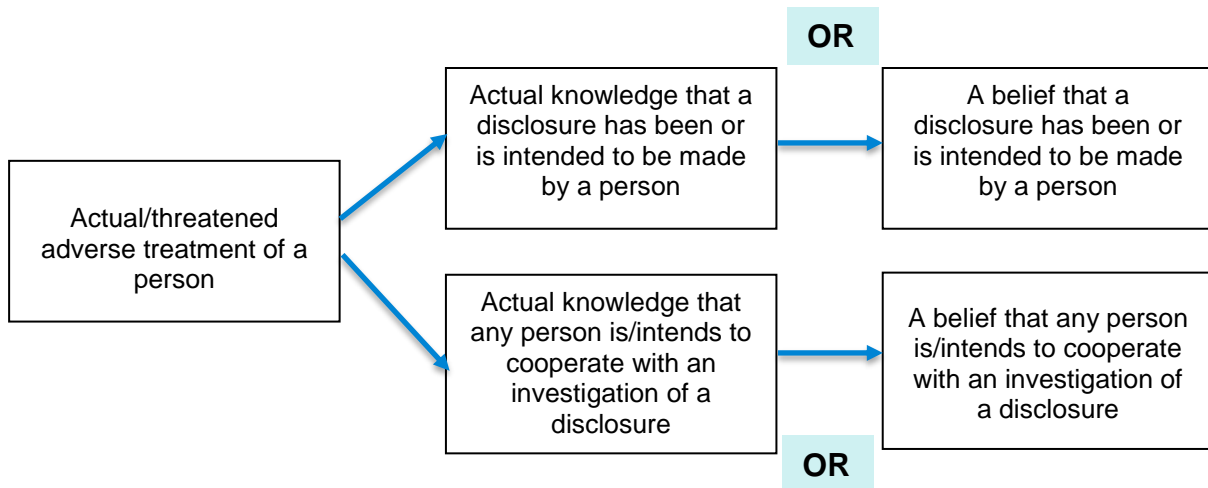
A person doesn't need to have actually taken the detrimental action, but can have threatened to do so, or incited or permitted someone else to do so.

The Act does not prevent the taking of management action against a person who had made a disclosure, provided the making of the disclosure is not the reason for the management action being taken.

## 14. Protections

The Act creates an offence for a person to take detrimental action against a person who has made a public interest disclosure.

### Essential elements of detrimental action



### Examples of detrimental action

- A public body demotes, transfers, isolates in the workplace or changes the duties of a person making a disclosure due to the making of a disclosure.
- A person threatens, abuses or carries out other forms of harassment directly or indirectly against the person making a disclosure, or to their family or associates.
- A public body discriminates against the person making a disclosure or their family and associates in subsequent applications for jobs, permits or tenders.

**Important note: from 1 January 2020 there is a lower threshold for proving that detrimental action has taken place. If the fact that an employee has made a disclosure forms *any part* of the reason for which action is taken against that employee, it will constitute detrimental action and be reportable as a public interest disclosure under the scheme as well as being a criminal offence.**

### Protection from reprisals

We are required to establish procedures for the protection of a person making a disclosure from reprisal for making a public interest disclosure.

Preserving the confidentiality of their identity will assist in minimising the risk of reprisals.

Persons making disclosures will be advised that it is in their own interests to keep disclosures confidential, by only discussing related matters with authorised persons within Council.

The Public Interest Disclosure Coordinator and Officers are responsible for ensuring persons making a public interest disclosure are protected from direct and indirect detrimental action, and the culture of our workplace is supportive of public interest disclosures being made.

A person making a public interest disclosure may be employed by us or may be a member of the public.

We are obligated to protect both internal and external persons making public interest disclosures from detrimental action taken in reprisal for making of the disclosure.

The management of both types of persons making public interest disclosures will, however, be different.

### **Welfare of a person making a public interest disclosure**

A Welfare Manager will be appointed to the person who has made the disclosure, where a public interest disclosure proceeds to an investigation.

