

PUBLIC INTEREST DISCLOSURE PROCEDURES

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MITCHELL SHIRE COUNCIL



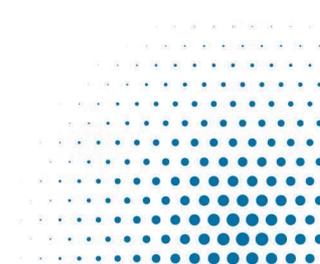
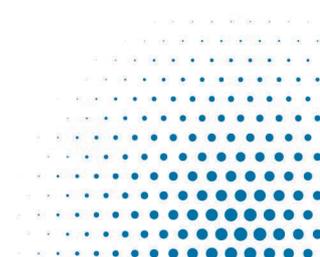
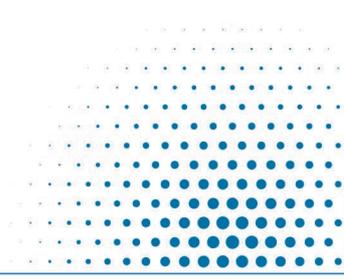


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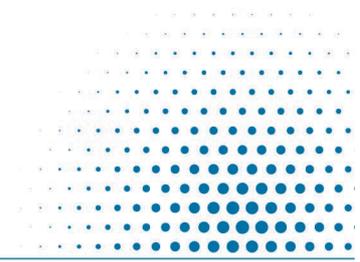
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DEFINITIONS

The following abbreviations and key terms are used in these procedures:

Key term/abbreviation	Definition
Act	<i>Public Interest Disclosure Act 2012 (formerly known as the Protected Disclosure Act 2012, changes effective 1 January 2020)</i>
Assessable Disclosure	Any disclosure either made directly to the IBAC or the VI, or if received by Mitchell Shire Council is required under section 21 of the Act to be notified by the Council to the IBAC for assessment
Council	Mitchell Shire Council
Detrimental Action	As defined in section 3 of the <i>Public Interest Disclosures Act 2012</i> .
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 IBAC under Section 57 of the Act as at January 2020, copies of which may be downloaded from https://www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-making-and-handling-protected-disclosures
IBAC Act	<i>Independent Broad-based Anti-corruption Commission Act 2011</i>
IBAC	Independent Broad-based Anti-corruption Commission
Improper Conduct	As defined in section 4 of the <i>Public Interest Disclosures Act 2012</i>
Investigative Entity	Any one of the bodies authorised to investigate a Public Interest Disclosure complaint, being the IBAC, the Victorian Ombudsman, the Chief Commissioner of Police, Judicial Commission of Victoria, Chief Municipal Inspector, the Information Commissioner or the Racing Integrity Commissioner
Natural Person	A human being, not a legal entity like a corporate body
Procedures	This version of the procedures of Mitchell Shire Council, as established under Section 58 of the Act
Public Interest Discloser	A person who makes a disclosure of improper conduct or detrimental action in accordance with the requirements of Part 2 of the Act
Public Interest Disclosure (PID)	Disclosure by a natural person of information that shows / tends to show or information that the person reasonably believes shows / tends to show improper conduct or detrimental action (previously a protected disclosure)
Public Interest Disclosure Complaint (PIC)	A public interest disclosure that has been determined by IBAC, the Victorian Inspectorate or IOC to be a Public Interest Complaint (previously a protected disclosure complaint)
Regulations	<i>Public Interest Disclosure Regulations 2013</i>
Serious Professional Misconduct	Conduct that constitutes a serious breach of an established professional code of conduct and/or other serious departures from the person's professional responsibilities
VI	Victorian Inspectorate



1. ABOUT THESE PROCEDURES

Mitchell Shire Council, as a public body/agency, plays a critical role in implementing the public interest disclosure regime. The Council is required to ensure these procedures are readily available to members of the public as well as internally to all councillors, and employees, of the Council.

These procedures are a resource for disclosers and potential disclosers, whether an internal Council member, employee or an external member of the public (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 will be managed and handled by the Council

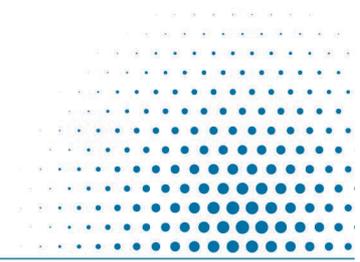
These procedures cover:

- what constitutes a public interest disclosure
- how disclosures may be made to the Council
- how the Council manages the receipt of disclosures
- how the Council assesses disclosures it is able to receive under the Act
- notifications the Council is required to make about disclosures, to both disclosers and to IBAC
- how external disclosures are managed
- how misdirected disclosures are managed
- management of a disclosures welfare
- how the Council protects certain people, including from detrimental action being taken against them in reprisal for making a public interest disclosure, namely:
 - protected disclosers
 - persons who are the subject of public interest disclosures and public interest disclosure complaints
 - other persons connected to public interest disclosures, such as witnesses; or persons cooperating with an investigation.

These procedures form an essential part of the Council's commitment to the aims and objectives of the Act. Mitchell Shire Council does not tolerate improper conduct by the organisation, it's employees, councillors, or persons performing a public function on behalf of the Council under contract (contractors) nor the taking of detrimental action in reprisals against persons who come forward to disclose such conduct.

Council recognises the value of transparency and accountability in it's 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 improper 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.



2. ABOUT THE ACT

The *Public Interest Disclosure Act 2012* came into effect on 1 January 2020.

The purpose of the Act is to encourage and facilitate the making of disclosures of improper conduct and detrimental action by public officers and public bodies. It does so by providing certain protections for people who make a disclosure, or those who may suffer detrimental action in reprisal for making a disclosure. An essential component 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.

Public interest disclosures may be made about any of the public officers or bodies as defined in Section 3 of the Act. They include (specific to local government):

- Councils established under the *Local Government Act 2020*
- A body performing a public function on behalf of the State, a public body or a public officer
- Employees and members of public bodies including those set out above
- Councillors

However, a public interest disclosure cannot be made about:

- a Public Interest Monitor
- the VI or officers of the VI; or
- the conduct or actions of a Court

3. WHAT CONSTITUTES A PUBLIC DISCLOSURE

A disclosure may be made about Improper Conduct or Detrimental Action.

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 and meet the following requirements:

A public interest disclosure is a disclosure by a natural person of:

- information that shows or tends to show or
- information that the person reasonably believes shows or tends to show:

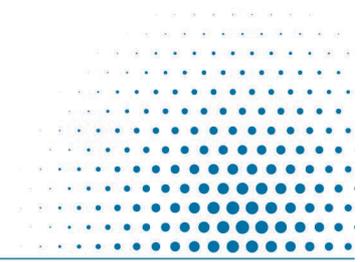
a person, public officer or public body has engaged, is engaging or proposes to engage in **improper conduct**;

OR

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

Central to the notion of improper conduct is the notion of the 'public trust'.

'Public trust' is a concept that provides the basis 'for obligations of honesty and fidelity



in public officers that exist to serve, protect and advance the interests of the public'.

A person acting in their official capacity is exercising 'public power' that is derived from their public office holding and may be controlled or influenced by legislative provisions, administrative directions, or constitutional principles or conventions. There is an expectation that members of the community may rely on and trust their public bodies and officials to act honestly. The expectation is that public officers will not use their positions for personal advantage or use the influence of their public office for improper purposes where there is a duty to act objectively and impartially.

Disclosers or the Council will need to identify that there is a link between the alleged improper conduct of a person or an organisation and their function as a public officer or a public body.

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

Disclosures may also be made about conduct that occurred prior to the commencement of the Act on 10 February 2013.

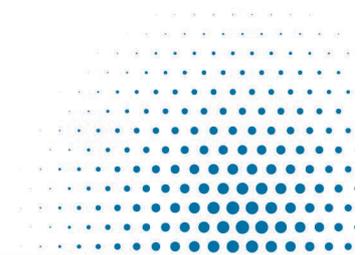
3.1 Improper conduct

Improper conduct is defined in the Act to mean either corrupt conduct or specified conduct (both terms are also defined by the Act and the IBAC Act).

- Corrupt conduct (see below) and/or
- a criminal offence
- serious professional misconduct
- 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 persons

Conduct of any person that:

- adversely affects the honest performance by a public officer or 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 license, 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.

