



Procedure Title:	Making and Handling Protected Disclosures		
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Definitions:	See page 4		
Related Policies:	Complaints Handling Policy, Bullying Prevention Policy, Disciplinary Policy and Procedures, Employee Assistance Program, Fraud Management Policy, Grievance Guidelines, Privacy Policy, Records Management Policy, Recruitment and Selection Policy & Procedure, Risk Management policy, Staff Code of Conduct,		

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# 1 Definitions

Word/Term	Definition
Complaint	<p>An expression of dissatisfaction with:</p> <ul style="list-style-type: none"> <li>• the quality of an action taken or service provided by council or its contractor</li> <li>• a delay or failure in providing a service or taking action by council or its contractor</li> <li>• the behaviour of a council employee or contractor</li> <li>• decision making process/practices of Council.</li> </ul>
Corrupt conduct	<p>Corrupt conduct means:</p> <ol style="list-style-type: none"> <li>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</li> <li>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</li> <li>c) of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust; or</li> <li>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</li> </ol> <p>that could constitute a conspiracy or an attempt to engage in any conduct referred to in paragraph (a), (b), (c) or (d)—being conduct that would, if the facts were found proved beyond reasonable doubt at a trial, constitute a relevant offence.</p>
Detrimental action	<p>The Act makes it a criminal offence for a person to take detrimental action against a person in reprisal for a protected disclosure. Detrimental action includes:</p> <ol style="list-style-type: none"> <li>a) action causing injury, loss or damage;</li> <li>b) intimidation or harassment; and</li> <li>c) discrimination, disadvantage or adverse treatment in relation to a person’s employment, career, profession, trade or business, including the taking of disciplinary action.</li> </ol> <p>Detrimental action is not legitimate management action where there are good and sufficient grounds that would justify the action against any other person in the same circumstances.</p>
IBAC	<p>Independent Broad-Based Anti-Corruption Commission</p> <p>Victoria’s first anti-corruption body with responsibility for identifying and preventing serious corrupt conduct across the whole public sector, including members of Parliament, the judiciary and state and local government.</p>

Word/Term	Definition
Improper Conduct	<p>(1) Improper conduct means:</p> <ul style="list-style-type: none"> <li>(a) corrupt conduct; or</li> <li>(b) conduct specified in subsection (2) that is not corrupt conduct but that, if proved, would constitute— <ul style="list-style-type: none"> <li>(i) a criminal offence; or</li> <li>(ii) reasonable grounds for dismissing or dispensing with, or otherwise terminating, the services of the officer who was, or is, engaged in that conduct.</li> </ul> </li> </ul> <p>(2) For the purposes of subsection (1)(b), <b>specified conduct</b> is conduct—</p> <ul style="list-style-type: none"> <li>(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</li> <li>(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</li> <li>(c) of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust; or</li> <li>(d) 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 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</li> <li>(e) that could constitute a conspiracy or an attempt to engage in any conduct referred to in paragraph (a), (b), (c) or (d); or</li> <li>(f) of a public officer or public body in his or her capacity as a public officer or its capacity as a public body that— <ul style="list-style-type: none"> <li>(i) involves substantial mismanagement of public resources; or</li> <li>(ii) involves substantial risk to public health or safety; or</li> <li>(iii) involves substantial risk to the environment.</li> </ul> </li> </ul>
Investigative bodies	IBAC, the Ombudsman, Chief Commissioner of Police and the Victorian Inspectorate. Only these entities can investigate a protected disclosure complaint.
Investigator	The investigator will be responsible for carrying out an internal investigation into a disclosure where the Ombudsman has referred a matter to Council
Protected disclosure	Is a complaint about improper conduct involving public officers and/or public bodies
Public bodies	Includes a Council (established under the <i>Local Government Act 1989</i> ).
Public officers	Includes local government Councillors and Council employees.
Victorian Ombudsman	Responsible for receiving certain types of disclosures' notifying IBAC where appropriate, determining whether disclosures warrant investigation and the investigation complaints
Whistleblower	Person making allegation of improper conduct

## 2 Introduction

The *Protected Disclosures Act 2012* (the Act) commenced operation on 10 February 2013. The purpose of the Act is to encourage and facilitate the making of disclosures of improper conduct by public officers and public bodies.

The Act provides protection from detrimental action to any person affected by a protected disclosure; including the person making the disclosure, witnesses and persons the subject of an investigation.

## 3 Statement

Macedon Ranges Shire Council is committed to the purposes of the *Protected Disclosures Act 2012*.