### **Disclosure made by a Council employee**

Internal persons making public interest disclosures are at risk of suffering reprisals in the workplace.

The Welfare Manager will foster a supportive work environment and respond to any reports of intimidation or harassment against the person making the disclosure.

### **Employee may request transfer of employment**

An employee who has made a public interest disclosure and believes on reasonable grounds that detrimental action will be, is being, or has been taken against them, may request a transfer of employment.

### **Disclosure made by a member of the public**

We will appoint a Welfare Manager for an external person making a public interest disclosure to protect them against reprisals.

## **Support**

The Welfare Manager will provide reasonable support to a person making a disclosure. The Welfare Manager will discuss the issue of reasonable expectations with the person making a public interest disclosure.

The level of support provided to the person will require the written approval of the CEO and will be documented and agreed by both parties. A copy of the agreement will be provided to the person and kept in Councils secure filing system.

The Welfare Manager will:

- examine the immediate welfare and protection needs of a person making a public interest disclosure and seek to foster a supportive work environment;
- advise the person making a public interest disclosure of the legislative and administrative protections available to them;
- listen and respond to any concerns of harassment, intimidation, or victimisation in reprisal for making a disclosure;
- keep contemporaneous records of all aspects of the case management of the person making the public interest disclosure, including all contact and follow up action; and
- endeavour to ensure the expectations of the person making the public interest disclosure are realistic.

The Welfare Manager will not divulge any detail relating to the disclosed matter to any person other than the Public Interest Disclosure Coordinator, the investigator or the Chief Executive Officer.

All meetings between the Welfare Manager and the person making a public interest disclosure will be conducted discreetly to protect the confidentiality of the person making a public interest disclosure.

## **Occurrence of detrimental action**

If a person making a public interest disclosure reports an incident of harassment, discrimination or adverse treatment that would amount to detrimental action apparently taken in reprisal for the making of the disclosure, the Welfare Manager, or the Public Interest Disclosure Coordinator will:

- record details of the incident; and
- advise the person making the disclosure of their rights under the Act

The Public Interest Disclosure Coordinator will:

- inform the Chief Executive Officer; and
- inform the IBAC where the detrimental action is of a serious nature and likely to amount to a criminal offence.

Where detrimental action is reported, the allegation will be assessed as a new disclosure under the Act.

We will be extremely cautious about conducting enquiries or gathering information concerning an allegation of detrimental action, as a criminal offence may have been committed and any informal investigation may compromise the integrity of evidence.

### **Limits on protections**

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

- knowingly provides false or misleading information; or
- 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.

## **15. Management of the person which the disclosure is made**

### **Natural justice**

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

Persons who are the subject of a disclosure may 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.

We will only release this information after consulting with the IBAC.

### **Confidentiality**

We will ensure that confidentiality of the identity of the person against whom a disclosure has been made.

### **Protection against reprisal**

The Public Interest Disclosure Coordinator and Officers take responsibility for ensuring a person against whom a public interest disclosure has been made, is protected from direct or indirect detrimental action.

A Welfare Manager will be assigned to monitor the welfare of the person against whom a disclosure has been made.

The Welfare Manager will not divulge any details relating to the disclosed matter to any person other than the Public Interest Disclosure Coordinator, the investigator or the Chief Executive Officer.

All meetings between the Welfare Manager and the person who is the subject of a public interest disclosure will be conducted discreetly to protect the confidentiality of that person.

### **If the allegations are wrong or unsubstantiated**

We will give our full support to a person who is the subject of a disclosure where the allegations contained in a disclosure are wrong or unsubstantiated. In those circumstances, we and any investigative entity involved will ensure there are no adverse consequences for the person arising out of the disclosure or its investigation. This is particularly crucial in a situation where there has been publicly disclosed information identifying the subject, but also where such information has become well-known across Council and the subject is an employee.

