



Public Interest Disclosures Procedures

OPERATIONAL PROCEDURE

PURPOSE

The *Public Interest Disclosures Act 2012 - Procedures* (**Procedures**) establish a system for reporting disclosures of improper conduct and/or detrimental action taken by Council or its employees in reprisal for a person having made a disclosure. Under the Procedures, such disclosures can be made to Council's Public Interest Disclosures Coordinator or to one of the nominated Public Interest Disclosures Officers. Disclosures may be made by employees or by members of the public.

These Procedures are designed to complement normal communication channels between supervisors and employees. Employees are encouraged to continue to raise appropriate matters at any time with their supervisors. Employees may also make a disclosure of improper conduct or detrimental action under the Act in accordance with these Procedures.

The Colac Otway Shire Council (**Council**) is committed to the aims and objectives of the *Public Interest Disclosures Act 2012 (Vic)* (**the Act**). Council does not tolerate improper conduct by its Councillors and employees, nor the taking of reprisals against those who come forward to disclose such conduct.

Council recognises the value of transparency and accountability in its administrative and management practices, and supports the making of disclosures that reveal improper conduct, including corrupt conduct, criminal offences, serious professional misconduct, conduct involving a substantial mismanagement of public resources, or conduct involving a substantial risk to public health and safety or the environment.

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 who is the subject of the disclosure.

SCOPE

The Act commenced operation on 10 February 2013 with key changes to the Act commencing on 1 January 2020.

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1. Purposes

The purposes of this Act are –

(a) to encourage and facilitate disclosures of –

- (i) improper conduct by public officers, public bodies and other persons; and
- (ii) detrimental action taken in reprisal for a person making a disclosure under this Act; and

(b) to provide protection for –

- (i) persons who make those disclosures; and
- (ii) persons who may suffer detrimental action in reprisal for those disclosures;

(ba) to ensure that those disclosures are properly assessed and, where necessary, investigated; and

(c) to provide for the confidentiality of the content of those disclosures and the identity of persons who make those disclosures.

DEFINITIONS

PUBLIC INTEREST DISCLOSURE

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

a) Information that shows or tends to show –

- i. A person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct; or
- ii. A public officer, or public body has taken, is taking or proposes to take detrimental action against a person because they have made, or are believed to have made, a public interest disclosure;

b) Information that the person reasonably believes shows or tends to show –

- i. A person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct; or
- ii. A public officer, or public body has taken, is taking or proposes to take detrimental action against a person because they have made, or are believed to have made, a public interest disclosure;

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PUBLIC BODY AND PUBLIC OFFICER

Council is a **public body**, for the purposes of the Act.

All employees and councillors of Council are **public officers** for the purposes of the Act. A person that is performing a public function on behalf of the Council is also a **public officer**.

IMPROPER CONDUCT

A disclosure may be made about **improper conduct** engaged in by a person, public body or public officer.

Improper conduct means:

a) Corrupt Conduct

Corrupt Conduct (within the meaning given by section 4 of the *Independent Broad-based Anti-Corruption Act 2011* (Vic)) means conduct, other than trivial conduct:

- i. Of any person (whether or not a public officer) that adversely affects the honest performance of a public officer's or public body's functions;
- ii. 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;
- iii. Of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust;
- iv. Of a public officer or public body that involves the misuse of information or material acquired in the course of the performance of his or her or its official 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;
- v. That could constitute a conspiracy or an attempt to engage in any of the above conduct –
being conduct that would, if proved beyond a reasonable doubt, constitute an offence.

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

- i. A criminal offence;
- ii. Serious professional misconduct

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Serious Professional Misconduct will include conduct that:

1. involves a serious failure to exhibit the skills or experience required to perform the responsibilities of the office; and/or
 2. constitutes a serious breach of an established professional code of conduct; and/or
 3. other serious departures from the person's professional responsibilities.
- iii. Dishonest performance of public functions;
 - iv. An intentional or reckless breach of public trust;
 - 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;
 - vi. A substantial mismanagement of public resources;
 - vii. A substantial risk to health or safety of one or more persons;
 - viii. A substantial risk to the environment; or
- c) Conduct of any person (whether or not a public officer) 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 result in the person, or an associate of the person, obtaining –
 1. A licence, permit, approval, authority or other entitlement under any Act or subordinate instrument;
 2. An appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument;
 3. A financial benefit or real or personal property; or
 4. Any other direct or indirect monetary or proprietary gain –that the person or associate would not have otherwise obtained; or
- Conduct of any person (whether or not a public officer) that could constitute a conspiracy or attempt to engage in any of the conduct referred to above in paragraph c).