Macedon Ranges Shire Council does not tolerate improper conduct by its employees, or members, nor the taking of reprisals against those who come forward to disclose such conduct.

Macedon Ranges Shire Council recognises the value of transparency and accountability in its administrative and management practices and supports the making of disclosures that reveal corrupt conduct, conduct involving a substantial mismanagement of public resources, or conduct involving a substantial risk to public health and safety or the environment.

The Macedon Ranges Shire 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.

## 4 Purpose

The purpose of this document is to establish procedures for making, receiving and assessing protected disclosures of improper conduct and/or detrimental action.

Disclosures may be made by employees or members of the public.

These procedures have been prepared in accordance with the *Protected Disclosure Act 2012* (the **Act**) and the guidelines of the Independent Broad-based Anti-corruption Commission (**IBAC**) which are available on the IBAC website ([www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)).

The procedures outlined in this document support the Protected Disclosure policy.

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. As an alternative, employees may make a disclosure of improper conduct or detrimental action under the Act in accordance with these procedures.

## 5 Reporting system

Protected disclosures can be made to Council about improper conduct and/or detrimental action of Council, Council staff and employees. A protected disclosure relating to Councillors must be made to IBAC. You may make a protected disclosure about

information that shows or tends to show, or that you believe on *reasonable grounds* shows or tends to show, that:

- (a) a person, public officer or public body
- (b) is engaging in, or proposing to engage in,
- (c) 'improper conduct' and/or 'detrimental action'

#### **Examples of improper conduct**

1. A department employee takes a bribe or receives a payment other than his or her wages in exchange for the discharge of a public duty.
2. A department employee sells confidential information.
3. A council officer favours applications for jobs or permits by friends and relatives.

#### **Examples of detrimental action**

1. A public body demotes, transfers, isolates in the workplace or changes the duties of a person who has made a disclosure due to the making of a disclosure.
2. A person threatens, abuses or carries out other forms of harassment directly or indirectly against the person who makes a disclosure and his or her family or friends.
3. A public body discriminates against the person who makes a disclosure or his or her family and associates in subsequent applications for jobs, permits or tenders.

## 5.1 Council contacts

An initial contact for disclosures of corrupt conduct, improper conduct or detrimental action by Macedon Ranges Shire Council or its employees, may be made to:

Protected Disclosure Officer  
Governance Project Officer  
PO Box 155  
KYNETON VIC 3444  
Phone: 03 5422 0345  
Email: [kstrahan@mrsc.vic.gov.au](mailto:kstrahan@mrsc.vic.gov.au)

Protected Disclosure Coordinator  
Manager Council & Customer Service  
PO Box 155,  
KYNETON, 3444  
Phone: 03 5422 0352  
Mobile: 0407 027 352  
Email: [smahon@mrsc.vic.gov.au](mailto:smahon@mrsc.vic.gov.au)

All correspondence, phone calls and emails from internal or external whistle-blowers will be referred to the Protected Disclosure Coordinator.

Where a person is contemplating making a disclosure and is concerned about approaching the Protected Disclosure Coordinator or a Protected Disclosure Officer in the workplace, he or she can call the relevant officer and request a meeting in a discreet location away from the workplace.

## 5.2 Alternative contacts

A disclosure about improper conduct, corrupt conduct or detrimental action by Macedon Ranges Shire Council or its employees, may also be made directly to the Independent Broad-Based Anti-Corruption Commission Victoria (IBAC).

## 5.3 Contact for disclosures about Councillors

A disclosure about improper conduct, corrupt conduct or detrimental action by a Macedon Ranges Shire Council Councillor must be made to IBAC or the Victorian Ombudsman.

IBAC

GPO Box 24234

[www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)

Telephone: 1300 735 135

MELBOURNE, VIC, 3000

VICTORIAN OMBUDSMAN

Level 9 North Tower

459 Collins Street

Melbourne VIC 3000

Website [www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au)

Telephone 0396136222

Email: [ombudvic@ombudsman.vic.gov.au](mailto:ombudvic@ombudsman.vic.gov.au)

## 5.4 Complaints

Protected Disclosures relate to improper conduct involving public officers and/or public bodies and/or detrimental action of Council, Council staff and employees.

A complaint or allegation that is already in the public domain will not normally be a protected disclosure—for example, if the matter has already been subject to media or other public commentary.

A complaint is an expression of dissatisfaction with:

- the quality of an action taken or service provided by council or its contractor
- a delay or failure in providing a service or taking action by council or its contractor
- the behaviour of a council employee or contractor
- decision making process/practices of Council.