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

## 16. Collating and Publishing Statistics

Council will, through the Public Interest Disclosure Coordinator, respond to any requests for statistical information from the IBAC relating to the number and type of disclosures received.

In addition, Council will, as required by the *Local Government Act 2020* disclose statistical information in Councils Annual Report which is publically available.

## 17. Training for all staff

We are committed to the aims and objectives of the Act, and support a workplace where disclosures are made that may reveal improper conduct or detrimental action. We are also committed to ensure our staff are fully aware of the obligations and protections available to them under the Act.

We will:

- ensure that Councillors, employees and contractors have access to a copy of these procedures in hard or soft copy;
- incorporate into our induction procedure training about our general obligations under the Act and the rights and obligations of all Councillors, employees and contractors;
- introduce periodic refresher courses for Councillors, employees and contractors about their rights and obligations under the Act;
- provide additional training and assistance to:
  - any members of Council with specific responsibilities and functions to handle and manage public interest disclosures under the Act, including the Public Interest Disclosure Coordinator and people involved in welfare management;
  - our complaint handling staff to ensure that any complaints received will be dealt with consistently and in accordance with the Act as required;
  - any staff with functions and duties under the 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 staff of the IBAC or other investigative agencies where required in response to a request for access under the FOI Act; and
  - all 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.

## 18. About the IBAC

The IBAC is Victoria's anti-corruption agency, responsible for preventing and exposing public sector corruption and police misconduct. They do this by:

- Investigating 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.

## **19. Review of Procedures**

These procedures will be reviewed annually or upon significant change to the Act, the Regulations or the IBAC's guidelines to ensure they comply with the requirements of the Act, the Regulations and the IBAC's guidelines.



## 20. Definition of key terms

Act	<i>Public Interest Disclosure Act 2012</i>
Assessable disclosure	Any disclosure either made directly to the IBAC or the VI, or if received by Council is required under s.21 of the Act to be notified by Council to the IBAC for assessment
Council	The Mildura Rural City Council
Contractor	Persons who are performing a public function on behalf of Council under a contract
Corrupt Conduct	As outlined in section 11.4 of these procedures
Councillor	Being a Councillor elected to the Mildura Rural City Council
Detrimental action	As outlined in section 13 of these procedures
Discloser	A person who (purports to) make(s) a complaint, allegation or disclosure (however described) under the Act
Disclosure	Any complaint, concern, matter, allegation or disclosure (however described) purported to be made in accordance with Part 2 of the Act
Guidelines	The Guidelines published by the IBAC under s.57 of the Act as at January 2020, copies of which may be downloaded from <a href="https://www.ibac.vic.gov.au/docs/default-source/guidelines/guidelines-for-handling-public-interest-disclosures.pdf?sfvrsn=eb8b6875_14">https://www.ibac.vic.gov.au/docs/default-source/guidelines/guidelines-for-handling-public-interest-disclosures.pdf?sfvrsn=eb8b6875_14</a> (last accessed April 2020)
IBAC	The Independent Broad-based Anti-corruption Commission
IBAC Act	<i>Independent Broad-based Anti-corruption Commission Act 2011</i>
Improper Conduct	As outlined in section 11.4 of these procedures
Investigative entity	An one of the four bodies authorised to investigate a Public Interest Disclosure complaint, being the IBAC, the Victorian Ombudsman, the Chief Commissioner of Police and the Victorian Inspectorate
Procedures	This version of the procedures of the Mildura Rural City Council, as established under s.58 of the Act
Public Interest Complaint	A public interest complaint that has been determined by an investigative entity to be a public interest complaint (previously a protected disclosure complaint)
Public Interest Disclosure (PID)	As outlined in section 11.1 of these procedures Public Interest Disclosures were previously known as Protected Disclosures
Public Interest Disclosure Complaint	Means a disclosure that has been determined to be a public interest complaint
Regulations	Public Interest Disclosure Regulations 2013