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DETRIMENTAL ACTION

The Act makes it an offence for a person to take, or threaten to take, or incite or permit someone else to take ***detrimental action*** against a person in reprisal for a public interest disclosure.

Detrimental action includes:

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

REFERENCES

- *Public Interest Disclosures Act 2012*

STATEMENT OF POLICY

1. EMPLOYEES

Employees must not engage in improper conduct, or detrimental action in reprisal, in their employment with Council.

Employees are encouraged to report known or suspected incidences of improper conduct or detrimental action by Council employees or councillors, to appropriate persons within Council and/or other reporting bodies, in accordance with these Procedures.

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

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2. PUBLIC INTEREST DISCLOSURES OFFICERS

Public Interest Disclosures Officers will:

- a) be a contact point for general advice about the operation of the Act for any person wishing to make a disclosure about improper conduct or detrimental action;
- b) make arrangements for a disclosure to be made privately and discreetly and, if necessary, away from the workplace;
- c) receive any disclosure made orally or in writing (internal and external);
- d) commit to writing any disclosure made orally;
- e) impartially assess the allegation and determine whether it is a public interest disclosure, in accordance with the Act;
- f) take all necessary steps to ensure the identity of the person making the disclosure and the identity of the person who is the subject of the disclosure are kept confidential; and
- g) forward all disclosures and supporting evidence to the Public Interest Disclosures Co-ordinator (or to the Relief Public Interest Disclosures Co-ordinator in the circumstances described above).

3. PUBLIC INTEREST DISCLOSURES CO-ORDINATOR

The Public Interest Disclosures Co-ordinator has a central clearinghouse role in the internal reporting system. He or she will:

- a) receive all disclosures forwarded from the Public Interest Disclosures Officers;
- b) receive all phone calls, emails and letters from members of the public or employees seeking to make a disclosure;
- c) impartially assess each disclosure, or review the assessment of a Public Interest Disclosure Officer, to determine whether it is a public interest disclosure;
- d) notify IBAC of all public interest disclosures within 28 days;
- e) notify the person who made the disclosure within 28 days, of whether the disclosure has been assessed as a public interest disclosure and referred to IBAC;
- f) appoint a Welfare Manager to support the person making the disclosure and to protect him or her from any reprisals;
- g) establish and manage a confidential filing system;

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- h) collate and publish statistics on disclosures made as required by the Act;
- i) take all necessary steps to ensure the identity of the person making the disclosure and the identity of the person who is the subject of the disclosure are kept confidential; and
- j) liaise with the Chief Executive Officer of the Council.

4. WELFARE MANAGER

The Welfare Manager is responsible for looking after the general welfare of a person making a disclosure. The Welfare Manager will:

- a) examine the immediate welfare and protection needs of a person making a disclosure and seek to foster a supportive work environment;
- b) advise a person making a disclosure of the legislative and administrative protections available to him or her;
- c) listen and respond to any concerns regarding harassment, intimidation or victimisation in reprisal for making a disclosure; and
- d) ensure the expectations of a person making a disclosure are consistent with these Procedures and the Act.

5. CONTACT PERSONS WITHIN THE COUNCIL

Any person may make a disclosure of improper conduct or detrimental action engaged in by councillors or Council employees. A disclosure may be made to the following roles, orally over the phone or in person, or in writing. A disclosure may be made anonymously.

Public Interest Disclosures Co-ordinator

- Manager Governance & Communications Phone: 5232 9453

If the Public Interest Disclosures Co-ordinator is absent, or is implicated in the disclosure, the Relief Public Interest Disclosures Coordinator is:

- Chief Executive Phone: 5232 9454

Public Interest Disclosures Officers

- Manager People and Culture Phone: 5232 9445
- General Manager Corporate Services Phone: 5232 9416
- General Manager Infrastructure and Leisure Services Phone: 5232 9483
- General Manager Development and Community Services Phone: 5232 9456

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All hard copy correspondence can be sent to the following address, care of the relevant contact person above:

PO Box 283
Colac VIC 3250

All correspondence, phone calls and emails from internal or external persons who make disclosures will be referred at first instance to the Public Interest Disclosures Co-ordinator (or the Relief Public Interest Disclosures Co-ordinator in the circumstances described above).