To make a complaint please refer to the Complaints Handling Policy which is available at [www.mrsc.vic.gov.au](http://www.mrsc.vic.gov.au)

## 5.5 Contact for disclosures about non Council matters

Under the Protected Disclosure Act, the definition of a public body that can receive disclosures is narrow. Organisations that can receive disclosures can only receive disclosures about the improper conduct of their own organisation or employees.

*Organisations which can receive a protected disclosure*

<b>Departments</b>	Department of Education and Early Childhood Development Department of Environment and Primary Industries Department of Health Department of Human Services Department of Justice	Department of Premier and Cabinet Department of State Development, Business and Innovation Department of Transport, Planning and Local Infrastructure Department of Treasury and Finance
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<b>Administrative offices</b>	Environmental Protection Authority Local Government Investigations and Compliance Inspectorate Office of the Environment Monitor Office of the Chief Parliamentary Council Office of the Child Safety Commissioner Office of the Governor	Office of Living Victoria Office of the Victorian Government Architect Public Record Office Victoria Victorian Bushfire Reconstruction and Recovery Authority Victorian Government Solicitor's Office
<b>Victorian Local Government</b>	79 Councils	
<b>Victorian Public Service Commission</b>		

## 6 Roles and responsibilities

### 6.1 Employees

Employees are encouraged to report known or suspected incidences of improper conduct or detrimental action in accordance with these procedures.

All employees of Macedon Ranges Shire 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 a disclosure. Furthermore, they should protect and maintain the confidentiality of a person they know or suspect to have made a disclosure.

### 6.2 Protected Disclosure Officer

The Protected Disclosure Officer will:

- 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
- 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 and external whistle-blowers)
- commit to writing any disclosure made orally
- impartially assess the allegation and determine whether it is a disclosure made in accordance with Part 2 of the Act (that is, 'a protected disclosure')
- take all necessary steps to ensure the identity of the whistle-blower and the identity of the person who is the subject of the disclosure are kept confidential and
- forward all disclosures and supporting evidence to the Protected Disclosure Coordinator.

### 6.3 Protected Disclosure Coordinator

The Protected Disclosure Coordinator will:

- receive all disclosures forwarded from the Protected Disclosure Officer

- receive all phone calls, emails and letters from members of the public or employees seeking to make a disclosure
- impartially assess each disclosure to determine whether it is a public interest disclosure
- refer all public interest disclosures to IBAC
- be responsible for carrying out, or appointing an investigator to carry out, an investigation referred to Macedon Ranges Shire Council by IBAC or the Victorian Ombudsman
- be responsible for overseeing and coordinating an investigation where an investigator has been appointed
- appoint a welfare manager to support the whistle-blower and to protect him or her from any reprisals
- appoint a welfare manager to support the person(s) who is the subject of the disclosure
- advise the whistle-blower of the progress of an investigation into the disclosed matter
- establish and manage a confidential filing system
- collate and publish statistics in the Annual Report on disclosures made
- take all necessary steps to ensure the identity of the whistle-blower and the identity of the person who is the subject of the disclosure are kept confidential and
- liaise with the Chief Executive Officer of Macedon Ranges Shire Council.

## 6.4 Investigator

The investigator will be responsible for carrying out an internal investigation into a disclosure where IBAC or the Ombudsman Victoria has referred a matter to Macedon Ranges Shire Council.

An investigator may be a person from within an organisation or a consultant engaged for that purpose. Macedon Ranges Shire Council must ensure that any investigator is aware of the provisions of the Act, including the criminal penalties that apply for breaches of the Act. Macedon Ranges Shire Council should ensure a contracted investigator signs a form confirming their understanding of the Act prior to the commencement of an investigation.

## 6.5 Welfare Manager

The Welfare Manager is responsible for looking after the general welfare of the whistle-blower and the person who is the subject of the protected disclosure.. The Welfare Manager will:

- examine the immediate welfare and protection needs of a whistle-blower/subject of a disclosure who has made a disclosure and seek to foster a supportive work environment

- advise the whistle-blower/subject of the disclosure of the legislative and administrative protections available to him or her
- listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making a disclosure and/or being the subject of a disclosure
- ensure the expectations of the whistle-blower are realistic.