3.1.1 Corrupt Conduct

Corrupt conduct means any one of the following:

- conduct 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
- conduct 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
- conduct of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust
- conduct 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
- conduct that could constitute a conspiracy or an attempt to engage in any of the conduct referred to above; and

if that conduct could be proved beyond reasonable doubt at a trial amounts to:

- an indictable offence; or
- one of the following three types of common law offences committed in Victoria:
 - perverting the course of justice
 - attempting to pervert the course of justice
 - bribery of an official

3.1.2 Specified Conduct

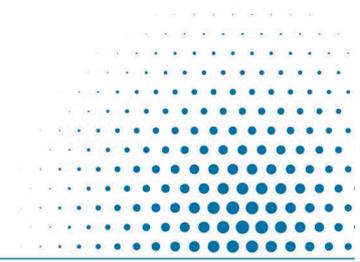
Specified conduct is any one of the above types of conduct, **or** conduct that involves substantial mismanagement of public resources, risk to public health or safety, or risk to the environment, which **would not** constitute 'corrupt conduct' but would nevertheless, if proved, constitute either:

- a criminal offence; or
- reasonable grounds for dismissing or terminating the employment of the officer who engaged or is engaging in that conduct

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

3.2 Detrimental action includes:

- action causing injury, loss or damage
- intimidation or harassment; and
- discrimination, disadvantage or adverse treatment in relation to a person's



employment, career, profession, trade or business, including the taking of disciplinary action

In addition, a person can have taken detrimental action without having taken the action itself, but just by threatening to take such action. Further, the detrimental action need not necessarily have been taken (or threatened to be taken) against a person making a public interest disclosure, but against any person connected with a public interest disclosure.

Examples of detrimental action prohibited by the Act include:

- threats to a person's personal safety or property, including intimidating, harassing a discloser or the discloser's family or friends, otherwise causing personal injury or prejudice to the safety or damaging property of a discloser or the discloser's family or friends
- the demotion, transfer, isolation or change in duties of a discloser due to him or her having made a disclosure
- discriminating or disadvantaging a person in their career, profession, employment, trade or business; or
- discriminating against the discloser or the discloser's family and associates in subsequent applications for promotions, jobs, permits or tenders resulting in financial loss or reputational damage

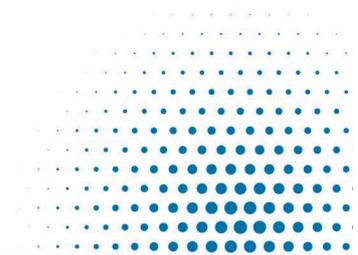
3.2.1 Taken in reprisal for a Public Interest Disclosure

The person (or the person incited to take detrimental action) must take or threaten the detrimental action, because, or in the belief that the:

- other person or anyone else has made, or intends to make, the disclosure
- other person or anyone else has cooperated, or intends to cooperate, with an investigation of the disclosure

NOTE:

- 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 reason for the person taking detrimental action in reprisal must be a 'substantial' reason for taking that action, or it will not be considered to be detrimental action.
- If the conduct is trivial, it will not meet the threshold of improper conduct.
- When allegations of improper conduct are assessed, a link between the conduct and the official function of a public officer or public body will need to be identified.
- 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.



4. HOW TO MAKE PUBLIC INTEREST DISCLOSURE

A disclosure must be made in accordance with Part 2 of the Act and may:

- only be made by a natural person (or a group of individuals making joint disclosures), as disclosures cannot be made by a company or an organisation
- be made even where the discloser is unable to identify precisely the individual or the organisation to which the disclosure relates; and
- also be a complaint, notification or disclosure (however described) made under another law
- be made anonymously*

Part 2 of the Act and the Regulations set out how disclosures must be made in order to be a public interest disclosure under the Act.

Generally, a **verbal disclosure** may be made:

- in person
- by telephone
- by any other form of non-written electronic communication

A disclosure **must** be made in private. For a verbal disclosure, this means the discloser must reasonably believe that only the following people are present or able to listen to the conversation:

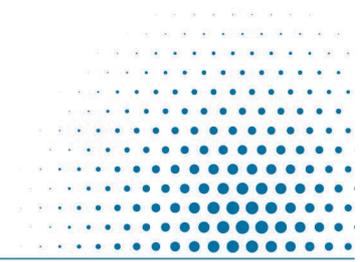
- the discloser him or herself (including any other individuals making a joint disclosure at the same time)
- any lawyer representing the discloser; and
- one or more people to whom a disclosure is permitted to be made under the Act or the Regulations

A **written disclosure** can be made via:

- a letter
- an email - A disclosure made by email from an address from which the identity of the discloser cannot be ascertained will be treated as an anonymous disclosure*.
- an online form where available (see disclosures to IBAC and the Victorian Ombudsman section for more information on forms)

Disclosures cannot be made by fax.

*Although this may create difficulties in the Council being able to communicate with the discloser, and some of the notification requirements imposed on the Council in relation to disclosures will not apply in relation to an anonymously made disclosure. In addition, it may impede the Council's ability to properly assess whether the complaint or allegation is a public interest disclosure for the purposes of the Act.



NOTE:

Some of the protections set out in the Act protecting a protected discloser are available only to the person who makes a disclosure. IBAC has pointed out that the consequence of this is, if a person makes a disclosure by 'notifying' the agency on behalf of another individual, then it is the 'notifier' who may receive those protections, and not the person on whose behalf they have made the disclosure. The person on whose behalf the disclosure has been made will only be entitled to protections against detrimental action taken against them in reprisal for the disclosure made by the notifier

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 his or her duties or functions under the 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

NOTE:

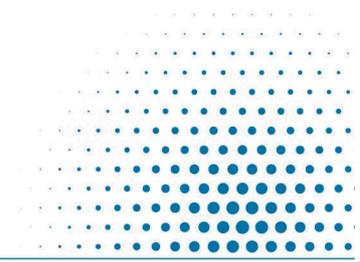
If Mitchell Shire Council receives any disclosures which do not meet all of the requirements of Part 2 of the Act or the prescribed procedures in the Regulations, Mitchell Shire Council will not be required to consider whether it is a public interest disclosure under the Act.

However, Council will always consider whether it would be appropriate to inform the discloser how to make the disclosure in a way that would comply with the requirements of the Act and the Regulations in order to ensure that persons are properly afforded the opportunity to receive any appropriate protections available to them under the Act.

In addition, Mitchell Shire Council is 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 the Council in accordance with any other laws or internal policies and procedures.

If a person does not wish their allegation or complaint to be treated as a disclosure made under Part 2 of the Act the person must, at the time of making the disclosure, expressly state in writing that the disclosure is not a disclosure for the purposes of the Act.

Unless such an express statement has been made, upon receiving a disclosure (whether directly or indirectly), Mitchell Shire Council's Public Interest Disclosure Coordinator will determine whether the disclosure has been made in accordance with Part 2 of the Act.



5. WHO CAN RECEIVE A DISCLOSURE

Part 2 of the Act requires disclosures are made to a body authorised under the Act to receive the disclosure.

NOTE:

- Disclosures about improper conduct or detrimental action by Mitchell Shire Council or its employees, contractors or officers may be made to Mitchell Shire Council or to an authorised external authority.
- Mitchell Shire Council can only deal with disclosures which concern Mitchell Shire Council, its employees, contractors or officers.
- Disclosures about improper conduct or detrimental action by Mitchell Shire Council's councillors must be made to IBAC or to the Ombudsman. Those disclosures may not be made to the Council. Contact details are provided in **section 7** of this procedure.

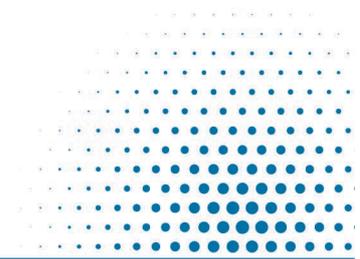
For a comprehensive list of Authorised Organisations including what type of disclosures can be made and to which body refer to **Appendix 1**.

6. HOW TO MAKE A DISCLOSURE TO MITCHELL SHIRE COUNCIL

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

Mitchell Shire Council will:

- ensure these procedures, including detailed information about how disclosures may be made and to whom, are accessible on its website and available internally and externally to employees, contractors and councillors and any individual in the broader community
- ensure that appropriate training is provided at 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 employees, contractors and councillors are familiar with the Council's public interest disclosure policies, procedures and any relevant codes of conduct
- ensure its 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 other action against any employees, contractors and councillors engaged in the taking of detrimental action
- ensure any employees involved with handling public interest disclosures are trained to receive and manage public interest disclosures appropriately
- ensure that the Council as a whole handles public interest disclosures consistently and appropriately in accordance with its 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

6.1 Making a disclosure

Disclosures should be made in either of the following ways:

Verbal disclosures

A verbal disclosure to Mitchell Shire Council must be made in private and be made:

- in person
- by telephone to one of the persons authorised to receive disclosures set out below; or
- by some other form of non-written electronic communication

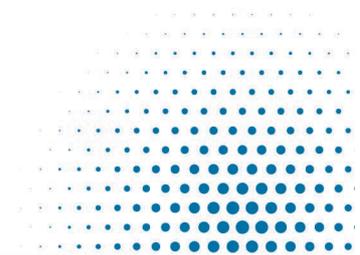
The verbal disclosure must be made to one of the following persons:

- the CEO of Mitchell Shire Council
- the Public Interest Disclosure Coordinator identified in these procedures
- one of the Public Interest Disclosure Officers identified in these procedures
- to the direct or indirect manager of the discloser, if the discloser is an employee of Mitchell Shire Council; or
- to the direct or indirect manager of the person to whom the disclosure relates, if that person is an employee of Mitchell Shire Council

Written disclosures

A written disclosure to Mitchell Shire Council must be:

- delivered personally to the office of Mitchell Shire Council at 113 High Street, Broadford; or
- sent by email to the official email address of:
- the direct or indirect supervisor or manager of the discloser, if the discloser is an employee of Mitchell Shire Council
- the direct or indirect supervisor or manager of the person to whom the disclosure relates, where that person is an employee of Mitchell Shire Council



- the Public Interest Disclosure Coordinator specified these procedures; or
- a Public Interest Disclosure Officer identified in these procedures

The written disclosure should be:

- sealed in an envelope which is clearly marked with one or more of the following:
 - 'Re: Public Interest Disclosure'
 - 'PRIVATE & CONFIDENTIAL'
 - 'To the personal attention of the Public Interest Disclosure Coordinator'; or
 - 'To the attention of the Public Interest Disclosure Officer'

If provided by email:

- The Mitchell Shire Council email address of a person specified below to whom a disclosure may be made.
- official email address of the Council rather than to the official email address of one of the individuals specified above,
- the Council recommends that the discloser insert in the email subject line one of the labels set out above applicable to personally delivered or posted items.

