



# Public Interest Disclosure Procedure

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## **1. Purpose of this Procedure**

The purpose of this Procedure is to:

- 1.1 explain how and to whom a Public Interest Disclosure can be made about Council or any of its employees, contractors or Councillors; and
- 1.2 summarise Council's obligations if a Public Interest Disclosure is made about it or any of its employees, contractors or Councillors.

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## **2. Executive Summary**

- 2.1 If any person wishes to make a Disclosure about the conduct of:
  - 2.1.1 Council or its employees or contractors, the person should make the disclosure to Council; or
  - 2.1.2 Councillors, the person should make the disclosure to IBAC or the Victorian Ombudsman.
- 2.2 If Council is satisfied that the information comprising a Disclosure may be a Public Interest Disclosure, the Public Interest Disclosure will be notified to IBAC within 28 days after it is received.
- 2.3 IBAC will then determine whether the Disclosure is a Public Interest Complaint and notify Council and the Discloser of its decision.
- 2.4 If IBAC determines that the Disclosure:
  - 2.4.1 is a Public Interest Complaint, IBAC will investigate it itself or refer it to another entity (other than Council) for investigation; or
  - 2.4.2 is not a Public Interest Complaint, IBAC will take no further action, although the Discloser may still pursue the Disclosure with Council directly.
- 2.5 Where a Disclosure is made to Council, it will take all reasonable steps to:
  - 2.5.1 maintain the confidentiality of the Disclosure and the identity of the Discloser; and
  - 2.5.2 protect the Discloser and any other person from Detrimental Action in reprisal for the Public Interest Disclosure,

in accordance with its obligations under the Act.

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## **3. Statement of Support**

Council supports both the broad principles contained in, and the spirit and intent of, the Act. It is committed to the aims and objectives of the Act and does not and will not tolerate corrupt or improper conduct by its employees, Councillors or contractors, nor the taking of reprisals against those who disclose such conduct.

Council recognises the value of transparency and accountability in its administrative and management practices and supports the making of disclosures that:

- 3.1 reveal corrupt conduct, such as conduct involving a substantial mismanagement of public resources; or
- 3.2 conduct involving a substantial risk to public health and safety or the environment.

Council will take all reasonable steps to protect and support people who make such disclosures from any detrimental action in reprisal for making the disclosure.

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## 4. Definitions

**Act** means the *Public Interest Disclosures Act 2012*.

**Corrupt Conduct** means conduct:

- (a) of any person that adversely affects the honest performance by a Public Officer or Public Body of his or her or its functions as a Public Officer or Public Body; or
- (b) of a Public Officer or Public Body that constitutes or involves the dishonest performance of his or her or its functions as a Public Officer or Public Body; or
- (c) of a Public Officer or Public Body that constitutes or involves knowingly or recklessly breaching public trust; or
- (d) of a Public Officer or a Public Body that involves the misuse of information or material acquired in the course of the performance of his or her or its functions as a Public Officer or Public Body, whether or not for the benefit of the Public Officer or Public Body or any other person; or
- (e) that could constitute a conspiracy or an attempt to engage in any conduct referred to in paragraphs (a), (b), (c) and/or (d) –

being conduct that would, if the facts were found proved beyond reasonable doubt at a trial, constitute a Relevant Offence.

**Council's Office** refers to:

- (a) in the case of personal attendance for delivery of a written Disclosure, the:
  - (i) Melton Civic Centre at 232 High Street, Melton; and
  - (ii) Caroline Springs Civic Centre/Library at 193-201 Caroline Springs Boulevard, Caroline Springs; or
- (b) in the case of delivery of a written Disclosure by post, PO Box 21 Melton VIC 3337.

**Detrimental Action** includes:

- (a) action causing injury, loss or damage;
- (b) intimidation or harassment;
- (c) discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action.

**Discloser** is the person who makes a Disclosure.

**Disclosure** means a report about Improper Conduct or Detrimental Action made in accordance with the IBAC Act.

**External Disclosure** means a disclosure made in the manner described in paragraph 9.6 of this Procedure.

**IBAC** means the Independent Broad-based Anti-corruption Commission established by the IBAC Act.

**IBAC Act** means the *Independent Broad-based Anti-corruption Commission Act 2011*.

**IBAC Email Address** is info@ibac.vic.gov.au.

**IBAC Guidelines** means:

- (a) the 'Guidelines for making and handling public interest disclosures' issued by IBAC in January 2020 under section 57 of the Act; and
- (b) the 'Guidelines for public interest disclosure welfare management' issued by IBAC in January 2020 under section 57 of the Act.

