

	<p>IBAC, 2019, Frequently asked questions: <i>The Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019</i></p> <p>IBAC, 2019, Information sheet: <i>Key changes – Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019 (No.2/2019)</i></p> <p>IBAC, 2019, Information sheet: <i>Public interest disclosure procedures: requirements for implementation</i></p> <p><i>Public Interest Disclosures Act 2012 (Vic)</i></p> <p>Victorian Ombudsman, 2015, <i>Councils and complaints—A good practice guide</i></p>
<p>Definitions:</p>	<p>Complaint: An expression of dissatisfaction with:</p> <ul style="list-style-type: none"> - the quality of an action taken, decision made, or service provided by Council, Council employees or contractors - a delay or failure in providing a service, taking an action, or making a decision by Council, Council employees or contractors <p>Detrimental action: Action that causes injury, loss or damage; intimidates or harasses; and/or discriminates, disadvantages or adversely impacts a person’s employment, career, profession, trade or business. A person doesn’t need to have actually taken the detrimental action, but can have threatened to do so or incited/permitted someone else to do so.</p> <p>Improper conduct:</p> <ul style="list-style-type: none"> • Conduct by a public body or public officer while carrying out public functions that is: <ul style="list-style-type: none"> - corrupt - a criminal offence - serious professional misconduct - dishonest - an intentional or reckless breach of public trust - an intentional or reckless misuse of information or material acquired in the course of performing public functions - a substantial mismanagement of public resources - a substantial risk to health or safety of one or more people - a substantial risk to the environment. • Conduct of any person that adversely affects, or is intended to adversely affect, the honest performance of a public body’s or public officer’s* public functions and results in that person, or an associate of that person, obtaining: <ul style="list-style-type: none"> - a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument - an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument - a financial benefit or real or personal property - any other direct or indirect monetary or proprietary gain that the person or associate would not have otherwise obtained. • Conduct of any person that could constitute a conspiracy or an attempt to engage in any of the conduct referred to above. <p>If the conduct is trivial, it does not meet the threshold of improper conduct.</p> <p>Independent Broad-based Anti-corruption Commission (IBAC): Victoria’s anti-corruption agency responsible for preventing and exposing public sector corruption and police misconduct. IBAC does this by:</p> <ul style="list-style-type: none"> • investigating corruption and police misconduct • informing the public sector, police and the community about the risks and impacts of corruption and police misconduct

Public bodies²: Organisations that deliver a public service, such as:

- public sector bodies (including public entities and special bodies)
- incorporated or unincorporated bodies established under an Act for a public purpose, including universities
- Electoral Boundaries Commission
- a local council established under the Local Government Act 2020
- an organisation performing a public function on behalf of the State or a public body or public officer, for example, an organisation that is performing a public function on behalf of Council (whether contracted or not)

Public interest complaint: A public interest disclosure that IBAC, the Victorian Inspectorate, or the Integrity and Oversight Committee has determined to be a public interest complaint. Previously known as a protected disclosure complaint.

Public interest disclosure: Disclosure made by a person (not an organisation) of information that shows, or tends to show:

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

A disclosure can also be made about a person who is not a public body employee, elected or appointed official, where their conduct is adversely affecting the honest performance of a public officer or public body; or is intended to do so (e.g. attempting to bribe a public officer). A disclosure can relate to conduct or action that may have already taken place; be occurring now; or happen in the future. Previously known as a protected disclosure.

Note: Council cannot receive a public interest disclosure about an individual Councillor; these must be made directly to IBAC or the Victorian Ombudsman. Council can receive disclosures that relate to the Councillors as a group, a Council employee or Council as an organisation.

Public Interest Disclosure Coordinator: Person or people appointed to manage public interest disclosures. Their responsibilities are outlined on page 6.

Public officers¹: Employees of a public body; or people who have been legally elected or appointed to office. Public officers include:

- public servants, including IBAC officers
- local government Councillors, Council employees and a person performing a public function of behalf of Council (whether under contract or not)
- university employees and teachers
- Victoria Police personnel
- Members of Parliament, including Ministers
- ministerial officers, parliamentary advisers and officers, electorate officers
- judicial officers, including coroners, members of the Victorian Civil and Administrative Tribunal (VCAT), associate judges, judicial registrars
- statutory office holders, including the Auditor-General and the Victorian Ombudsman, and the Director of Public Prosecutions
- the Governor, Lieutenant-Governor or Administrator of the State
- a person performing a public function on behalf of the State or a public body or public officer

² Further information about the types of public bodies and public officers about whom disclosures can be made is in the *Public Administration Act 2004*, and the *Independent Broad-based Anti-corruption Commission Act 2011* (IBAC Act).