6.2 Public Interest Disclosure Coordinator

Mitchell Shire Council's Public Interest Disclosure Coordinator has a central role in the internal reporting system and maintains oversight over it.

The Public Interest Disclosure Coordinator appointed by Mitchell Shire Council and his contact details:

Mr. Laurie Ellis - Director Governance and Corporate Performance

113 High Street, Broadford 3658

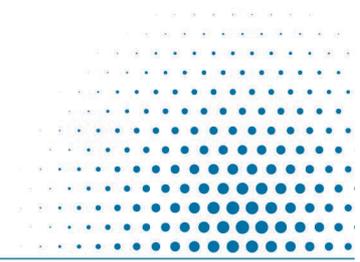
T: 5734 6250

M: 0411 041 606

E: laurie.ellis@mitchellshire.vic.gov.au

The Public Interest Disclosure Coordinator is:

- contactable by external and internal persons making disclosures and has the authority to make enquiries of officers within the Council
- to receive all disclosures forwarded from Mitchell Shire Council's Public Interest Disclosure Officers
- the contact point for general advice about the operation of the Act and for integrity agencies such as IBAC
- responsible for ensuring that Mitchell Shire Council carries out its responsibilities under the Act, any regulations made pursuant to the Act and any Guidelines issued by IBAC
- Mitchell Shire Council's chief liaison with IBAC in regard to the Act



- responsible for coordinating Mitchell Shire Council's reporting system
- to take 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
- required to consider each disclosure impartially to determine whether it should be notified to IBAC for assessment under the Act
- responsible for arranging any necessary and appropriate welfare support for the discloser, including appointing a Welfare Manager to support the discloser and to protect him or her from any reprisals
- to advise the discloser, appropriately and in accordance with the Act, the stage at which the disclosure is at (whether it has been notified to IBAC for assessment, etc.)
- to establish and manage a confidential filing system
- to collate statistics on disclosures made; and
- to liaise with the Chief Executive Officer (CEO) of the Council

6.3 Public Interest Disclosure Officers

Mitchell Shire Council has appointed two 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. Public Interest Disclosure Officers are available to receive disclosures made internally within the Council or from external sources. For internal employees, they provide a confidential avenue of advice about the Act where employees wish to raise a concern about their line managers, colleagues or supervisors.

Public Interest Disclosure Officers appointed by Mitchell Shire Council and their contact details are shown below:

Ana Fraser - Manager People & Culture

113 High Street, Broadford 3658

T: 5734 6336

E: ana.fraser@mitchellshire.vic.gov.au

Lidia Harding - Manager Governance and Corporate Accountability

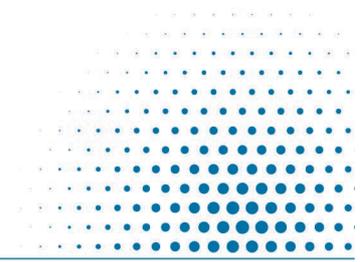
113 High Street, Broadford 3658

T: 5734 6252

E: lidia.harding@mitchellshire.vic.gov.au

Public Interest Disclosure Officers 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 internal or external 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, and remains private and confidential
- impartially assess the allegation and consider whether it is a disclosure required to be notified to IBAC for assessment; and
- offer to remain a support person for the discloser in dealing with the Public Interest Disclosure Coordinator

6.4 Employees, Contractors and Councillors

Employees, contractors and councillors are encouraged to raise matters of concern in relation to Mitchell Shire Council including about any employee, contractors or councillors. In particular, employees, contractors 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 will take place, or is still occurring.

All employees, contractors and councillors of Mitchell Shire Council 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.

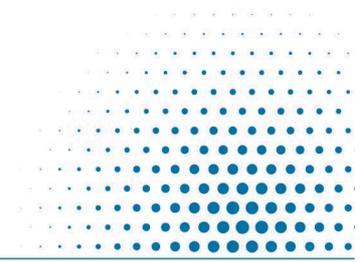
6.5 Direct and indirect Supervisors and Managers

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 Mitchell Shire 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 the Public Interest Disclosure Coordinator for further action in accordance with the Act
- commit to writing down any disclosures made orally; and
- 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



7. MAKING A DISCLOSURE TO OTHER AUTHORISED BODY

7.1 How to make a disclosure to IBAC

Verbal disclosures

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

- in person
- by telephoning 1300 735 135
- by leaving a voicemail message on the telephone number of one of the specified individuals below to whom an oral disclosure may be made; or
- by some other form of non-written electronic communication
- To one of the following:
 - the Commissioner of IBAC
 - the Deputy Commissioner of IBAC
 - the CEO of IBAC
- an employee referred to in Authorised Organisation Appendix 1
- any staff referred to in Section 35(2) of the IBAC Act

Written disclosures

A written disclosure to IBAC must be:

submitted by an online form available from: <https://www.ibac.vic.gov.au/reporting-corruption/report/complaints-form> ; or

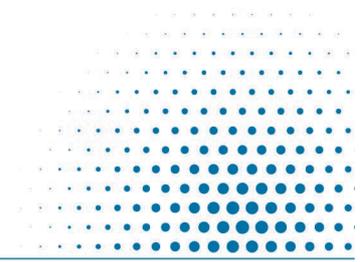
delivered personally to the office of IBAC at Level 1 North Tower, 459 Collins Street, Melbourne 3001, or

sent by post addressed to the office of IBAC at GPO Box 24234, Melbourne, 3000, or

sent by email to the official email address of a person specified above to whom an oral disclosure may be made (i.e. the Commissioner, the Deputy Commissioner, the CEO, or employee or staff referred to in Section 35 of the IBAC Act)

For more information visit:

<https://www.ibac.vic.gov.au/reporting-corruption/public-interest-disclosures>



7.2 How to make a disclosure to the (Victorian) Ombudsman

Verbal disclosures

- A verbal disclosure to the Victorian Ombudsman must be made in private and may be made:
- in person
- by telephoning 9613 6222 or toll free 1800 806 314 (regional)
- by leaving voicemail message on the telephone number of any Ombudsman officer; or
- by some other form of non-written electronic communication

The oral disclosure may be made to a Victorian Ombudsman officer.

Written disclosures

A written disclosure to the Victorian Ombudsman must be:

- submitted by an online form:
- <https://www.ombudsman.vic.gov.au/complaints/make-complaint>
- delivered personally to the office of the Victorian Ombudsman, at Level 2, 570 Bourke Street, Melbourne VIC 3000: or
- sent by post addressed to the office of the Victorian Ombudsman as above; or
- sent by email to the office of the Victorian Ombudsman
complaints@ombudsman.vic.gov.au
- sent by email to the official email address of any Ombudsman officer

Public Interest Disclosures may also be made to the Commonwealth Ombudsman

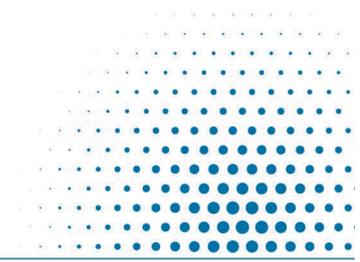
Telephone: 02 6276 3777

Email: PID@ombudsman.gov.au

For more information visit:

<https://www.ombudsman.vic.gov.au/Disclosures/Making-a-disclosure>

<https://www.ombudsman.gov.au/Our-responsibilities/making-a-disclosure>



7.3 How to make a disclosure to the Victorian Inspectorate

Verbal disclosures

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

- in person
- by telephoning 8614 3225
- by leaving a voicemail message on the telephone number of one of the individuals specified below who is authorised to receive disclosures
- by some other form of non-written electronic communication

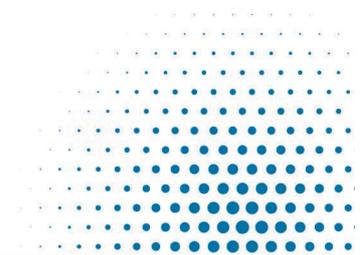
The oral disclosure must be made to one of the following persons:

- the Inspector appointed under Section 18(1) of the Victorian Inspectorate Act, 2011 (VI Act)
- an employee referred to in Section 28(1) of the VI Act; or
- any staff referred to in Section 28(2) of the VI Act Authorised Organisations Table.