The Welfare Manager is to be appointed by the Chief Executive Officer or the Protected Disclosure Coordinator and will usually be:

Manager Organisational Development

PO Box 151,

KYNETON, 3444

Phone: 5422 0297

Mobile: 0437 633 596

Email: [dmclean@mrsc.vic.gov.au](mailto:dmclean@mrsc.vic.gov.au)

## 7 Receiving disclosures

### 7.1 Who can make a protected disclosure?

Any person can make a protected disclosure about improper conduct engaged in, or detrimental action taken by, Council or one of its officers. You can make a protected disclosure:

- if you are a member of the public, an employee or officer
- as an individual or together with a group of individuals.

A company or business cannot make a protected disclosure.

You can ask someone else to make a disclosure on your behalf. However, if you ask someone else to make a disclosure on your behalf, only that person will receive the full protection of the Act in relation to that disclosure. Your protection will be limited to confidentiality and protection against detrimental action taken against you in reprisal for the disclosure that has been made.

You do not have to specifically refer to the Act or the protections in the Act for your disclosure to be a 'protected disclosure'. You may also advise that you do not want your disclosure to be treated as a 'protected disclosure'.

### 7.2 How do I make a protected disclosure?

You may make a protected disclosure:

- a) in person
- b) by phone
- c) by leaving a voicemail message
- d) in writing by post, personal delivery or email

- e) by any other form of electronic communication and/or
- f) anonymously.

You may **not** make a protected disclosure by fax.

A protected disclosure must be made in private so it is important that only the person to whom you are making the disclosure to can hear or receive your disclosure. For example, if you make your disclosure by email, your disclosure should be sent to the email address of the person to whom you are making the disclosure to, rather than a group email. You are not precluded from making a joint disclosure with a group of individuals at the same time.

If you are making your disclosure verbally, the person receiving your disclosure may take notes of your discussion. The person receiving your disclosure may also want to record the conversation, but will only do so with your permission.

You do not have to identify yourself when making a disclosure. However, if your disclosure is anonymous, this may affect how the disclosure is investigated and you will not be notified of the outcome of any investigation.

If you cannot be identified from the disclosure, the disclosure will be treated as an anonymous disclosure.

### **7.3 Can I withdraw a protected disclosure?**

A disclosure cannot be withdrawn if it has been referred to IBAC.

If your disclosure has not been referred to IBAC you can withdraw the disclosure:

- a) in person
- b) by phone
- c) by leaving a voicemail message
- d) in writing by post, personal delivery or email
- e) by any other form of electronic communication and/or
- f) anonymously.

All withdrawals must be made to the Protected Disclosure Coordinator.

### **7.4 Receipt of disclosures**

The receipt of your disclosure will be acknowledged verbally, or in writing (if a postal or email address is known). You will also be advised of the key steps involved in the process for handling your disclosure, including the timeframes involved.

## 7.5 What protections will I receive?

The act sets out the protections provided to persons who make a disclosure in accordance with the act. These include:

- (d) immunity from civil or criminal liability as well as administrative action (including disciplinary action) for making the disclosure;
- (e) immunity from committing an offence under the *Constitution Act 1975* or any other Act that imposes obligations of confidentiality or otherwise restricts the disclosure of information;
- (f) immunity from breaching any other obligation (made by oath or rule of law or practice) requiring the maintenance of confidentiality or otherwise restricting the disclosure of information; and
- (g) protection from an action for defamation.

These protections apply to a disclosure from the time you make the disclosure and continue to apply even if Council determines the disclosure does not comply with the requirements of the Act or IBAC determines that the disclosure is not a 'protected disclosure'.

The protections in the Act do not apply if you provide false or misleading information or claim that a matter is the subject of a protected disclosure knowing that claim to be false.

The protections will apply to further information relating to a protected disclosure that you provide to:

- i Council;
- ii IBAC; or
- iii an investigating entity.

In addition to these protections, Council recognises that the welfare and protection from detrimental action of persons making genuine protected disclosures is essential for the effective implementation of the Act and is relevant to the department's obligation to create a safe working environment under the *Occupational Health and Safety Act 2004*, the *Charter of Human Rights and Responsibilities Act 2006*, the *Public Administration Act 2004* (Vic) and at common law.

## 8 Assessing disclosures

### 8.1 Compliance with the Act

Where a disclosure has been received by the Protected Disclosure Officer or by the Protected Disclosure Coordinator, he or she will assess whether the disclosure has been made in accordance with Part 2 of the Act and therefore, is a protected disclosure.