**IBAC Office** refers to:

- (a) in the case of personal attendance for delivery of a written Disclosure, the office at Level 1, North Tower, 459 Collins Street, Melbourne; or
- (b) in the case of delivery of a written Disclosure by post, GPO Box 24234 Melbourne VIC 3001.

**Improper Conduct** means:

- (a) Corrupt Conduct; or
- (b) conduct of a public officer or public body engaged in by the public officer or public body in their capacity as a public officer or a public body that constitutes –
  - (i) a criminal offence; or
  - (ii) serious professional misconduct; or
  - (iii) dishonest performance of public functions; or
  - (iv) an intentional or reckless breach of public trust; or
  - (v) an intentional or reckless misuse of information or material acquired in the course of the performance of the functions of the public officer or public body; or
  - (vi) a substantial mismanagement of public resources; or
  - (vii) a substantial risk to the health or safety of one or more persons; or
  - (viii) a substantial risk to the environment; or
- (c) conduct of any person that –

- (i) adversely affects the honest performance by a public officer or public body of their functions as a public officer or public body; or
- (ii) is intended to adversely affect the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body and results in the person, or an associate of the person, obtaining –
  - (A) a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument; or
  - (B) an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument; or
  - (C) a financial benefit or real or personal property; or
  - (D) any other direct or indirect monetary or proprietary gain –
    - that the person or associate would not have otherwise obtained; or
- (d) conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referred to in paragraph (a), (b) or (c).

**In Private** refers to circumstances in which a person making a Disclosure reasonably believes that the only persons who are present or able to listen to the Disclosure at the time it is made are:

- (a) the person making the disclosure;
- (b) one or more person to whom the disclosure can be made in accordance with the Act and the Regulations; and/or
- (c) an Australian legal practitioner (if any) representing the person making the disclosure.

**Misdirected Disclosure** means a Disclosure made in the manner described in paragraph 6.6 of this Procedure.

**Ombudsman Email Address** is [ombudvic@ombudsman.vic.gov.au](mailto:ombudvic@ombudsman.vic.gov.au).

**Ombudsman Office** refers to Level 2, 570 Bourke Street, Melbourne.

**Procedure** means this procedure document, which is established by Council in accordance with section 58(5) of the Act.

**Public Interest Disclosure** is a Disclosure made in accordance with Part 2 of the Act (as described in paragraph 5 of this Procedure).

**Public Interest Complaint** is a disclosure that has been determined by IBAC to be a Public Interest Complaint under section 26 of the Act.

**Public Interest Disclosure Coordinator** is the person referred to in paragraph 13.2 who has the responsibilities set out in Annexure 1 to this Procedure.

**Public Body** has the meaning given in section 6 of the Act, and includes Council.

**Public Officer** has the meaning given in section 6 of the Act, and includes Council's employees, contractors and Councillors.

**Regulations** means the *Public Interest Disclosures Regulations 2019*.

**Relevant Offence** means:

- (a) an indictable offence against an Act; or
- (b) any of the following common law offences committed in Victoria –
  - (i) attempt to pervert the course of justice;
  - (ii) bribery of a public official;
  - (iii) perverting the course of justice;
  - (iv) misconduct in public office.

**Welfare Manager** means a person appointed by the Public Interest Disclosure Coordinator to perform the role described in Annexure 1 to this Procedure.

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## 5. What is a Public Interest Disclosure?

5.1 A Public Interest Disclosure is a Disclosure that is made in accordance with Part 2 of the Act. To be a Public Interest Disclosure, the Disclosure must:

5.1.1 be made by a natural person (a corporation or a business cannot make a Public Interest Disclosure); and

5.1.2 show or tend to show (or the Discloser must reasonably believe that the Disclosure shows or tends to show):

- (a) that a person, a public body (such as Council), or a public officer (including a Council employee or contractor or Councillor) has engaged in, is engaging in, or proposes to engage in Improper Conduct; or
- (b) that a public body (such as Council) or a public officer (including a Council employee or contractor or Councillor) has taken, is taking or proposes to take Detrimental Action against a person in reprisal for making a Public Interest Disclosure; and

5.1.3 be made to in the prescribed manner, as described in paragraph 6 below.