Written disclosures

A written disclosure to VI must be:

- submitted by an online form available from:
<https://w.www.vic.gov.au/vicinspectorate/complaints/public-interest-disclosures.html>; or
- completed on hardcopy of the form available here :
https://w.www.vic.gov.au/system/user_files/Documents/vi/Public%20Interest%20Disclosure%20form.pdf to be:
- delivered personally to the VI office; or
- sent by post addressed to the VI office at PO Box 617, Collins Street West, Melbourne 8007; or
- sent by email to the VI office at info@vicinspectorate.vic.gov.au ; or
- sent by email to the official email address of a person specified above to whom an oral disclosure may be made (i.e. the Inspector, employee or staff referred to in Section 28 of the Victorian Inspectorate Act 2011)



7.4 How to make a disclosure to the Chief Commissioner of Police

There are no particular Regulations at this time prescribing detailed procedures for making a disclosure to the Chief Commissioner of Police. The standard procedures as set out in Part 2 of the Act and as outlined in these procedures still apply where relevant.

A guideline for making a (protected disclosure) complaint is available here:

<https://www.police.vic.gov.au/compliments-and-complaints>

7.5 Disclosures about other public bodies or public officers

Disclosures relating to improper conduct or detrimental action involving other public bodies or officers who are not employees, officers or contractors of Mitchell Shire Council may be made to the various bodies as shown below (although the table does not comprise an exhaustive list).

For further information please refer to the IBAC Guidelines for Handling Public Interest Disclosure publication (released 10 December 2019)

<https://www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-making-and-handling-protected-disclosures>

7.6 Misdirected disclosures

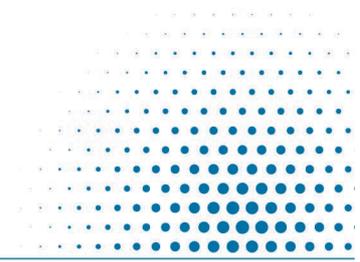
The ‘misdirected disclosure’ scheme provides a “no wrong door” provision where a disclosure is made to an entity which ordinarily can receive a public interest disclosure and which the discloser believed to be the correct place for the disclosure but it is not the correct place for that particular disclosure, the disclosure can still be notified to IBAC for assessment as a Public Interest Disclosure or Public Interest Complaint and will receive the protections of the public interest disclosure regime.

The misdirected disclosure scheme does not apply to disclosures that relate to members of Parliament. Those disclosures need to be made directly to the Speaker of the Legislative Assembly or the President of the Legislative Council.

If Council receives a misdirected disclosure it shall:

- consider if the disclosure may be one which shows a public officer or public body has engaged in or proposes to engage in improper conduct or detrimental action
- notify those disclosures to the appropriate entity within 28 days.
- The appropriate entity to which misdirected disclosures should be notified are:
 - the Integrity and Oversight Committee if the disclosure relates to the Victorian Inspectorate or a Victorian Inspectorate officer
 - the Victorian Inspectorate if the disclosure relates to IBAC, an IBAC officer or a Public Interest Monitor
- Beyond this notification, Council is prohibited from disclosing the content of that misdirected disclosure and from disclosing information likely to reveal the identity of the person who made it.

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



8. HANDLING DISCLOSURES

The Public Interest Disclosure process is summarised in **Appendix 2**.

8.1 Receiving a disclosure

When Council receives a complaint, report or allegation of improper conduct or detrimental action, the first step will be to ascertain whether it has been made in accordance with Part 2 of the Act.

If the disclosure satisfies Part 2 of the Act, the discloser is entitled to receive protections under Part 6 of the Act.

8.2 Assessing a disclosure

In assessing whether there is improper conduct or detrimental action, Council will look critically at all available information about the alleged conduct and about the discloser.

Preliminary questions Council may seek answers to, or consider, include:

- What is the discloser's connection to the alleged conduct - is the discloser a victim, a witness, or a participant in the conduct alleged about?
- How did the discloser come to know about the conduct - was or is the discloser directly involved in it, did the discloser observe it happening to another person or did someone else tell the discloser about it?
- How detailed is the information provided - is there sufficient information to enable Council to consider whether there is improper conduct or detrimental action?
- How reliable is the information given to Council - is it supported by other information?

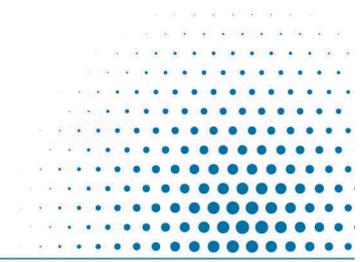
Disclosers or Council will need to identify that there is a link between the alleged improper conduct of a person or an organisation and their function as a public officer or a public body.

Detrimental action - what to consider as part of your assessment:

There are two essential components here: whether there is in fact 'detrimental action', as defined by the Act, and whether that action is being taken in reprisal against a person for making or being connected with a public interest disclosure.

- Consider both the nature of the detrimental action and whether it is being taken in reprisal for a public interest disclosure.
- Did the person take or threaten the action (or incite or permit another person to take or threaten the action) because (or in the belief) that;
 - the other person (or anyone else) has made, or intends to make, the disclosure
 - the other person (or anyone else) has cooperated, or intends to cooperate, with an investigation of the disclosure.

The Public Interest Disclosure Act does not prevent a manager taking management action against a person who has made a disclosure provided that the making of the disclosure is not the reason for the management action being taken.



If the disclosure satisfies the requirements of Part 2 of the Act, Council is required to determine whether the disclosure may be a public interest disclosure by going through the two step assessment process recommended by IBAC as follows.

This will be the case even if the discloser does not refer to the Act or require the protections of the Act. The initial assessment is made on the nature of the information disclosed or on the belief that the discloser has about the nature of the information, and not the discloser's intention.

8.2.1 First step

The first question Council must answer is whether the information disclosed shows, or tends to show, that there is improper conduct or detrimental action taken in reprisal for the making of a public interest disclosure.

This requires Council to ascertain whether the information satisfies the 'elements' of improper conduct or detrimental action, as defined in the Act and whether any of the relevant exceptions apply.

This may require Council to:

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

If it is not clear that the information disclosed shows or tends to show that there is improper conduct or detrimental action, then Council will go on to the second step below.

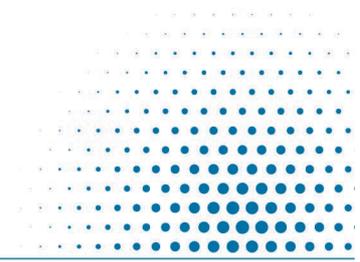
8.2.2 Second step

This requires the Council to ask whether the discloser believes on reasonable grounds that the information shows or tends to show there is improper conduct or detrimental action. That is, does the person actually believe that the information shows, or tends to show, there is improper conduct or detrimental action?

A reasonable belief requires the belief to be based on facts that would be sufficient to make a reasonable person believe there was improper conduct or detrimental action.

This reasonable belief does not have to be based on actual proof that the improper conduct or detrimental action in fact occurred, is occurring, or will occur, but there must be some information supporting this belief. The grounds for the reasonable belief can leave something to surmise or conjecture, but it must be more than just a reasonable suspicion, and the belief must be probable.

According to IBAC, simply stating that improper conduct or detrimental action is occurring without providing any supporting information, would not be a sufficient basis for having a reasonable belief. In IBAC's view, a belief cannot be based on a mere allegation or conclusion unsupported by any further facts or circumstances.



Other matters that IBAC suggests the Council can consider are:

- the reliability of the information provided by the discloser, even if it is second or third hand. For example, how would the discloser have obtained the information
- The amount of detail that has been provided in the information disclosed; and
- the credibility of the discloser, or of those people who have provided the discloser with information

8.2.3 Where urgent action is required while an assessment is still being made

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

Examples of this provided by IBAC include where the disclosure may be about:

- a child protection worker allegedly sexually assaulting children in care
- a council worker allegedly lighting bush fires; or
- a person threatening to poison the water supply

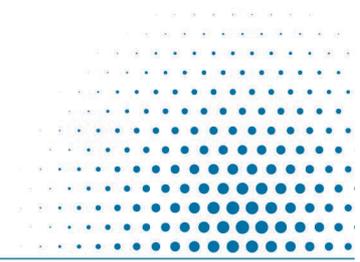
In these cases the Council can take immediate action while considering whether or not it is an assessable disclosure that must be notified to IBAC or awaiting IBAC's decision on a notified matter.

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 the Council to disclose the content of the disclosure by a person or body 'to the extent necessary for the purpose of taking lawful action in relation to the conduct that is the subject of an assessable disclosure including disciplinary process or action'. However, IBAC notes that this does not allow the identity of the discloser to be revealed. Reporting the alleged conduct to Victoria Police as criminal conduct or taking legitimate management action against the subject of the disclosure in order to prevent future conduct, may be appropriate courses of action in these circumstances.