## 8.2 Received by the appropriate person

For the disclosure to be responded to by Macedon Ranges Shire Council, it must concern an employee of Macedon Ranges Shire Council. If the disclosure concerns an employee, officer or member of another public body, the person who has made the disclosure must be advised of the correct person or body to whom the disclosure should be directed (see table on page 7).

In some circumstances, it may be necessary to report your disclosure to Victoria Police for immediate investigation. It may also be necessary to take action to prevent certain future conduct (including taking action against the person you have made the disclosure about). For example, an employee may be concealing evidence of criminal conduct. This action may take place before the department has decided whether your disclosure meets all of the requirements in the Act.

## 8.3 Meet the criteria

To be a protected disclosure, a disclosure must satisfy the following criteria:

- Did a natural person (that is, an individual person rather than a corporation) make the disclosure?
- Does the disclosure relate to conduct of a public body or public officer acting in their official capacity?
- Is the alleged conduct either improper conduct or detrimental action taken against a person in reprisal for making a protected disclosure?
- Does the person making a disclosure have reasonable grounds for believing the alleged conduct has occurred?

## 8.4 Notifications

Where a disclosure is assessed to be a protected disclosure, the Protected Disclosure Coordinator will notify IBAC within 28 days of the disclosure being made.

Where a disclosure is assessed not to be a protected disclosure, the matter does not need to be dealt with under the Act and can be considered under other internal complaint handling processes.

The Protected Disclosure Officer will decide how the matter should be responded to in consultation with the Protected Disclosure Coordinator.

In either case, the Protected Disclosure Coordinator will notify the whistle-blower within 14 days of the assessment. Notification to the whistle-blower is not necessary where the disclosure has been made anonymously.

# 9 Investigations

## 9.1 Introduction

Where IBAC or the Ombudsman Victoria refers a public interest disclosure to Macedon Ranges Shire Council for investigation, the Protected Disclosure Coordinator will appoint an investigator to carry out the investigation.

The objectives of an investigation will be:

- to collate information relating to the allegation as quickly as possible. This may involve taking steps to protect or preserve documents, materials and equipment
- to consider the information collected and to draw conclusions objectively and impartially
- to maintain procedural fairness in the treatment of witnesses and the person who is the subject of the disclosure and
- to make recommendations arising from the conclusions drawn concerning remedial or other appropriate action.

## 9.2 Terms of reference

Before commencing an investigation, the Protected Disclosure Coordinator will draw up terms of reference and obtain authorisation for those terms by the Chief Executive Officer.

The terms of reference will set a date by which the investigation report is to be concluded, and will describe the resources available to the investigator to complete the investigation within the time set. The Protected Disclosure Coordinator may approve, if reasonable, an extension of time requested by the investigator.

The terms of reference will require the investigator to make regular reports to the Protected Disclosure Coordinator who, in turn, is to keep IBAC or the Ombudsman Victoria informed of general progress.

## 9.3 Investigation plan

The investigator will prepare an investigation plan for approval by the Protected Disclosure Coordinator. The plan will list the issues to be substantiated and describe the avenue of inquiry. It will address the following issues:

- What is being alleged?
- What are the possible findings or offences?
- What are the facts in issue?
- How is the inquiry to be conducted?
- What resources are required?

At the commencement of the investigation, the whistle-blower should be:

- notified by the investigator that he or she has been appointed to conduct the investigation
- asked to clarify any matters and
- provide any additional material he or she might have.

The investigator will be sensitive to the whistle-blower's possible fear of reprisals and will be aware of the statutory protections provided to the whistle-blower.

## 9.4 Natural justice

The principles of natural justice will be followed in any investigation of a public interest disclosure. The principles of natural justice concern procedural fairness and ensure a fair

decision is reached by an objective decision maker. Maintaining procedural fairness protects the rights of individuals and enhances public confidence in the process.

Macedon Ranges Shire Council will have regard to the following issues in ensuring procedural fairness:

- the person who is the subject of the disclosure is entitled to know the allegations made against him or her and must be given the right to respond. (This does not mean the person must be advised of the allegation as soon as the disclosure is received or the investigation has commenced)
- if the investigator is contemplating making a report adverse to the interests of any person, that person should be given the opportunity to put forward further material that may influence the outcome of the report and that person's defence should be fairly set out in the report
- all relevant parties to a matter should be heard and all submissions should be considered
- a decision should not be made until all reasonable inquiries have been made
- the investigator or any decision maker should not have a personal or direct interest in the matter being investigated
- all proceedings must be carried out fairly and without bias. Care should be taken to exclude perceived bias from the process and
- the investigator must be impartial in assessing the credibility of the whistle-blowers and any witnesses. Where appropriate, conclusions as to credibility should be included in the investigation report.