5.2 Simply stating that Improper Conduct or Detrimental Action is occurring, without providing any supporting information, will not be a sufficient basis for a 'reasonable belief'. A 'reasonable belief' must be based in something more than a mere allegation or conclusion unsupported by any further facts or circumstances.

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## 6. How can a person make a Public Interest Disclosure about Council?

6.1 The Act specifies that Disclosures must be made in different ways according to the entity or person the subject of them.

6.2 It is not necessary that a person making a Disclosure can identify the person or Public Body to whom or to which it relates.

6.3 It is also not necessary that a person making a Disclosure identifies themselves – Disclosures can be made anonymously.

6.4 *Disclosures about Council and its employees and contractors*

6.4.1 These Disclosures must be made to Council (see section 16 of the Act) and can be either oral or written.

6.4.2 An oral Disclosure must be made In Private, either in person, by telephone or by some other means that does not involve writing:

- (a) to Council's Chief Executive Officer;
- (b) to Council's Public Interest Disclosure Coordinator;
- (c) if the person making the Disclosure is an employee of Council –
  - (i) to a person specified in paragraph (a) or (b); or
  - (ii) to an employee of Council who directly or indirectly supervises or manages that person; or
- (d) if the Disclosure relates to a person who is an employee of that Council –
  - (i) to a person specified in paragraph (a), (b) or (c)(ii); or
  - (ii) to a Council employee who directly or indirectly supervises or manages that person.

6.4.3 A written Disclosure must be:

- (a) delivered personally to Council's Office;
- (b) sent by post addressed to Council's Office; or
- (c) sent by email to the:
  - (i) christinede@melton.vic.gov.au Address; or
  - (ii) email address of any of the persons described in paragraph 6.4.2.

6.4.4 Whenever possible, Disclosures should be:

- (a) made to the Chief Executive Officer or the Public Interest Disclosure Coordinator; and
- (b) identified by the Discloser as being a Public Interest Disclosure by including on the envelope or in the email subject line the following:

*CONFIDENTIAL - Attention Public Interest Disclosure Coordinator –  
Christine Denyer.*

6.5 *Disclosures about Councillors*

6.5.1 These Disclosures must be made directly to IBAC or the Victorian Ombudsman (see section 14(e) of the Act).

6.5.2 These Disclosures can also be made orally or in writing, as follows:

## IBAC

Complaints can be submitted by:

- (a) making an oral Disclosure In Private, either in person, by telephone or by some other means that does not involve writing, to:
  - (i) the IBAC Commissioner;
  - (ii) a Deputy IBAC Commissioner;
  - (iii) the Chief Executive Officer of IBAC;
  - (iv) an IBAC employee; or
  - (v) any staff seconded to, or engaged by, IBAC from a Department, statutory authority of other public body; or
- (b) making a written Disclosure which must be:
  - (i) delivered personally to the IBAC Office;
  - (ii) sent by post addressed to the IBAC Office;
  - (iii) sent by email to the:
    - a. IBAC Email Address; or
    - b. email address of any person described in paragraph 6.5.2(a); or
  - (iv) submitted by an online form at <https://www.ibac.vic.gov.au/reporting-corruption/report/complaints-form>.

## Ombudsman

Complaints can be submitted by:

- (c) making an oral Disclosure In Private, either in person, by telephone or by some other means that does not involve writing, to an Ombudsman officer; or
- (d) making a written Disclosure which must be:
  - (i) delivered personally to the Ombudsman's Office;
  - (ii) sent by post addressed to the Ombudsman's Office;
  - (iii) sent by email to the:
    - a. Ombudsman Email Address; or
    - b. email address of any person described in paragraph 6.5.2(c); or
  - (iv) submitted by an online form at <https://www.ombudsman.vic.gov.au/Complaints/Make-a-Complaint>.



## 6.6 *Misdirected Disclosures*

6.6.1 These disclosures may be made to Council in accordance with the 'no wrong door' provisions in the Act (see section 18 of the Act).

6.6.2 A Disclosure is a Misdirected Disclosure if:

- (a) it is a Disclosure for which Council is not the appropriate receiving entity to which the Disclosure may or must be made (see paragraphs 6.4 and 6.5) – eg Disclosures about Councillors; and
- (b) the Discloser honestly believed that Council was the appropriate receiving entity for the Disclosure; and
- (c) the Disclosure does not relate to a member of Parliament.

6.6.3 If Council receives a Misdirected Disclosure, Council will consider whether the Disclosure may be a potential Public Interest Disclosure in accordance with paragraph 7 below and notify the Disclosure to the appropriate receiving entity accordingly.