8.2.4 Assessment decisions

At the conclusion of the assessment, the Council must decide whether it considers the disclosure to be a public interest disclosure. If the Council decides it may be a public interest disclosure, it **must** notify IBAC of the disclosure. If the Council does not consider it to be a public interest disclosure, then it may be a matter that the Council otherwise deals with through any other relevant internal complaint or grievance management processes.



8.3 Notifications

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

If the Council determines the disclosure is not a public interest disclosure, and the discloser has indicated to Mitchell Shire Council (or it otherwise appears to the Council) that the discloser wishes to receive the protections that apply to a public interest disclosure under the Act, the discloser will be notified in writing, within 28 days of the Council receiving the disclosure, that:

- Mitchell Shire Council considers the disclosure is not a public interest disclosure
- the disclosure has not been notified to IBAC for assessment under the Act; and
- regardless of whether the disclosure is notified to IBAC for assessment under the Act, the protections under Part 6 of the Act apply

Notifications to a discloser do not need to be provided by Mitchell Shire Council in response to an anonymously made disclosure.

8.3.2 If the Council considers the disclosure to be a public interest disclosure

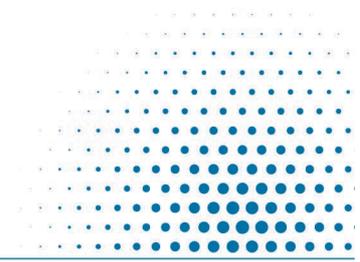
If the Council considers the disclosure may be a public interest disclosure under the Act, the Council will, within 28 days of receiving the disclosure:

- notify IBAC that:
 - the Council considers the disclosure may be a public interest disclosure; and
 - the Council is notifying the disclosure to IBAC for assessment under Section 21 of the Act; **and**
- notify the discloser that:
 - the disclosure has been notified to IBAC for assessment under the Act; and
 - it is an offence under Section 74 of the Act to disclose that the disclosure has been notified to IBAC for assessment under the Act

In addition, at the time of notifying IBAC under Section 21 of the Act or at any later time, the Council may also provide IBAC with any information obtained by the Council regarding the disclosure in the course of its enquiries leading up to its notification of the disclosure to IBAC.

8.3.3 Protections for Public Officers

A public officer is given specific protections under the Act to provide information to other public officers or to IBAC in dealing with a disclosure they have received. When a public officer acts in good faith and in accordance with the Act, Regulations and 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.



9. ASSESSMENT BY IBAC

Once a disclosure has been notified to IBAC, IBAC 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 IBAC.

IBAC must inform Mitchell Shire Council of its determination as to whether or not the disclosure is a public interest disclosure complaint:

- in writing; and
- within a reasonable time after making the determination

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

If 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 IBAC is of the view that the assessable disclosure is a public interest disclosure, then it must determine that the public interest disclosure is a 'public interest disclosure complaint'.

9.1 If IBAC determines the disclosure is not a Public Interest Disclosure complaint

If IBAC determines the disclosure is not a public interest disclosure complaint, IBAC must advise the discloser in writing and within a reasonable time after the determination is made, that:

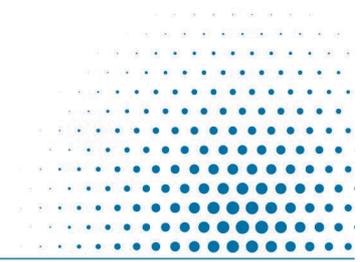
- IBAC has determined that the disclosure is not a public interest disclosure complaint; and
- as a consequence of that determination:
 - the disclosure will not be investigated as a public interest disclosure complaint; and
 - the confidentiality provisions under Part 7 of the Act no longer apply in relation to the disclosure; and
- regardless of whether IBAC has determined that the disclosure is a public interest disclosure complaint, the protections under Part 6 apply to a public interest disclosure

In addition, if IBAC is of the view that the disclosure although not a public interest disclosure complaint, may be able to be dealt with by another entity, IBAC may advise the discloser that:

- the matter which is the subject of the disclosure may be able to be dealt with by that entity other than as a public interest disclosure complaint; and
- if the discloser wishes to pursue the matter, to make a complaint directly to that entity

If this is the case, IBAC will also advise the relevant notifying entity that the discloser has been given this advice.

IBAC is also able to consider whether it wishes to treat the assessable disclosure as a notification made to IBAC under the IBAC Act.



9.2 If IBAC determines the disclosure is a Public Interest Disclosure Complaint

9.2.1 Notification to the discloser

If IBAC determines the disclosure is a public interest disclosure complaint, IBAC must advise the discloser in writing and within a reasonable time after the determination is made, that:

- IBAC has determined that the disclosure is a public interest disclosure complaint
- regardless of the determination, the protections available to a discloser of a public interest disclosure under Part 6 of the Act apply
- the discloser has rights, protections and obligations under the Act as contained in Sections 72, 74 and Parts 6 and 7 of the Act, including an explanation of the effect of those Sections and Parts of the Act; and
- it is an offence under Section 74 of the Act to disclose that IBAC has determined that the disclosure is a public interest disclosure complaint

Whether or not IBAC determines the disclosure to be a public interest disclosure complaint, the protections under Part 6 of the *Public Interest Disclosure Act* apply to the discloser.

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

9.2.2 Further actions IBAC may take

Under the IBAC Act, IBAC may dismiss, investigate or refer a public interest disclosure complaint.

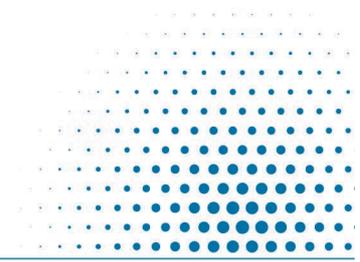
If IBAC dismisses a public interest disclosure complaint, then it must do so on one of the grounds specifically set out in the IBAC Act. In particular, IBAC **must** dismiss a public interest disclosure complaint if the matter disclosed is a matter that neither IBAC nor an investigating entity may investigate.

IBAC may choose to investigate the alleged conduct if it is reasonably satisfied that it is 'serious corrupt conduct'.

IBAC may also choose to refer the public interest disclosure complaint to other appropriate and relevant investigative entities.

Depending on the action decided to be taken by IBAC, IBAC must also provide certain other information to the discloser. That information is set IBAC's Guidelines.

For more information visit the [IBAC website](#) & [Guidelines](#)



9.2.3 Other information about investigative entities' investigations of a public interest disclosure complaint

If IBAC or another investigative entity is conducting an investigation of a public interest disclosure complaint, it may be in contact with Council or person about which the disclosure has been made. This will be for the purpose of conducting investigative enquiries.

Council or the person will be able to disclose information about the public interest disclosure complaint to the investigative entity without breaching the confidentiality requirements of the Act.

The relevant investigative entity may also disclose the identity of the discloser and the content of the disclosure if necessary to do so for the purposes of their investigative action. If this is the case, then Council or the person to whom the information has been disclosed, is bound by the confidentiality requirements of Part 7 of the *Public Interest Disclosure Act*.

For further information please refer to the IBAC Guidelines for Handling Public Interest Disclosure publication (released 10 December 2019)

<https://www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-making-and-handling-protected-disclosures>

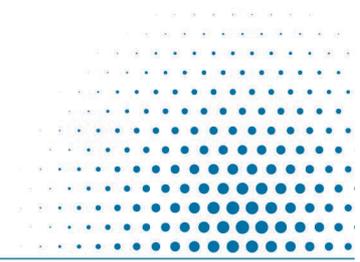
10. WELFARE MANAGEMENT

Mitchell Shire Council is committed to the protection of genuine disclosers against detrimental action taken in reprisal for the making of public interest disclosures.

The protection of persons making genuine public interest disclosures about improper conduct or detrimental action is essential for the effective implementation of the Act. In addition, the Act extends the need for welfare management to people who have cooperated or intend to cooperate with an investigation of a public interest disclosure complaint ('cooperators'). Persons who are the subject of allegations will also have their welfare looked after.

Council must ensure disclosers and cooperators are supported and protected from direct and indirect detrimental action being taken against them in reprisal for the public interest disclosure. Council will ensure its workplace culture supports disclosers and cooperators. Such support will extend to the relevant persons regardless of whether they are internal to the organisation (e.g. employees, councillors, other officers) or external members of the public. However, different legislative responsibilities (including those external to the Act) apply to persons internal to the organisation, and to persons who may be clients or users of Council's services. Those derive from various legislative and administrative obligations to:

- ensure the health and wellbeing of employees of a public sector body under laws including those relating to Occupational Health and Safety, the Charter of Human Rights and Responsibilities Act 2006, the Public Administration Act 2004, and various Victorian Public Sector Codes of Conduct (as relevant); and



- comply with various relevant laws, policies and practices when making administrative and other decisions or taking particular actions affecting a customer, client or user of the public body's services.