## 9.5 Conduct of the investigation

The investigator will make notes of all discussions and phone calls while they are occurring and all interviews with witnesses will be taped.

All information gathered in an investigation will be stored securely.

Interviews will be conducted in private and the investigator will take all reasonable steps to protect the identity of the whistle-blower.

Where disclosure of the identity of the whistle-blower cannot be avoided due to the nature of the allegations, the investigator will warn the whistle-blower and his or her welfare manager of this probability.

It is at the discretion of the investigator to allow any witness to have legal or other representation or support during an interview. If a witness has a special need for legal representation or support, permission should be granted.

## 9.6 Referral of an investigation to IBAC or the Ombudsman

The Protected Disclosure Coordinator will make a decision regarding the referral of an investigation to IBAC or the Ombudsman Victoria where, on the advice of the investigator:

- the investigation is being obstructed by, for example, the non-cooperation of key witnesses or
- the investigation has revealed conduct that may constitute a criminal offence.



## 9.7 Reporting requirements

The Protected Disclosure Coordinator will ensure the whistle-blower is kept regularly informed concerning the handling of an investigation.

The Protected Disclosure Coordinator will report to IBAC or the Ombudsman Victoria about the progress of an investigation.

Where IBAC or the Ombudsman Victoria or the whistle-blower requests information about the progress of an investigation, that information will be provided within 28 days of the date of the request.

## 9.8 Action taken after an investigation

At the conclusion of the investigation, the investigator will submit a written report of his or her findings to the Protected Disclosure Coordinator. The report will contain:

- the allegation/s
- an account of all relevant information received and, if the investigator has rejected evidence as being unreliable, the reasons for this opinion being formed
- the conclusions reached and the basis for them
- any recommendations arising from the conclusions.

Where the investigator has found that the conduct disclosed by the whistle-blower has occurred, recommendations made by the investigator will include:

- the steps that need to be taken by Macedon Ranges Shire Council to prevent the conduct from continuing or occurring in the future
- any action that should be taken by Macedon Ranges Shire Council to remedy any harm or loss arising from the conduct. This action may include bringing disciplinary proceedings against the person responsible for the conduct, and referring the matter to an appropriate authority for further consideration.

The report will be accompanied by:

- the transcript or other record of any oral evidence taken, including tape recordings
- all documents, statements or other exhibits received by the officer and accepted as evidence during the course of the investigation.

Where the investigator's report is to include an adverse comment against any person that person will be given the opportunity to respond and his or her defence will be fairly included in the report.

The report will not disclose particulars likely to lead to the identification of the whistle-blower.

## 9.9 Action to be taken

If the Protected Disclosure Coordinator is satisfied that the investigation has found that the disclosed conduct has occurred, he or she will make recommendations to the Chief Executive Officer to prevent the conduct from continuing or occurring in the future. The Protected Disclosure Coordinator may also recommend that action be taken to remedy any harm or loss arising from the conduct.

The Protected Disclosure Coordinator will provide a written confidential report to Macedon Ranges Shire Council, IBAC, the Ombudsman Victoria and the whistle-blower, setting out the findings of the investigation and any remedial steps taken. Where the investigation concludes that the disclosed conduct did not occur, the Protected Disclosure Coordinator will report these findings to IBAC or the Ombudsman Victoria and to the whistle-blower.

## 10 Managing the welfare of the whistle-blower

### 10.1 Commitment to protecting whistle-blowers

Macedon Ranges Shire Council is committed to the protection of whistle-blowers against detrimental action taken in reprisal for the making of protected disclosures.

The Protected Disclosure Coordinator is responsible for ensuring whistle-blowers are protected from direct and indirect detrimental action, and that the culture of the workplace is supportive of protected disclosures being made.

The Protected Disclosure Coordinator will appoint a Welfare Manager to all whistle-blowers who have made a protected disclosure. The welfare manager will:

- examine the immediate welfare and protection needs of a whistle-blower who has made a disclosure and, where the whistle-blower is an employee, seek to foster a supportive work environment
- advise the whistle-blower of the legislative and administrative protections available to him or her
- listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making disclosure
- keep a constantly updated record of all aspects of the case management of the whistle-blower including all contact and follow-up action
- ensure the expectations of the whistle-blower are realistic.

All employees will be advised that it is an offence for a person to take detrimental action in reprisal for a protected disclosure.