6.6.4 Beyond notifying a Misdirected Disclosure to the appropriate receiving entity, 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 the Misdirected Disclosure.

6.7 A Disclosure will not be a Public Interest Disclosure if:

- 6.7.1 it is not made in accordance with the processes outlined at paragraphs 6.4, 6.5 or 6.6 of this Procedure;
- 6.7.2 it is made about the actions of, among others, a Public Interest Monitor, the Victorian Inspectorate, an officer of the Victorian Inspectorate or a Court (see section 9(3) of the Act);
- 6.7.3 the Discloser expressly states that the Disclosure is not a Public Interest Disclosure; or
- 6.7.4 it is not made in accordance with the procedures prescribed by Part 2 of the Act and the Regulations.

6.8 In those circumstances, Council may:

- 6.8.1 reject the Disclosure;
- 6.8.2 consider directing the Discloser to make the Disclosure to another entity; and/or
- 6.8.3 where the Disclosure concerns Council, a Council employee or contractor or a Councillor, accept the Disclosure but not treat it as a Public Interest Disclosure for the purposes of the Act.

- 6.9 Such Disclosures will therefore not attract any of the protections provided by the Act (see paragraph 9).

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## **7. What happens when Council receives a Disclosure?**

- 7.1 On each occasion that Council receives a Disclosure of Improper Conduct or Detrimental Action (including a Misdirected Disclosure), it will assess the Disclosure to determine whether it is a Public Interest Disclosure. The assessment will involve determining whether the elements set out in paragraph 5 above are met.
- 7.2 If it is determined that the Disclosure is not a Public Interest Disclosure, Council:
- 7.2.1 will advise the Discloser, within 28 days:
- (a) of the determination;
  - (b) that the Disclosure has not been notified to IBAC for assessment; and
  - (c) that the protections provided by Part 6 of the Act (see paragraph 9) continue to apply; and
- 7.2.2 may take such further action in respect of the Disclosure as it sees fit, according to the nature of the Disclosure.
- 7.3 If it is determined that a Disclosure is a Public Interest Disclosure, Council:
- 7.3.1 will notify IBAC within 28 of the Public Interest Disclosure for assessment;
- 7.3.2 will advise the Discloser, within 28 days that the:
- (a) Disclosure has been notified to IBAC for assessment;
  - (b) protections provided by Parts 6 and 7 of the Act (see paragraph 9) apply; and
  - (c) it is an offence for the Discloser to disclose that the Disclosure has been notified to IBAC; and
- 7.3.3 may take urgent action to prevent the Improper Conduct the subject of the Disclosure occurring or continuing pending the outcome of IBAC's assessment.
- 7.4 Council is not obliged to advise a Discloser of any of the matters outlined above if the Disclosure is made anonymously.

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## **8. What happens if a Public Interest Disclosure is notified to IBAC?**

- 8.1 When a Public Interest Disclosure is notified to IBAC, it will assess it to determine whether it is a Public Interest Complaint.
- 8.2 If a Public Interest Disclosure is assessed as a Public Interest Complaint, IBAC must:
- 8.2.1 dismiss the Public Interest Complaint and take no further action;
- 8.2.2 investigate the Public Interest Complaint itself; or

- 8.2.3 refer the Public Interest Complaint to another person or body, including the Ombudsman and the Chief Municipal Inspector.
- 8.3 IBAC will notify the Discloser that:
- 8.3.1 it has determined that the Public Interest Disclosure is a Public Interest Complaint; and
- 8.3.2 irrespective of IBAC's determination, the protections provided by Part 6 of the Act (see paragraph 9) apply.

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## **9. What protections apply to persons making Public Interest Disclosures?**

### **9.1 Protections from liability**

- 9.1.1 Part 6 of the Act provides that a person who makes a Disclosure (including a Misdirected Disclosure or an External Disclosure) is entitled to various protections.
- 9.1.2 These protections include:
- (a) immunity from civil or criminal liability arising from the Disclosure being made;
  - (b) protection from breach of confidentiality obligations imposed by statute;
  - (c) availability of the defence of absolute privilege in a defamation action arising from the Disclosure; and
  - (d) protection from Detrimental Action (see paragraph 9.2).