Generally, for internal persons, Council will ensure a supportive work environment and respond appropriately to any reports of intimidation or harassment against these persons. For external persons, Council will take reasonable steps to provide appropriate support. Council will discuss reasonable expectations with all persons receiving welfare management in connection with a public interest disclosure.

10.1 Support available to Disclosers and Cooperators

The Council will support disclosers and cooperators as outline below:

Keeping them informed by providing:

- confirmation that the disclosure has been received
- the legislative or administrative protections available to the person
- a description of any action proposed to be taken
- if action has been taken by the Council, details about results of the action known to the Council

Providing active support by:

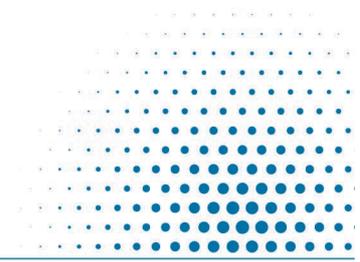
- acknowledging the person for having come forward
- assuring the discloser or cooperator that they have done the right thing, and the Council appreciates it
- making a clear offer of support
- assuring them that all reasonable steps will be taken to protect them
- giving them an undertaking to keep them informed as far as the Council is reasonably able to

managing their expectations by:

- undertaking an early discussion with them about:
 - what outcome they seek
 - whether their expectations are realistic
 - what the Council will be able to deliver

Maintaining confidentiality by:

- ensuring as far as is possible that other people cannot infer the identity of the discloser or cooperator
- reminding the discloser or cooperator not to reveal themselves or to reveal any information that would enable others to identify them as a discloser or cooperator
- ensuring that hardcopy and electronic files relating to the disclosure are accessible



only to those who are involved in managing disclosures in the Council

Proactively assessing the risk of detrimental action being taken in reprisal:

- rather than reactively waiting for a problem to arise and a complaint made by the discloser or cooperator) that is, actively monitor the workplace, anticipating problems and dealing with them before they develop as far as is possible
- protecting the discloser or cooperator by:
 - examining the immediate welfare and protection needs of the person and seeking to foster a supportive work environment
 - listening and responding to any concerns the person may have about harassment, intimidation or victimisation in reprisal for their actions
 - assessing whether the concerns the person may have about harassment, intimidation or victimisation might be due to other causes other than those related to the public interest disclosure
 - preventing the spread of gossip and rumours about any investigation into the public interest disclosure; and
 - keeping contemporaneous records of all aspects of the case management of the person, including all contact and follow-up action

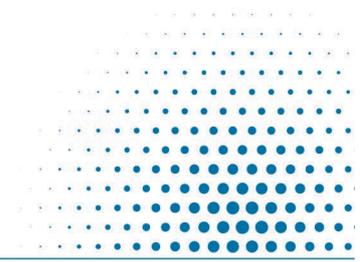
For more information see the IBAC [Public Interest Disclosure Welfare Management Guideline](#)

10.1.1 Appointment of a Welfare Manager

In appropriate circumstances, the Council will appoint a suitable Welfare Manager to protect a discloser or a cooperator. In almost all instances, the Welfare Manager will also be one of the Public Interest Disclosure Officers. If the Welfare Manager is the person complained about or is in any way connected to the subject matter of the disclosure, the Public Interest Disclosure Officer, Coordinator or the Chief Executive Officer will appoint an independent Welfare Manager. The following matters will be taken into consideration by the Council when deciding whether to appoint a Welfare Manager in a particular case:

- are there any real risks of detrimental action against the discloser or cooperator, taking into account their particular circumstances
- whether the Council can take the discloser or cooperator seriously and treat them with respect
- whether the Council will give the discloser or cooperator effective support, including keeping the discloser informed of the status of the disclosure can the Council protect the person from suffering repercussions by dealing with the matter discreetly and confidentially, and responding swiftly and fairly to any allegations that the discloser or cooperator has in fact suffered retribution

If the answer to the first question is 'yes', then IBAC recommends the appointment of a dedicated welfare officer. If the answer to the first question is 'no', and the Council can meet the needs set out in the remainder of the questions, IBAC suggests there may be no need for a dedicated welfare officer to be appointed for that particular case.



In most circumstances, a Welfare Manager will only be required where a public interest disclosure complaint proceeds to investigation, but each public interest disclosure received by the Council will be assessed on its own merits. In particular, a Welfare Manager will be appointed where the Council believes that one is required to ensure that the appropriate support as set out in above can be provided to the discloser or cooperator.

If appointed, the Welfare Manager will, in addition to providing the general support set out above:

- advise the discloser or cooperator of the legislative and administrative protections available to him or her, including providing practical advice
- listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making a disclosure
- not divulge any details relating to the public interest disclosure to any person other than the Public Interest Disclosure Coordinator or the CEO
- ensure all meetings between the Welfare Manager and the discloser or cooperator are conducted discreetly to protect the person from being identified as being involved in the public interest disclosure; and
- ensure the expectations of the discloser are realistic and reasonable, and that the discloser or cooperator understands the limits of the support the Council is able to reasonably provide in the particular circumstances. This is particularly the case where a Welfare Manager has been appointed in relation to an external discloser or cooperator.

10.2 Welfare Management of Persons Who Are The Subject Of Public Interest Disclosures

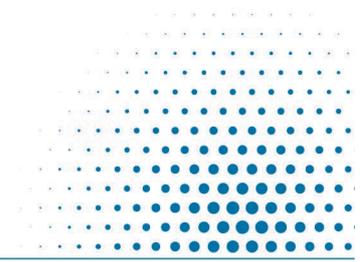
The Council will also meet the welfare needs of a person who is the subject of a public interest disclosure. It is important to remember that until a public interest disclosure complaint is resolved, the information about the person is only an allegation.

The Council will make a decision about whether or when the subject of a disclosure will be informed about a public interest disclosure involving an allegation made against him or her.

It is possible that the subject of the disclosure may never be told about the disclosure if it is not determined to be a public interest disclosure complaint, or if a decision is made to dismiss the disclosure.

The Act limits the disclosure of information about the content of an assessable disclosure and the identity of the discloser to certain specified circumstances set out in Part 7 of the Act. The Council may give information about the disclosure to the subject of the disclosure if it is directed or authorised to do so by the investigative entity investigating the public interest disclosure complaint, or for the purpose of taking action with respect to the conduct alleged, including disciplinary action.

Investigative entities may also inform the subject of the public interest disclosure complaint in the course of their investigation for the purposes of conducting that investigation, or any actions that they propose to take as a result of the investigation.



Welfare Services

A person, the subject of a disclosure who is made aware of their status as such, may have a Welfare Manager appointed by the Council or be referred to the Council's EAP program for welfare assistance. Alternatively, the Public Interest Disclosure Coordinator will provide support and advice to a person the subject of a disclosure, particularly in relation to their rights and obligations under the Act, Mitchell Shire Council's internal reporting system, these procedures, and any other relevant law or code of conduct. The Council will consider each matter on a case by case basis, taking into account the particular circumstances of the person and the public interest disclosure complaint.

Confidentiality

Consistent with Mitchell Shire Council's confidentiality obligations under the Act as outlined in these procedures, the fact that a disclosure has been made, whether it has been notified to IBAC for assessment, any information received from IBAC or another investigative entity and the identities of persons involved will not be divulged.

The Council will take all reasonable steps to ensure the confidentiality of the subject of a disclosure during any assessment and any ensuing investigation – refer section 11 of this document for additional detail. Where the disclosure is dismissed or investigations do not substantiate the allegations made against the person, the fact that the investigation was undertaken, its results, and the identity of the person subject of the disclosure will still be kept confidential.

Natural Justice

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

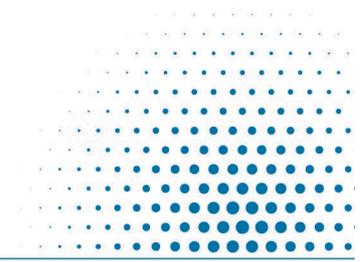
If the matter has been investigated by an investigative entity, then the investigative entity will be responsible for ensuring consultations with the subject include the provision of natural justice to him or her. IBAC has noted that affording the subject of a disclosure, natural justice in this context means that if a decision is to be made about their conduct this 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; and
- have his or her defence set out fairly in any report

if the matter is being investigated the investigating entity (e.g. IBAC) is responsible for carrying out this consultation.

10.2.1 If the allegations are wrong or unsubstantiated

Mitchell Shire Council will give its 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, the Council and any investigative entity involved will ensure that there are no adverse consequences for this 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 the Council and the subject is an employee, councillor, or contractor of the Council.

Further, if the matter has been publicly disclosed by Mitchell Shire Council, 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.

10.2.2 If detrimental action is reported

If any person reports an incident of harassment, discrimination or adverse treatment that may amount to detrimental action apparently taken in reprisal for a disclosure, the Welfare Manager or Public Interest Disclosure Coordinator must record details of the incident and advise the person of their rights under the Act.