The taking of detrimental action in breach of this provision can also be grounds for making a disclosure under the Act and can result in an investigation. Detrimental action includes:

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

### 10.2 Keeping the whistle-blower informed

The Protected Disclosure Coordinator will ensure the whistle-blower is kept informed of action taken in relation to his or her disclosure, and the timeframes that apply. The whistle-blower will be informed of the objectives of an investigation, the findings of an investigation, and the steps taken by Macedon Ranges Shire Council to address any improper conduct or detrimental action that has been found to have occurred. All communication with the whistle-blower will be in plain language.

## 11 Detrimental action

If a whistle-blower reports an incident of harassment, discrimination or adverse treatment that would amount to detrimental action taken in reprisal for the making of the disclosure, the Welfare Manager will:

- record details of the incident;
- advise the whistle-blower of his or her rights under the Act; and
- advise the Protected Disclosure Coordinator 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 Protected Disclosure Coordinator will assess the report as a new disclosure under the Act. Where the Protected Disclosure Coordinator is satisfied that the disclosure is a protected disclosure, he or she will refer it to IBAC or the Ombudsman Victoria. If IBAC or the Ombudsman Victoria subsequently determines the matter to be a protected disclosure, IBAC or the Ombudsman may investigate the matter or refer it to Macedon Ranges Shire Council for investigation as outlined in the Act.

## 12 Whistleblowers implicated in improper conduct

Where a person who makes a disclosure is implicated in misconduct, Macedon Ranges Shire Council will handle the disclosure and protect the whistle-blower from reprisals in accordance with the Act and these procedures.

Macedon Ranges Shire Council acknowledges that the act of whistleblowing should not shield whistle-blowers from the reasonable consequences flowing from any involvement in improper conduct

The Chief Executive Officer will make the final decision on the advice of the Protected Disclosure Coordinator as to whether disciplinary or other action will be taken against a whistle-blower. Where disciplinary or other action relates to conduct that is the subject of the whistle-blower's 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, the Chief Executive Officer must be satisfied that any disciplinary action is justified and proportionate to conduct that has occurred.

The Protected Disclosure Coordinator will thoroughly document the process including recording the reasons why the disciplinary or other action is being taken, and the reasons why the action is not in retribution for the making of the disclosure.

The Protected Disclosure Coordinator will clearly advise the whistle-blower of the proposed action to be taken and of any mitigating factors that have been taken into account.

## 13 Welfare management of the person against whom a disclosure has been made

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

Macedon Ranges Shire Council will take all reasonable steps to ensure the confidentiality of the person who is the subject of the disclosure during the assessment and investigation process. Where investigations do not substantiate disclosures, the fact that the investigation has been carried out, the results of the investigation, and the identity of the person who is the subject of the disclosure will remain confidential.

The Protected Disclosure Coordinator will ensure the person who is the subject of any disclosure investigated by or on behalf of Macedon Ranges Shire Council:

- is informed as to the substance of the allegations;
- is given the opportunity to answer the allegations before a final decision is made;
- is informed as to the substance of any adverse comment that may be included in any report arising from the investigation; and has
- has his or her defence set out fairly in any report.

Where the allegations in a disclosure have been investigated, and the person who is the subject of the disclosure is aware of the allegations, or the fact of the investigation, the Protected Disclosure Coordinator will formally advise the person who is the subject of the disclosure of the outcome of the investigation.

Information about services available through Council's Employee Assistance Program (EAP) will be provided to anyone who is the subject of a disclosure.

Where the allegations contained in a disclosure are clearly wrong or unsubstantiated. If the matter has been publicly disclosed, the Chief Executive Officer of Macedon Ranges Shire Council will consider any request by that person to issue a statement of support setting out that the allegations were clearly wrong or unsubstantiated.

## 14 Confidentiality

Macedon Ranges Shire Council will take all reasonable steps to protect the identity of the whistle-blower. Maintaining confidentiality is crucial in ensuring reprisals are not made against a whistle-blower.

The Act requires any person who receives information, due to the handling or investigation of a protected disclosure, not to disclose that information except in certain limited circumstances. Disclosure of information constitutes an offence

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

- where exercising the functions of the public body under the Act;
- when making a report or recommendation under the Act;
- when publishing statistics in the annual report of a public body; and
- in criminal proceedings for certain offences in the Act.

However, the Act prohibits the inclusion of particulars in any report or recommendation that is likely to lead to the identification of the whistle-blower. The Act also prohibits the identification of the person who is the subject of the disclosure in any particulars included in an annual report.