### **9.2 Detrimental Action**

#### What is Detrimental Action?

- 9.2.1 Under section 45 of the Act, it is an offence to take Detrimental Action against a person in reprisal for the making of a Public Interest Disclosure. A person who commits such an offence may receive a penalty of up to 2 years imprisonment or a fine of up to 240 penalty units, or both.
- 9.2.2 A person takes Detrimental Action against another person in reprisal for a Public Interest Disclosure if the person acts in the belief that the other person or anyone else:
- (a) has made or intends to make a Public Interest Disclosure; or
  - (b) has cooperated or intends to cooperate with an investigation of a Public Interest Disclosure.
- 9.2.3 It is also an offence under section 45 of the Act if a person threatens to take Detrimental Action in reprisal for a Public Interest Disclosure or incites or permits another person to do so.
- 9.2.4 A manager does not take Detrimental Action if they take management action in relation to an employee who has made a Public Interest Disclosure (unless the Public Interest Disclosure is a reason for the management action). Nor does the Act prevent a person taking action against a Discloser who has made a false Disclosure or provided false information regarding the Disclosure.

### What are Council's obligations in relation to Detrimental Action?

- 9.2.5 Council's obligations to protect persons from Detrimental Action in reprisal for a Public Interest Disclosure will apply to any person, including:
- (a) the Discloser;
  - (b) a person who is the subject of the Public Interest Disclosure; and
  - (c) any person who is cooperating with an investigation into a Public Interest Disclosure.
- 9.2.6 Council will take steps to protect any person who faces a risk of Detrimental Action being taken against them in reprisal for a Public Interest Disclosure.
- 9.2.7 Such steps may include:
- (a) if the person is an employee or contractor of Council, actively monitoring the workplace to anticipate any possible Detrimental Action against the Discloser or person cooperating in reprisal for the Public Interest Disclosure;
  - (b) considering any concerns the person may express about possible harassment or intimidation, including considering whether any such conduct may be due to causes other than a Public Interest Disclosure; and
  - (c) ensuring that Council complies with its obligations under Occupational Health and Safety legislation and the *Charter of Human Rights and Responsibilities Act 2006* in relation to the person.
- 9.2.8 Depending on the nature and circumstances of the Disclosure, Council may take other appropriate steps to protect the person from Detrimental Action.
- 9.2.9 The Public Interest Disclosure Coordinator will be responsible for taking the steps set out in paragraphs 9.2.7 and 9.2.8 above, although the Public Interest Disclosure Coordinator may engage the assistance of the Welfare Manager (if one is appointed) to carry out some or all of these steps.
- 9.2.10 The Public Interest Disclosure Coordinator and the Welfare Manager (if one is appointed) must ensure that appropriate records are kept of their contact with the person being protected from Detrimental Action, and of any follow up action taken in relation to the Public Interest Disclosure.
- 9.2.11 If a Council employee, contractor or Councillor becomes aware that a Public Interest Disclosure has been made, the employee, contractor or Councillor must refrain from any activity that is, or could be perceived to be, discrimination, victimisation, harassment or intimidation of a person who makes a Public Interest Disclosure or any person who they know, or suspect, is cooperating with an investigation.

### Complaints about Detrimental Action

- 9.2.12 If a person believes that, as a result of a Public Interest Disclosure, they have been subjected to Detrimental Action, the person may notify Council of the suspected Detrimental Action. If the notification is made in accordance with the requirements of the Act, the notification will constitute a further Public Interest Disclosure.
- 9.2.13 The notification must be made, and will be handled, in accordance with the Act and this Procedure as if it is a Public Interest Disclosure.

### **9.3 Council's confidentiality obligations**

- 9.3.1 When a Public Interest Disclosure is made Council and its employees, contractors and Councillors will be obliged to maintain the confidentiality of:
- (a) the identity of the Discloser; and
  - (b) the content, and information about the content, of the Disclosure.
- 9.3.2 It is an offence for Council to disclose to any person the identity of someone who has made a Public Interest Disclosure, or the content, or information about the content, of a Public Interest Disclosure, except in the circumstances identified in paragraph 9.5 of this Procedure. If Council commits such an offence, it may be subject to a penalty of up to 600 penalty units.
- 9.3.3 It is an offence for any person, including a Council employee, contractor or Councillor, to disclose to any person the identity of someone who has made a Public Interest Disclosure, or the content, or information about the content, of a Public Interest Disclosure, except in the circumstances identified in paragraph 9.5 of this Procedure. A person who commits such an offence may be subject to a penalty of up to one year's imprisonment or a fine of up to 120 penalty units, or both.