A person takes detrimental action against another person in reprisal for a public interest disclosure if:

- the person takes, or threatens to take detrimental action, (or incite or permit another person to take or threaten action) against the other person because, or in the belief that:
- the other person or anyone else has made, or intends to make, the disclosure; or
- the other person or anyone else has cooperated, or intends to cooperate, with an investigation of the disclosure; or
- for either of the reasons above, the person incites or permits someone else to take or threaten to take detrimental action against the other person

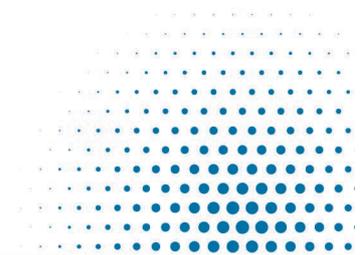
All persons are reminded it is a criminal offence to take detrimental action against another person in reprisal for a public interest disclosure under the Act. The penalty for committing such an offence in contravention of the Act is a maximum fine of 240 penalty units, usually increasing 1 July every year in accordance with arrangements made under the *Monetary Act Units 2004*), two years imprisonment or both.

In such circumstances, the Council will be careful about making preliminary enquiries or gathering information concerning such an allegation of detrimental action so that, to the extent it is reasonably able to, it protects the integrity of any evidence that might be later relied upon in a criminal prosecution.

In addition, the taking of detrimental action in reprisal for making a disclosure can be grounds for a person to make a further disclosure with respect to that conduct. The disclosure of this allegation will then be assessed by the Council as a new disclosure under Part 2 of the Act. Where the detrimental action is of a serious nature likely to amount to a criminal offence, the Council will also consider reporting the matter to the Police or IBAC (if the matter was not already the subject of a disclosure notified to IBAC).

A discloser of a public interest disclosure may also:

- take civil action against the person who took detrimental action against the discloser and seek damages



- take civil action against Mitchell Shire Council jointly and severally to seek damages if the person who took detrimental action against the discloser took that action in the course of employment with, or while acting as an agent of Mitchell Shire Council; and
- apply for an order or an injunction from the Supreme Court

10.3 Protections for the person making a Public Interest Disclosure

10.3.1 Part 6 protections available to discloser

Part 6 of the Act sets out the protections provided to persons who make a disclosure that is a 'public interest disclosure', i.e. one that is made in accordance with Part 2 of the *Public Interest Disclosure Act*. In summary, they are as follows:

- the discloser is not subject to any civil or criminal liability for making the public interest disclosure
- the discloser is not subject to any administrative action (including disciplinary action) for making the public interest disclosure
- by making the public interest disclosure, the discloser is not committing an offence against the *Constitution Act 1975* or any other law that imposes obligations of confidentiality or otherwise restricts the disclosure of information
- by making the public interest disclosure, the discloser is not breaching any other obligation (made by oath, rule of law or practice) requiring him or her to maintain confidentiality; and
- the discloser cannot be held liable for defamation in relation to information included in a public interest disclosure made by him or her

The protections in Part 6 apply from the time at which the disclosure is made by the discloser. They apply even if the Council receiving the disclosure does not notify the disclosure to IBAC, and even if IBAC has determined that the public interest disclosure is not a public interest disclosure complaint.

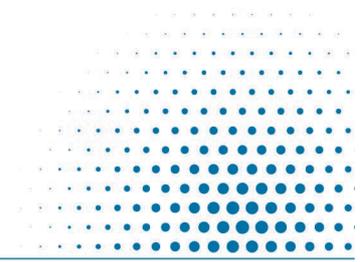
The protections also apply to further information relating to a public interest disclosure made by the original discloser, if the further information has been provided, verbally or in writing, to:

- the entity to which the public interest disclosure was made
- IBAC; or
- any investigative entity investigating the public interest disclosure

10.3.2 Loss of protections caused by actions of the discloser

However, a discloser is not protected if they commit an offence under Section 72 or Section 73 of the Act, as follows:

- provide false or misleading information, or further information that relates to a public interest disclosure, that the person knows to be false or misleading in a material particular, intending that the information be acted on as a public interest disclosure (maximum penalty: a fine of 120 penalty units, usually increasing 1 July every year in accordance with arrangements made under the *Monetary Units Act 2004*, 12 months' imprisonment, or both)



- claim that a matter is the subject of a public interest disclosure knowing the claim to be false (maximum penalty: a fine of 120 penalty units, 12 months' imprisonment, or both)
- falsely claim that a matter is the subject of a disclosure that IBAC has determined to be a public interest disclosure complaint (maximum penalty: a fine of 120 penalty units, 12 months' imprisonment, or both)

10.3.3 Other limitations on protections afforded to disclosers

A discloser is not protected against legitimate management action being taken by the Council in accordance with the Act.

In addition, although the discloser of a public interest disclosure is not subject to criminal or civil liability for making the disclosure, the Act specifically provides that a person remains liable for their own conduct even though the person has made a disclosure of that conduct under the Act. Therefore, the discloser will still be held liable for their own conduct that they disclose as part of making a public interest disclosure.

10.3.4 If the person making the disclosure is implicated in the improper conduct or detrimental action that is the subject of the disclosure

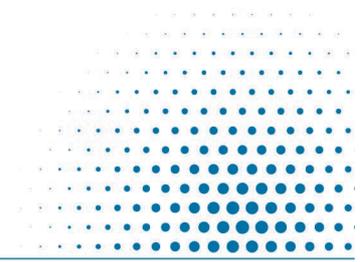
Where a discloser is implicated in improper conduct, Mitchell Shire Council will handle the disclosure and protect the discloser from reprisals in accordance with the Act, IBAC's Guidelines and these procedures. Mitchell Shire Council acknowledges that the act of disclosing should not shield disclosers from the reasonable consequences flowing from any involvement in improper conduct. However, in some circumstances, an admission may be a mitigating factor when considering disciplinary or other action.

The management of the welfare of a discloser may become complicated when that person is implicated in misconduct, whether or not that misconduct is related to the disclosure.

Taking disciplinary or other action against a person who has made a public interest disclosure invariably creates the perception that it is being taken in reprisal for the disclosure. The CEO will make the final decision on the advice of the Public Interest Disclosure Coordinator as to whether disciplinary or other action will be taken against a discloser. Where disciplinary or other action relates to conduct that is the subject of the disclosure, the disciplinary or other action will only be taken after the disclosed matter has been appropriately dealt with. In all cases where disciplinary or other action is being contemplated, any such action will not be taken without the Council's CEO ensuring that:

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

The Council will take all reasonable steps to thoroughly document its decision making



process, including recording the reasons why the disciplinary or other action is being taken, and the reasons why the action is not being taken in retribution against the discloser for making the disclosure, so that it will be able to clearly demonstrate that the disciplinary or other action was taken for the appropriate and permitted reasons under the Act.

The discloser will be clearly informed of any action proposed to be taken, be afforded natural justice, and inform and be informed of any mitigating factors that have been taken into account. Such communications with the discloser will be made in plain English and reasonable steps to provide appropriate support will be offered where appropriate.

11. CONFIDENTIALITY

11.1 General obligation of confidentiality on Mitchell Shire Council and all individuals

Mitchell Shire 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 public interest disclosure matters is crucial, among other things, in ensuring reprisals are not made against a discloser.

The obligation of confidentiality extends to any person receiving a disclosure or making a disclosure. It is in the interest of the discloser to ensure he or she does not discuss any related matters other than with authorised persons within Mitchell Shire Council, officers of IBAC, or other persons authorised by law.

11.2 Steps taken by Mitchell Shire Council to ensure confidentiality

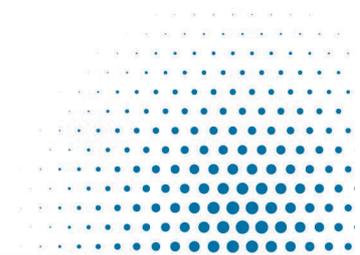
11.2.1 Information management

Mitchell Shire Council will ensure all files, whether paper or electronic, are kept securely. Those files will be accessible only by the Public Interest Disclosure Coordinator or a Public Interest Disclosure Officer involved in a particular matter. Where necessary, a Welfare Manager may be able to gain access (where appropriate) to related welfare matters.

The Welfare Manager will not divulge any details relating to the disclosed matter to any person other than the Public Interest Disclosure Coordinator or an investigator appropriately authorised under the Act or the IBAC Act. All meetings between any relevant persons, including Public Interest Disclosure Officers, the Welfare Manager and disclosers will be conducted discreetly to protect the confidentiality of the person making a public interest disclosure.

All printed material will be kept in files that are clearly marked as *Public Interest Disclosure Act* matters and warn of the criminal penalties that apply to any unauthorised access, use, or divulging of information concerning a public interest disclosure.

All electronic files will be stored on Council's EDRMS system. Access will be limited only to the Public Interest Disclosure Coordinator and the Public Interest Disclosure



Officers. Any physical files that are created will be kept in a locked filing cabinet in a secure location, accessible only with a key. Likewise, key access will be limited to the Public Interest Disclosure Coordinator and the Public Interest Disclosure Officers.