Where a person is contemplating making a disclosure and is concerned about approaching the Public Interest Disclosures Co-ordinator or a Public Interest Disclosures Officer in the workplace, he or she can call the relevant officer and request a meeting in a discreet location away from the workplace.

6. ALTERNATIVE CONTACT PERSONS

A disclosure about improper conduct or detrimental action engaged in by councillors or employees may also be made directly to any of the following bodies:

The Independent Broad-based Anti-Corruption Commission (IBAC):

Address: Level 1, North Tower, 459 Collins Street

Melbourne, Victoria 3001

GPO Box 24234

Melbourne, Victoria 3000

Internet: www.ibac.vic.gov.au

Email: info@ibac.vic.gov.au

Phone: 1300 735 135

TTY users phone: 1800 555 677

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The Victorian Ombudsman

Address: Level 2, 570 Bourke Street

Melbourne, Victoria 3000

DX210174 Melbourne

Internet: www.ombudsman.vic.gov.au

Phone: 03 9613 6222 (1800 806 314 – regional only)

TTY users phone: 133 667 then 03 9613 6222

Telephone Interpreter: 131 450

The Victorian Inspectorate

Address: PO Box 617, Collins St West 8007

Internet: www.vic.gov.au/vicinspectorate

Phone: 03 8614 3232

Council will take all reasonable steps to protect the identity of a person making a disclosure. Maintaining confidentiality is crucial in ensuring reprisals are not made against a person for making a disclosure.

The Act prohibits:

- a) any person who receives information via a public interest disclosure from disclosing the content, or information about the content, of that disclosure; and
- b) Any person or body from disclosing information likely to lead to the identification of a person who has made a public interest disclosure, without their consent,

except in certain limited circumstances.

The circumstances in which a person may disclose protected information include:

- a) where it is necessary to do so in exercising the functions under the Act;
- b) when obtaining legal advice in relation to the rights, liabilities, obligations and privileges under the Act;
- c) when seeking advice or support in relation to the disclosure from a registered health practitioner, trade union or employee assistance program; and

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- d) when an interpreter is required to assist a person who does not have sufficient knowledge of the English language.

Council will ensure all paper files are kept in a secure room that can only be accessed by the Public Interest Disclosures Co-ordinator, Public Interest Disclosures Officers or the Welfare Manager (in relation to welfare matters).

All printed material will be kept in files that are clearly marked as '*Public Interest Disclosures Act 2012 Matter*', and warn of the criminal penalties that apply to any unauthorised divulging of information concerning a public interest disclosure.

All electronic files will be produced and stored on a secure network location and be given password protection.

So far as is reasonably practicable, correspondence regarding public interest disclosures will not be sent by email. Any emails in relation to a public interest disclosure will be marked confidential and any documents attached to email correspondence subject to password protection.

Council will ensure all phone calls and meetings in relation to a public interest disclosure are conducted in private.

Correspondence with IBAC regarding public interest disclosures will be marked confidential and will be hand delivered or sent via a secure email server.

While Council is required to include certain information about public interest disclosures in its Annual Report, information likely to lead to the identification of a person who made a public interest disclosure will not be included.

The Public Interest Disclosures Co-ordinator will establish a secure register to record the information required to be published in the Annual Report, and to generally keep account of the status of persons making disclosures under these Procedures (including disclosures which are not assessed as being public interest disclosures).

The register will only be accessible by the Public Interest Disclosures Co-ordinator and will not record any information that may identify the person making a disclosure.

The register will contain the following information:

- a) the number and types of disclosures made to Council during the year;
- b) the number of disclosures assessed by Council as being public interest disclosures and referred to IBAC.

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RECEIVING AND ASSESSING DISCLOSURES

1. IS THE DISCLOSURE A PUBLIC INTEREST DISCLOSURE?

Where a disclosure has been received by a Public Interest Disclosures Officer or by the Public Interest Disclosures Co-ordinator, he or she will assess whether the disclosure is a public interest disclosure under the Act.

a) Has the disclosure been made to the appropriate person?