### **9.4 How will Council protect the confidentiality of information?**

- 9.4.1 Council will take all reasonable steps to ensure that all Disclosures are kept confidential.
- 9.4.2 These reasonable steps will include:
- (a) ensuring that Council employees, particularly those receipting mail, are alert to identifying Disclosures;
  - (b) immediately referring all Disclosures to the Public Interest Disclosure Coordinator;
  - (c) establishing security measures in Council's electronic document management system to ensure that information relating to Disclosures cannot be accessed by anyone except the Public Interest Disclosure Coordinator; and
  - (d) keeping all hard copy documents relating to Disclosures in a dedicated filing space that is locked and only accessible by the Public Interest Disclosure Coordinator, the Welfare Manager (if one is appointed) and any other Council employee who is involved in managing the Public Interest Disclosure or protecting the welfare of the Discloser.
  - (e) ensuring that the Welfare Manager, and any other employees who are involved in managing the Public Interest Disclosure, understand their confidentiality obligations under the Act;
  - (f) only disclosing information regarding conduct which is the subject of a Disclosure to others on a 'need-to-know' basis and in accordance with paragraph 9.5 of this Procedure; and
  - (g) ensuring that all written and verbal communications regarding a Disclosure are conducted in a discreet manner.

- 9.4.3 Subject to paragraph 9.5 of this Procedure, Council, through the Public Interest Disclosure Coordinator, will take steps to protect the confidentiality of the identity of the Discloser and the content of any Public Interest Disclosure for the duration of any investigation into the matter. It will also ensure that, following the conclusion of any investigation, it keeps confidential the fact that an investigation has occurred, its result, and the identity of the Discloser.
- 9.4.4 Council will only disclose information about a Disclosure in the circumstances permitted by the Act and identified in paragraph 9.5 of this Procedure.

## **9.5 Exceptions to confidentiality requirements**

- 9.5.1 Council and any Council employees, contractors and Councillors may only disclose information about the content of a Disclosure:
- (a) in accordance with a direction or authorisation from IBAC (or another investigating entity);
  - (b) to the extent necessary for the purpose of taking lawful action in relation to the conduct which is the subject of the Disclosure – e.g. as part of a disciplinary process;
  - (c) if IBAC has determined that the Disclosure is not a Public Interest Complaint;
  - (d) for the purpose of obtaining legal advice in relation to the Disclosure;
  - (e) for the purpose of a proceeding for an offence against an Act;
  - (f) where necessary for the purpose of exercising functions under the Act; or
  - (g) if otherwise permitted to do so by the Act.
- 9.5.2 Council and any Council employees, contractors and Councillors may only Disclose the identity of a person who has made a Disclosure:
- (a) if the person who made the Disclosure has consented to it;
  - (b) if IBAC has determined that the Disclosure is not a Public Interest Complaint;
  - (c) for the purpose of obtaining legal advice in relation to the Disclosure;
  - (d) for the purpose of a proceeding for an offence against an Act;
  - (e) where necessary for the purpose of exercising functions under the Act; or
  - (f) if otherwise permitted to do so by the Act.
- 9.5.3 In addition, the Public Interest Disclosure Coordinator may provide information about a Public Interest Disclosure to:
- (a) the Chief Executive Officer, unless the Chief Executive Officer is the subject of the Public Interest Disclosure; and
  - (b) a Welfare Manager, if one is appointed by the Public Interest Disclosure Coordinator in accordance with paragraph 10 or 11 of this Procedure.

## 9.6 External Disclosures

- 9.6.1 An External Disclosure is a Public Interest Disclosure made to a person or body that is not otherwise able to receive Disclosures under the Act (see section 38A of the Act) – e.g. to a journalist.
- 9.6.2 A Discloser may make an External Disclosure under the Act if:
- (a) the original Disclosure was not made anonymously; and
  - (b) the original Disclosure was determined to be a Public Interest Complaint and the Discloser was notified of that determination; and
  - (c) the subject matter of the External Disclosure is substantially the same as the original Disclosure; and
  - (d) the External Disclosure does not contain information that may prejudice a criminal investigation, criminal proceeding or other legal proceeding of which the Discloser is aware, or is likely to lead to the disclosure of any investigative method used by the IBAC or members of Victoria Police personnel; and
  - (e) one of the following situations exists:
    - (i) the Discloser has not been notified of any action taken in relation to the Disclosure within 6 months of determination as a Public Interest Complaint, and the Discloser has not received a response 30 days after requesting an update on progress; or
    - (ii) 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; or
    - (iii) 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 receives no further update advising the investigation had been completed 6 months after that response.
- 9.6.3 The protections provided by Part 6 of the Act (see paragraph 9 of this Procedure) apply to External Disclosures.