Macedon Ranges Shire Council will ensure all files, whether paper or electronic, are kept secure and can only be accessed by the Protected Disclosure Coordinator, Protected Disclosure Officer, the investigator or welfare manager (in relation to welfare matters).

All printed material will be kept in files that are clearly marked as a *Protected Disclosure Act* matter, and warn of the criminal penalties that apply to any unauthorised divulging of information concerning a protected disclosure.

All electronic files produced will be imported into an electronic document management system and be given a confidential classification and be password protected to restrict access. All materials relevant to an investigation, such as tapes from interviews, will also be stored securely with the whistle-blower files.

Macedon Ranges Shire Council will not email documents, without encryption and password protection, relevant to a whistle-blower matter and will ensure all phone calls and meetings are conducted in private.

If you repeat your disclosure to someone other than as provided for in these procedures or permitted by the Act, you may lose the protections provided for in the Act. For example, if a disclosure is repeated to the media and the media reports on it, you may not be protected from defamation action. You may also breach your confidentiality obligations.

If you are considering disclosing information about your disclosure, you may wish to speak to the Protected Disclosure Coordinator, your welfare manager and/or obtain legal advice first.

## 15 Collating and publishing statistics

The Protected Disclosure Coordinator will record the information required to be published in the annual report. The report will not record any information that may identify the whistle-blower to ensure confidentiality. The report will contain the following information:

- Information on how to access the Protected Disclosures guidelines
- the number and types of disclosures made to IBAC ;
- the number and types of protected disclosures complaints referred to Macedon Ranges Shire Council by IBAC
- the number and types of protected disclosure complaints investigated by Macedon Ranges Shire Council
- the number and types of protected disclosures complaints dismissed by Macedon Ranges Shire Council
- The number of applications for an injunction made by Macedon Ranges Shire Council.

## 16 Criminal offences

Macedon Ranges Shire Council will ensure officers appointed to handle protected disclosures and all other employees are aware of the following offences created by the Act:

1. It is an offence for a person to take detrimental action against a person in reprisal for a protected disclosure being made.

2. It is an offence for a person to divulge information obtained as a result of the handling or investigation of a protected disclosure without legislative authority.
3. It is an offence for a person to knowingly provide false information under the Act with the intention that it is acted on as a disclosed matter.
4. It is an offence for any person to:
  - i. provide false or misleading information, or further information that relates to a protected disclosure, that the person knows to be false or misleading in a material particular, intending that the information be acted on as a protected disclosure;
  - ii. claim that a matter is the subject of a protected disclosure knowing the claim to be false; and
  - iii. falsely claim that a matter is the subject of a disclosure that IBAC has determined to be a protected disclosure complaint; and
  - iv. disclose that a disclosure has been notified to IBAC for assessment unless permitted to do so by the Act; and
  - v. disclose that a disclosure has been determined to be a protected disclosure complaint unless permitted to do so by the Act.

## 17 Review

These procedures will be reviewed every two years to ensure they meet the objectives of the Act and accord with the Ombudsman Victoria's guidelines.

## 18 Quick reference guide to protected disclosures

Who can make a disclosure?	Any individual or group of individuals. A disclosure cannot be made by a business or company.
How do I make a disclosure?	Verbally or in writing (but not by fax) in accordance with specific procedures.
What can I make a disclosure about?	Improper conduct engaged in, and/or detrimental action taken by council officers performing public functions. For disclosures against Councillors....
Who can I make a disclosure to?	If you wish to make a protected disclosure about this Council or any of its employees and/or officers, you may contact our Protected Disclosure Coordinator:  Stephen Mahon Manager Council & Customer Service Macedon Ranges Shire Council PO Box 151 Kyneton VIC 3444 Telephone: (03) 5422 0352 Email: <a href="mailto:smahon@mrsc.vic.gov.au">smahon@mrsc.vic.gov.au</a>

<p>How do I make a disclosure about a Councillor?</p>	<p>If you wish to make a protected disclosure about any Councillors please contact:</p> <p>The Independent Broad-based Anti-corruption Commission (IBAC) Level 1, North Tower 459 Collins Street Melbourne Vic 3000 GPO Box 24234, Melbourne, VIC 3001 Telephone: 1300 735 135 Website: <a href="http://www.ibac.vic.gov.au">www.ibac.vic.gov.au</a></p>
	<p>If you wish to make a protected disclosure about the Freedom of Information Commissioner or the Privacy Commissioner you must make your disclosure to IBAC.</p>