For a disclosure to be considered by Council, it must concern a councillor or employee of the Council. Disclosures may be made to the relevant officers within Council, set out above.

If a disclosure is in relation to the conduct of a Councillor, it must be made to the IBAC or the Victorian Ombudsman. If a disclosure about a Councillor's conduct is made to Council, the person who has made the disclosure will be advised to direct their disclosure to IBAC or the Victorian Ombudsman.

Where a disclosure concerns a public officer of a public body other than Council, and Council is satisfied that the person who made the disclosure honestly believed that Council was the appropriate entity to make a disclosure to, Council may assess the disclosure in accordance with these Procedures and notify IBAC if appropriate. Otherwise, the person who has made the disclosure will be advised of the correct person to whom, or body to which, the disclosure should be directed.

b) Does the disclosure contain the essential elements of a public interest disclosure?

To be a public interest disclosure, a disclosure must satisfy the following criteria:

- i) Did a natural person (that is, an individual person rather than a corporation) make the disclosure?
- ii) Does the disclosure relate to conduct of Council, or councillor or employee of Council acting in their official capacity or in connection with their official duties?
- iii) Is the alleged conduct either improper conduct, or detrimental action taken against a person in reprisal for making a public interest disclosure, as defined in the Act and set out at 0 and 0 above?
- iv) Does the person making the disclosure have reasonable grounds for believing the alleged conduct has occurred?
- v) Does the information provided show or tend to show, or does the person reasonably believe that the information shows, or tends to show, that the public officer to whom the disclosure relates:

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- a. has engaged, is engaging or proposes to engage in improper conduct in his or her capacity as a public officer; or
- b. has taken, is taking or proposes to take detrimental action in reprisal for the making of the public interest disclosure by another person?

c) Assessment by Council

Where a disclosure is received by a Public Interest Disclosures Officer, the Public Interest Disclosures Officer will make an initial assessment about whether it is a public interest disclosure. That initial assessment will be documented.

The disclosure will then be referred to the Public Interest Disclosures Co-ordinator, together with the initial assessment of the Public Interest Disclosures Officer, for final assessment. The Public Interest Disclosures Co-ordinator will determine whether the disclosure is a public interest disclosure under the Act and document the final assessment.

The Public Interest Disclosures Officer and Public Interest Disclosures Co-ordinator may make reasonable inquiries in order to form their view as to whether the disclosure is a public interest disclosure.

The person who made the disclosure will be advised of Council's assessment within 28 days.

2. WHERE THE DISCLOSURE CONSIDERED A PUBLIC INTEREST DISCLOSURE

Where the Public Interest Disclosures Co-ordinator concludes that the disclosure amounts to a public interest disclosure, he or she will:

- a) notify IBAC of the public interest disclosure and provide relevant information about the public interest disclosure to IBAC; and
- b) notify the person who made the disclosure that the disclosure has been notified to the IBAC for assessment.

IBAC will then assess the public interest disclosure, in accordance with Part 3 of the Act, to determine whether it is a public interest complaint that should be dealt with by IBAC. IBAC is required to notify Council and the person who made the disclosure of its decision.

3. WHERE THE DISCLOSURE IS NOT CONSIDERED A PUBLIC INTEREST DISCLOSURE

Where the Public Interest Disclosures Co-ordinator concludes that the disclosure is not a public interest disclosure, he or she will notify the person who made the disclosure that:

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- a) Council considers that the disclosure is not a public interest disclosure;
- b) the disclosure has not been notified to the IBAC for assessment under the Act; and
- c) the protections under Part 6 of the Act continue to apply.

4. COMMITMENT TO PROTECTING PERSON MAKING THE DISCLOSURE

Council is committed to the protection of any person who makes a genuine disclosure against detrimental action taken in reprisal for the making of public interest disclosure. The Public Interest Disclosures Co-ordinator is responsible for ensuring a person making a disclosure is protected from direct and indirect detrimental action, and that the culture of the workplace is supportive of public interest disclosures being made.