	<p>*For example this could include a consultant or contractor performing a public function on behalf of Council; unless a volunteer or supplier is performing a public function on behalf of Council (which is unlikely) they are excluded from this definition of a public officer.</p> <p>Serious professional misconduct: Professional misconduct is where:</p> <ul style="list-style-type: none"> • a person behaved in a way that is inconsistent with the expectations, skills and responsibilities of their office or role • the behaviour occurred while the person was in their capacity as a public officer.
Related policies	<p>Bullying Prevention Policy Complaints Handling Policy Councillor Code of Conduct Councillor Support and Expenses Policy Customer Service Charter Disciplinary Policy and Procedures Fraud Management Policy and Procedure Occupational Health and Safety Policy Privacy Policy Records Management Policy Risk Management Framework and Policy Staff Code of Conduct (and Employee Assistance Program)</p>
Related legislation:	<p><i>Public Interest Disclosures Act 2012</i></p> <p>Other relevant legislation includes but is not limited to: <i>Constitution Act 1975</i> <i>Freedom of Information Act 1982</i> <i>Independent Broad-based Anti-corruption Commission Act 2011</i> <i>Inquiries Act 2014</i> <i>Local Government Act 2020</i> <i>Major Crimes (Investigative Powers) Act 2004</i> <i>Ombudsman Act 1973</i> <i>Privacy and Data Protection Act 2014</i> <i>Public Administration Act 2004</i> <i>Victorian Inspectorate Act 2011</i> <i>Charter of Human Rights and Responsibilities Act 2006</i></p>

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Public Interest Disclosures Policy

1. Policy statement

It takes courage to speak up about wrongdoing by a public officer or public body.

Victoria's integrity scheme ensures people making disclosures of improper conduct or corruption can do so knowing they will be protected from reprisals. Local government is part of this scheme.

Macedon Ranges Shire Council (Council) is committed to promoting Victoria's integrity scheme to the organisation and the community; to protecting disclosers; and to processing disclosures with sensitivity and in a timely manner.

2. Purpose

- To provide a clear process for Macedon Ranges Shire Councillors, Council employees and community members wanting to make disclosures of improper conduct or detrimental action
- To ensure Council has effective systems in place to handle public interest disclosures with sensitivity and in a timely manner
- To ensure the welfare of all people involved in the disclosure is paramount, which includes the person disclosing, witnesses/co-operators as well as a person who may be the subject of a public interest complaint.

3. Principles

- **Accessibility:** People can easily find out how to make a public interest disclosure and our process for handling disclosures is easy to follow.
- **Consistency:** The process for handling a public interest disclosure is the same, regardless of who is making the disclosure (and who receives it).
- **Natural justice³:** Council is aware of unhelpful stereotypes relating to age, sex, gender identity, race, culture, ability, religion etc. and will hear people without bias, whether conscious or unconscious; and our decision making will be based on established fact or sound reasoning.
- **Transparency:** It is clear how Council will assess disclosures and determine if they are public interest disclosures or not.

4. Scope

Our process

This policy details how Council will process public interest disclosures as well as a basic summary of what IBAC may do with assessable public interest disclosures sent to them.

IBAC's [Guidelines for handling public interest disclosures](#) available at ibac.vic.gov.au details their process and obligations.

Public interest disclosures only

A public interest disclosure is a disclosure of information that shows, or tends to show, improper conduct or detrimental action. 'Improper conduct' and 'detrimental action' are clearly defined in the PID Act and relate to serious and, in some cases, illegal wrongdoing.

The following are not public interest disclosures:

- A report that does not include any information that shows, or tends to show, improper conduct. This is an unsubstantiated allegation.
- An expression of dissatisfaction with a decision made, action taken or service provided. This is a complaint.

³ The right to a fair hearing or to rebut evidence is not included here. The PID Act restricts the release of information that would be likely to identify the discloser. This means Council cannot reveal information about the content of the disclosure to the person who is the subject of a disclosure.

This policy covers public interest disclosures only. If the report is not a public interest disclosure, the person making the report will be asked to provide information that shows, or tends to show, improper conduct or they will be directed to Council's complaints process.

Council's Complaints Handling Policy covers complaints about Council as an organisation, Council employees and contractors acting on behalf of Council.

The terms 'public interest disclosure', 'complaint', 'improper conduct' and 'detrimental action' are defined on page 2.

5. Roles and responsibilities

Who can make a public interest disclosure?

Anyone can report improper conduct or detrimental action by a public officer or public body.

Council's role

Council can receive public interest disclosures that relate to the conduct of:

- Council employees in their capacity as public officers
- Councillors as a group in their capacity as public officers
- a person or organisation, whether under contract or not, who is performing a public function on behalf of Council.

The disclosures that may be made about these three categories only relate to any improper conduct in their capacity as public officers or a public body.