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## 10. Managing the welfare of the discloser and/or person cooperating

- 10.1 Council is committed to ensuring that its workplace culture supports those who make Disclosures and those who cooperate with an investigation into a Public Interest Complaint.
- 10.2 Council will take all reasonable steps to protect the welfare of Council employees, contractors and/or Councillors who make Disclosures or who cooperate with an investigation into a Public Interest Complaint.
- 10.3 If the Public Interest Disclosure Coordinator considers it appropriate to do so, the Public Interest Disclosure Coordinator will appoint a Welfare Manager who will be responsible for managing the welfare of:
- 10.3.1 a person who has made a Public Interest Disclosure; and/or

- 10.3.2 a person who is cooperating with an investigation into a Public Interest Complaint.
- 10.4 The responsibilities of the Welfare Manager are set out in Annexure 1 to this Procedure.
- 10.5 In addition to the steps set out in paragraph 9.2.7 above, Council will, if appropriate, also take steps to protect the welfare of the Discloser and/or any person cooperating with an investigation, which may include:
- 10.5.1 providing active support to the Discloser and/or person cooperating;
  - 10.5.2 managing the expectations of the Discloser and/or person cooperating in relation to the outcome of the matter;
  - 10.5.3 actively considering the welfare needs of the Discloser and/or person cooperating;
  - 10.5.4 explaining the operation of this Procedure and/or the Act; and/or
  - 10.5.5 keeping records of all aspects of the matter, including all contact and follow up with the Discloser and/or person cooperating.
- 10.6 If the Discloser or person cooperating with an investigation is a Council employee, contractor or Councillor, Council may have other obligations in relation to the management of that individual's welfare, including, if relevant, under a contract of employment or engagement.
- 10.7 The Public Interest Disclosure Coordinator will be responsible for taking the steps set out in paragraphs 10.5 and 10.6 above, unless the Public Interest Disclosure Coordinator appoints a Welfare Manager for the Discloser or person cooperating, in which case, the Welfare Manager will be responsible for taking those steps.

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## **11. Managing the welfare of the person against whom a disclosure has been made**

- 11.1 Council will take all reasonable steps to ensure that the identity of the person who is the subject of any Public Interest Disclosure will remain confidential while the Public Interest Disclosure is being assessed or investigated.
- 11.2 Council will only inform the person who is the subject of a Public Interest Disclosure that a Public Interest Disclosure has been made about him or her, and/or provide that person with information about the Public Interest Disclosure, if instructed to do so by IBAC (or another investigating entity).
- 11.3 In such circumstances, Council may take steps to protect the welfare of the person who is the subject of any Public Interest Disclosure, which may include:
- 11.3.1 providing active support to the person;
  - 11.3.2 actively considering the welfare needs of the person;
  - 11.3.3 explaining the operation of this Procedure and/or the Act; and/or
  - 11.3.4 keeping records of all contact and follow up with the person.
- 11.4 If appropriate, the Public Interest Disclosure Coordinator may also appoint a Welfare Manager to look after the wellbeing of the person who is the subject of a Disclosure. The responsibilities of the Welfare Manager are set out in Annexure 1 to this Procedure.
- 11.5 The Public Interest Disclosure Coordinator will be responsible for taking the steps set out in paragraph 11.3 above, unless the Public Interest Disclosure Coordinator appoints a Welfare



Manager for the person the subject of the Disclosure, in which case, the Welfare Manager will be responsible for taking those steps.

- 11.6 The investigation or assessment of a Public Interest Disclosure will be conducted by IBAC (or another investigating entity), and IBAC will be responsible for ensuring that any person who is the subject of the Public Interest Disclosure is afforded natural justice.

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## 12. Other notifications to IBAC

- 12.1 Even if a Disclosure is not a Public Interest Disclosure – eg because it is not made in the manner outlined above – Council’s Chief Executive Officer may be obliged to notify the Disclosure to IBAC.
- 12.2 Section 57(1) of the IBAC Act requires Council’s Chief Executive Officer to notify IBAC of any matter which he or she suspects on reasonable grounds involves Corrupt Conduct occurring or having occurred.
- 12.3 In those circumstances, the confidentiality provisions in Part 7 of the Act and outlined at paragraph 9.3 above will not apply to the Disclosure.