The Public Interest Disclosures Co-ordinator will appoint a Welfare Manager to all persons who have made a public interest disclosure. The Welfare Manager will:

- a) examine the immediate welfare and protection needs of a person who has made a disclosure and, where the person making the disclosure is an employee, seek to foster a supportive work environment;
- b) advise the person making the disclosure of the legislative and administrative protections available to him or her;
- c) listen and respond to any concerns about, or allegations of, harassment, intimidation or victimisation in reprisal for making the disclosure;
- d) keep a contemporaneous record of all aspects of the case management of the person making the disclosure including all contact and follow-up action; and
- e) ensure the expectations of the person making the disclosure are consistent with these Procedures and the Act.

Employees and councillors of Council will be provided with a copy of these Procedures and advised that it is an offence for a person to take detrimental action against a person who has made public interest disclosure. The maximum penalty is a fine of 240 penalty units or two years' imprisonment or both. The taking of detrimental action in breach of the Act can also be grounds for making a disclosure under the Act and can result in an investigation into that employee or councillor's conduct.

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5. KEEPING THE PERSON MAKING THE DISCLOSURE INFORMED

The Public Interest Disclosures Co-ordinator will ensure that a person making a disclosure is kept informed of any and all action taken in relation to his or her disclosure, and the time frames that apply. The person making the disclosure will be informed of the assessment of the disclosure and, if relevant, its referral to IBAC. All communication with the person making the disclosure will be in plain English.

6. OCCURRENCE OF DETRIMENTAL ACTION

If a person making a disclosure experiences harassment, discrimination or adverse treatment that may amount to detrimental action taken in reprisal for the making of the disclosure, they should report this to the Welfare Manager. The Welfare Manager will:

- a) record details of the incident;
- b) advise the person making the disclosure of his or her rights under the Act; and
- c) advise the Public Interest Disclosures Co-ordinator or Chief Executive Officer of the detrimental action.

The taking of detrimental action in reprisal for the making of a disclosure can be an offence against the Act as well as grounds for making a further disclosure.

Where such detrimental action is reported, the Public Interest Disclosures Co-ordinator will assess the report as a new disclosure in accordance with these Procedures, unless the person reporting the detrimental action states in writing that the report is not a public interest disclosure.

7. EMPLOYEE MAKING THE DISCLOSURE IMPLICATED IN IMPROPER CONDUCT

Where an employee of Council who makes a disclosure is implicated in improper conduct or misconduct, Council will handle the disclosure and protect the employee making the disclosure from reprisals in accordance with the Act. However, the act of disclosure does not shield the employee making the disclosure from the reasonable consequences flowing from any involvement in improper conduct, including performance management and/or disciplinary action.

The Chief Executive Officer will make the final decision, with input from the Public Interest Disclosures Co-ordinator, as to whether disciplinary or other action will be taken against an employee making a disclosure, in accordance with Council's policies and procedures.

Where disciplinary or other action relates to the improper conduct disclosed, such action will only be taken after the disclosure has been appropriately dealt with under these Procedures and the Act.

In all cases where disciplinary or other action is being contemplated, the Chief Executive Officer must be satisfied that the fact that the employee has made a disclosure (as opposed to the content of that

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disclosure) is **not a reason** for taking the proposed action. The Chief Executive Officer’s reasoning will be documented.

Council recognises that employees and councillors against whom disclosures are made must also be supported during the handling and investigation of disclosures.

Council will take all reasonable steps to ensure the confidentiality of the person who is the subject of the disclosure is protected during the internal assessment process.

The Public Interest Disclosures Co-ordinator will ensure the person who is the subject of any disclosure which is assessed as being a public interest disclosure is:

- a) informed as to the substance of the alleged improper conduct or detrimental action;
- b) given the opportunity to answer the allegations before a final decision is made as to whether the public interest disclosure should be referred to IBAC;
- c) informed as to the substance of any adverse comment that may be included in a notification to IBAC or any other report arising from the disclosure; and
- d) given the opportunity to have his or her response to the alleged improper conduct or detrimental action set out in a notification to IBAC or in any report.

Ultimately, if a public interest disclosure is referred to IBAC, it will be a matter for IBAC to determine the consequences, if any, that flow from substantiated improper conduct or detrimental action in reprisal.

DOCUMENT CONTROL

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