Council can also receive public interest disclosures:

- about a person who is not a public officer but who has tried to obtain an advantage for themselves (or an associate) from a Councillor or Council employee
- from Council employees and/or Councillors about any public officer or public body, including but not limited to Council.

This policy does not cover public interest disclosures about an individual Councillor. These must be made directly to IBAC or the Victorian Ombudsman.

Responsibilities

The Coordinator Governance is Council's Public Interest Disclosure Coordinator.

Responsibilities of the Public Interest Disclosure Coordinator include:

- receiving all disclosures, including phone calls, emails and letters from members of the public, Councillors or staff
- assessing disclosures in accordance with the PID Act
- redirecting the person making the report to Council's complaints handling process or seek information if it is an unsubstantiated report
- notifying all assessable disclosures to IBAC within 28 days after the disclosure was made
- ensuring filing systems and processes are secure to protect confidentiality
- ensuring the welfare of a discloser is considered, and they know what protections are available to them under the PID Act
- tracking actions taken in relation to disclosures
- reporting statistics on disclosures in the Annual Report.

Council's Governance officers can also receive disclosures; however the Coordinator Governance has overall responsibility for the process.

The Manager People, Culture and Performance is Council's Welfare Manager. The Public Interest Disclosure Coordinator will call on the Welfare Manager in cases where the discloser requires additional support. Council's obligation to protect disclosers from detrimental action extends to both

employees and members of the public. However Council has particular legislative and administrative obligations⁴ to employees that may not apply to members of the public who are disclosers.

Responsibilities of the Welfare Manager include:

- monitoring the specific needs of the discloser or witness/co-operator and provide them with practical advice and support
- developing and implementing a risk management plan to manage the risk of confidentiality breaches
- protecting disclosers from reprisal, for example by relocating staff if requested
- considering the welfare of a person who is the subject of a public interest complaint.

The Welfare Manager cannot be expected to go beyond what is reasonable for a public body in providing support to the discloser or co-operator.

Responsibilities of the People, Culture and Performance team include:

- facilitating training for staff and Councillors on the reasons for having a public interest disclosure policy and procedure (in consultation with the Public Interest Disclosure Coordinator)

Responsibilities of Senior Leadership Team (CEO, Directors, Managers) include:

- reassuring staff that detrimental action will not be tolerated and they will be protected if they report improper conduct
- being visible, approachable, communicating openly and leading by example.

6. Training and promotion

Training

IBAC have produced a number of resources for Public Interest Disclosure Coordinators including a PowerPoint presentation to help with training staff and educating Councillors:

ibac.vic.gov.au/reporting-corruption/public-interest-disclosures/information-for-public-interest-disclosure-coordinators.

An annual session will be included in the corporate training calendar on the reasons for having a public interest disclosure policy and procedure; and to familiarise employees with Council's documents.

Promotion

One of the purposes of this policy is to provide a clear process for Macedon Ranges Shire Councillors, Council employees and community members wanting to make disclosures of improper conduct or detrimental action. Council will promote this policy and the attached procedure at key points (e.g. following a major review) using the usual communications channels such as media releases, social media messaging, intranet and website news items.

⁴ For example, legislation relating to occupational health and safety, human rights and public administration; as well as state-wide public sector codes of conduct.

7. Monitoring and review

Initial review

After the first public interest disclosure has been processed, Council will review this policy and the associated procedure to ensure it is effective, easy to follow for all parties and sensitive to the welfare needs of disclosers.

Ongoing review

Following the initial review, Council will review the effectiveness of this policy and the associated procedure every four years.

Review questions include but are not limited to:

<p>Effective, sensitive, timely systems</p>	<ul style="list-style-type: none"> • Did the Public Interest Disclosure Coordinator receive all disclosures from community members, Council employees or Councillors? If no, who else received disclosures? • Did the Public Interest Disclosure Coordinator find it easy to assess disclosures? • How long did it take to assess disclosures? • Were all assessable disclosures notified to IBAC within 28 days from receipt? • Were statistics collated and reported? • Were the disclosers' identities kept confidential? • Was the content of the disclosure kept confidential? • How was the welfare of disclosers/co-operators managed? Did that work well? • Were disclosers protected from detrimental action? • Did the disclosers find it easy to find information on how to report to us? • Did the disclosers understand how their report would be assessed by us? • Were the disclosers satisfied with the way Council managed their welfare?
<p>Training and promotion</p>	<ul style="list-style-type: none"> • Can staff identify the reasons for having a public interest disclosure policy and procedure? • Do staff know where to find the policy and procedure? • Have staff read the policy and procedure? • Was the policy and procedure promoted internally and externally? If yes, using what method and how often?

This policy is to be read in conjunction with Council's Public Interest Disclosures Procedure