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## 13. Further information

- 13.1 If you would like further information about how to make a Public Interest Disclosure or about your rights and obligations under the Act, please refer to:

Name	Location
<i>Independent Broad-Based Anti-Corruption Act 2011</i>	<a href="http://www.legislation.vic.gov.au/">http://www.legislation.vic.gov.au/</a>
<i>Public Interest Disclosures Act 2012</i>	<a href="http://www.legislation.vic.gov.au/">http://www.legislation.vic.gov.au/</a>
<i>Public Interest Disclosures Regulations 2019</i>	<a href="http://www.legislation.vic.gov.au/">http://www.legislation.vic.gov.au/</a>
<i>Ombudsman Act 1973</i>	<a href="http://www.legislation.vic.gov.au/">http://www.legislation.vic.gov.au/</a>
The Independent Broad-Based Anti-Corruption Commission Guidelines for Making and Handling Public Interest Disclosures	<a href="https://www.ibac.vic.gov.au/docs/default-source/guidelines/guidelines-for-handling-public-interest-disclosures.pdf">https://www.ibac.vic.gov.au/docs/default-source/guidelines/guidelines-for-handling-public-interest-disclosures.pdf</a>
The Independent Broad-Based Anti-Corruption Commission Guidelines for Public Interest Disclosures Welfare Management	<a href="https://www.ibac.vic.gov.au/docs/default-source/guidelines/guidelines-for-public-interest-disclosure-welfare-management.pdf">https://www.ibac.vic.gov.au/docs/default-source/guidelines/guidelines-for-public-interest-disclosure-welfare-management.pdf</a>

- 13.2 If you have any questions about this Procedure, please contact the Public Interest Disclosure Coordinator:

Christine Denyer  
Manager Legal and Governance  
City of Melton  
232 High Street  
MELTON VIC 3337

Telephone: 03 9747 5367

Email: [christinede@melton.gov.vic.au](mailto:christinede@melton.gov.vic.au)

- 13.3 The Public Interest Disclosure Coordinator will be able to provide you with confidential advice about the matters addressed in this Procedure.

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# **Attachment 1 Responsibilities of the Public Interest Disclosure Coordinator and Welfare Manager**

## **1. Public Interest Disclosure Coordinator**

- 1.1 The role of the Public Interest Disclosure Coordinator is to:
  - 1.1.1 be a contact point for general advice about this Procedure;
  - 1.1.2 be responsible for ensuring that Council carries out its responsibilities under the Act;
  - 1.1.3 where the Public Interest Disclosure Coordinator determines that it is necessary and appropriate, appoint a Welfare Manager to support a person making a Disclosure, a person cooperating with an investigation into a Public Interest Complaint, or a person who is the subject of a Public Interest Disclosure; and
  - 1.1.4 carry out the steps referred to in paragraphs 9.2.7 and 9.2.8 and, if no Welfare Manager is appointed, perform the duties set out in paragraph 10.3 in relation to a Public Interest Disclosure.
- 1.2 Subject to paragraph 9.5 of this Procedure, the Public Interest Disclosure Coordinator must keep confidential all information relating to a Public Interest Disclosure.

## **2. Welfare Manager**

- 2.1 The role of the Welfare Manager is to:
  - 2.1.1 perform the duties set out in paragraph 10.3 in relation to a Discloser and/or person cooperating with an investigation into a Public Interest Complaint;
  - 2.1.2 carry out the steps set out in paragraph 11.3 in relation to a person who is the subject of a Public Interest Disclosure;
  - 2.1.3 if asked to do so, assist the Public Interest Disclosure Coordinator to carry out the steps set out in paragraphs 9.2.7 and 9.2.8; and
  - 2.1.4 otherwise, and in accordance with a direction from the Public Interest Disclosure Coordinator, take all reasonable steps to protect the welfare of any person who has made a Disclosure, any person who is cooperating with an investigation into a Public Interest Complaint or any person who is the subject of a Public Interest Disclosure.
- 2.2 Subject to paragraph 9.5 of this Procedure, the Welfare Manager must keep confidential all information relating to a Public Interest Disclosure.
- 2.3 The Welfare Manager will ensure that all meetings and conversations with any person in relation to the Public Interest Disclosure are conducted in a discreet manner.