Officers will not use unsecured email to transmit documents in connection with a disclosure and will ensure all telephone calls and meetings in connection to disclosures are conducted privately and in the strictest of confidence.

Hard copy documents will not be delivered by internal mail to a generally accessible area and, where possible, will be delivered in person to authorised officers.

11.2.2 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 the possession of Mitchell Shire Council.

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

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

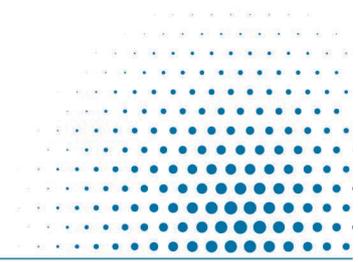
- any information relating to a disclosure made in accordance with the Act
- any information relating to a disclosure notified to IBAC by Mitchell Shire Council under Section 21 of the Act for assessment; and
- any information that is likely to lead to the identification of a discloser

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

11.2.3 Training for All employees

Mitchell Shire Council will:

- ensure that employees, officers, contractors and members have access to a copy of these procedures in hard or soft copy
- incorporate into its induction procedures training about Mitchell Shire Council's general obligations under the Act and the rights and obligations of all employees, contractors and members
- introduce periodic refresher courses for existing employees, contractors and members about their rights and obligations under the Act, including any changes to the Act.
- provide additional training and assistance to:
 - any employee of the 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
 - its complaint handling staff to ensure that any complaints received will be dealt with consistently and in accordance with the Act as required



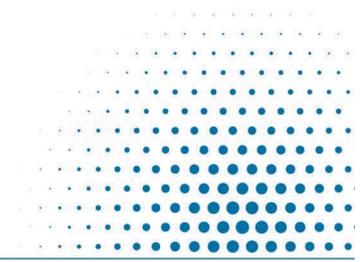
- any staff with functions and duties under the FOI Act or with responsibilities for information management, to ensure that no prohibited information is disclosed under the Act and to ensure there is appropriate liaising with the staff of IBAC or other investigative agencies where required in response 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

11.3 Limited Exceptions Permitted By The Act

The Act makes it a crime to disclose information connected with a disclosure made in accordance with the Act. Limited exceptions to the prohibition on disclosure are specified by the Act, including circumstances such as:

- where disclosure is required by Mitchell Shire Council (or one of its officers) in the exercise of functions of Mitchell Shire Council under the Act
- where necessary for the purpose of the exercise of functions under the Act
- by an investigating entity for the purpose of exercising that entity's functions under the IBAC Act
- in accordance with a direction or authorisation given by the investigating entity that is investigating the disclosure
- to the extent necessary for the purpose of taking lawful action in relation to the conduct that is the subject of an assessable disclosure including a disciplinary process or action
- where IBAC or the VI has determined that the assessable disclosure is not a public interest disclosure and the discloser or Mitchell Shire Council subsequently discloses the information
- when an investigative entity had published a report to Parliament, in accordance with its confidentiality obligations
- for the purpose of obtaining legal advice in relation to matters specified in the Act
- in order to enable compliance with the Act:
- where a person does not have a sufficient knowledge of the English language, to obtain a translation from an interpreter
 - where a person is under 18 years of age, to a parent or guardian
 - where a person is suffering a disability and is not able to understand, to an independent person
- in disciplinary actions or legal proceedings for certain offences in the Act or other specified Acts

It is important to note that the Act prohibits the inclusion of any details, in any report or recommendation, which is likely to lead to the identification of a discloser. The Act also prohibits the identification of the person who is the subject of the disclosure in any particulars included in an annual report or any reports to Parliament.



11.4 Penalties Apply For Breach Of Confidentiality

The Act contains a number of offence provisions relating to unauthorised disclosure of information by either disclosers or persons who have received disclosures. The penalties for breaching the confidentiality required by the Act include imprisonment, financial payments, or both.

The criminal offences set out in the Act relating to confidentiality include:

- divulging information obtained in connection with or as a result of the handling or investigation of a public interest disclosure without legislative authority. Maximum penalty: 60 penalty units, six months' imprisonment, or both
- disclosing that a disclosure has been notified to IBAC for assessment under the Act. Maximum penalty: 60 penalty units, six months' imprisonment, or both
- disclosing that a disclosure has been assessed by IBAC or VI to be a public interest disclosure complaint under the Act. Maximum penalty: 60 penalty units, six months' imprisonment, or both

12. EXTERNAL DISCLOSURES

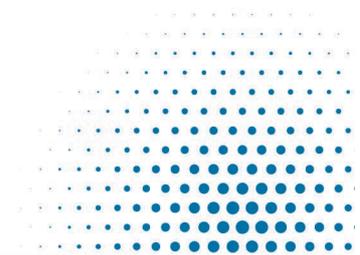
A mechanism has been introduced to allow relief for people who have made a public interest disclosure and are subject to confidentiality restrictions relating to that disclosure, in situations where the disclosure has not been adequately addressed.

This mechanism allows for people who have made a public interest disclosure to make a further disclosure of substantially the same subject matter to external parties (i.e. those not authorised to receive public interest disclosures, such as journalists or politicians) if:

- the original disclosure was not made anonymously
- the original disclosure was determined to be a public interest complaint and the discloser was notified of that determination, and
- one of the following situations applies:
 - the discloser has not been notified of any action taken in relation to the disclosure within six months of determination as a public interest complaint and has not received a response 30 days after requesting an update on progress
 - an investigation has not been completed 12 months after determination as a public interest complaint and the discloser has not received a response 30 days after requesting an update on progress
 - an investigation has not been completed 12 months after determination as a public interest complaint and, although the discloser received a response within 30 days after requesting an update on progress, the discloser received no further update advising the investigation had been completed six months after that response.

The protections provided to public interest disclosures under the Part 6 of the PID Act will also apply to these external disclosures.

Any external disclosure must not contain information that may prejudice a criminal investigation, criminal proceeding or other legal proceeding of which the person making the external disclosure is aware and must not contain information that is likely to disclose investigative methods used by IBAC or Victoria Police.



13. COLLATING AND PUBLISHING STATISTICS

Mitchell Shire Council is required to publish certain statistics about the Act in its annual reports. That information relates mainly to how these procedures may be accessed and the number of disclosures notified to IBAC for assessment under Section 21 of the Act during the financial year.

The Public Interest Disclosure Coordinator will establish a secure register to record such information, and to generally keep account of the status of disclosures made under the Act.

14. REVIEW

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

15. RELATED DOCUMENTS

- Public Interest Disclosure Act 2012
- Mitchell Shire Council website - public interest disclosure information
- Protected Disclosure Policy IBAC has published two Guidelines under Section 57 of the Act on 1 January 2020. Further information about the Guidelines, including links to the full Guidelines, may be found at:
<https://www.ibac.vic.gov.au/>
<https://www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-making-and-handling-protected-disclosures>
<https://www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-protected-disclosure-welfare-management>



APPENDIX 1 - Authorised Organisations

Organisation & Contact details	Types of disclosure	Officers who can receive disclosures
Mitchell Shire Council www.mitchellshire.vic.gov.au	All councils can receive disclosures that relate to the conduct of themselves, or disclosures made by their own members, officers or employees. Disclosures about councils can also be made to IBAC, or to the Victorian Ombudsman or the Victorian Inspectorate Disclosures can be received verbally or written	Chief Executive Officer Public Interest Disclosure Coordinator Public Interest Disclosure Officer Manager or supervisor of the discloser Manager or supervisor of the person who is the subject of the disclosure
IBAC www.ibac.vic.gov.au	Disclosures can be received verbally or written	The Commissioner A Deputy Commissioner The Chief Executive Officer An IBAC employee An IBAC consultant
Victorian Ombudsman www.ombudsman.vic.gov.au	Disclosures can be received verbally or written	A Victorian Ombudsman officer
Victorian Inspectorate www.vicinspectorate.vic.gov.au	Disclosures can be received verbally or written	The Victorian Inspector A Victorian Inspectorate employee
Public service body Chief Commissioner of Police Judicial Commission of Victoria Chief Municipal Inspector The Information Commissioner The Racing Integrity Commissioner Refer to the IBAC website www.ibac.vic.gov.au for a list of public service bodies that are authorised to receive disclosures.	Public service bodies can only receive disclosures that relate to the conduct of themselves, or disclosures made by their own members, officers or employees. Disclosures about public sector bodies can also be made to IBAC, or to the Victorian Ombudsman or the Victorian Inspectorate.	Head of the relevant public service body A person defined in the public service body's procedures as a person who can receive a disclosure about that body, e.g. Public Interest Disclosure Coordinator Manager or supervisor of the discloser Manager or supervisor of the person who is the subject of the disclosure

APPENDIX 2 - Summary of Public Interest Disclosure process

The chart below summarises the flow of information, key authorised bodies and key steps in the process for handling a Public Interest Disclosure. See procedure sections for more detailed information.

