



PUBLIC INTEREST DISCLOSURES PROCEDURE



Campaspe
Shire Council

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Public Interest Disclosures Procedure

1. Introduction

1.1 Statement of support to public interest disclosure

Campaspe Shire Council (CSC) is committed to the aims and objectives of the *Public Interest Disclosures Act 2012* (the PID Act), and does not tolerate improper conduct by its elected representatives or employees, nor reprisals against those who come forward to disclose such conduct.

CSC 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, conduct involving a substantial risk to public health and safety, or the environment.

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

1.2 Purpose of these procedures

These procedures establish a system for reporting disclosures of improper conduct or detrimental action by CSC or its employees. The system enables such disclosures to be made to the Public Interest Disclosure Coordinator or to the Independent Broad-based Anti-corruption Commission (IBAC). Disclosures may be made by any person - this includes a person who is a member, officer or employee of CSC.

Details of all contact information for the Protected Disclosure Coordinator are listed in *Appendix A*.

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 PID Act in accordance with these procedures.

2. Objects of the Act

The new legislation introduced some changes to the former *Protected Disclosure Act 2012* to support people making disclosures that are in the public interest. On 1 January 2020, these changes took effect replacing existing 'protected disclosure' arrangements (PDs) with 'public interest disclosures' (PIDs).

The PID Act aims to:

- Encourage and assist people to report improper conduct and detrimental action taken in reprisal for a public interest disclosure.
- Provide certain protections for people who make a disclosure or those who may suffer detrimental action in reprisal for a disclosure.
- Ensure that certain information about a disclosure is kept confidential including the identity of the person making the disclosure and the content of that disclosure.

The PID Act has also established a new parliamentary oversight committee, the Integrity and Oversight Committee (IOC), consolidating the oversight of a number of Victorian integrity agencies, including the IBAC, the Victorian Ombudsman (VO) and the Office of the Victorian Information Commissioner (OVIC).

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3. The reporting system – making a disclosure

3.1 What is a public interest disclosure?

Public interest disclosures are reports about:

- 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 a public interest disclosure or cooperated with the investigation of a public interest disclosure.

A disclosure can relate to conduct or action that:

- May have already taken place.
- May be occurring now.
- May happen in the future.

3.2 Public interest disclosure can be about

Disclosures can be made about:

- Public bodies.
- Public officers.
- Conduct of a person who is not a public officer or is not employed by a public body, where their conduct is adversely affecting the honest performance of a public body or public officer, or is intended to adversely affect their effective performance.

Public bodies include:

- A Council (established under the Local Government Act 2020).
- Public sector bodies (including public entities and special bodies).
- Incorporated or corporate bodies established under an Act for a public purpose, including universities.
- Electoral Boundaries Commission.
- A body performing a public function on behalf of the State or a public body or public officer (for example, a regulatory function or a function that is publicly funded).

Public officers include:

- Local government Councillors and Council employees.
- Public servants, including the IBAC officers.
- University employees and teachers.
- Victoria Police personnel.
- Members of Parliament, including Ministers.
- Ministerial officers, parliamentary advisers and officers, and electorate officers.

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- 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.

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).

A person can still make a disclosure even if they cannot identify the person or the organisation to which the disclosure relates.

3.3 Who can make a disclosure?

Anyone can make a disclosure about improper conduct or detrimental action – both members of the public and employees of a public body. However, to fall within the scheme, disclosures must be made to an organisation that is authorised to receive disclosures.

Disclosures can be made by individuals or a group of people. A company or business cannot make a disclosure – but its officers or employees can.

3.4 Organisations that can receive a public interest disclosure

Disclosures about some public bodies or officers must only be made to particular entities.

The following sets out where disclosures about specific public bodies or officers should be made.

Public Body/Officers	Receiving entity
<ul style="list-style-type: none"> • Chief Commissioner of Police • Director of Public Prosecutions • Chief Crown Prosecutor • Solicitor-General • Governor • Lieutenant-Governor or Administrator • Director, Police Integrity • Electoral Commissioner • Commissioner or member of a Board of Inquiry appointed under the <i>Inquiries Act 2014</i> • A judicial employee • A ministerial officer • A parliamentary adviser 	<p>→ IBAC</p>

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<ul style="list-style-type: none"> • An electorate officer • A parliamentary officer 	
<ul style="list-style-type: none"> • A Councillor • The Information Commissioner • Health Complaints Commissioner 	→ IBAC or the Victorian Ombudsman
<ul style="list-style-type: none"> • The Chief Examiner or an Examiner appointed under the <i>Major Crimes (Investigative Powers) Act 2004</i> • A Victorian Ombudsman officer • A Victorian Auditor-General's officer • A Judicial Commission officer (other than a judicial member of the Board of the Judicial Commission) 	→ IBAC or the Victorian Inspectorate
<ul style="list-style-type: none"> • A member of police personnel (other than the Chief Commissioner) 	→ IBAC or a Prescribed Member of Police Personnel
<ul style="list-style-type: none"> • Member of Parliament (Legislative Council) 	→ President of the Legislative Council
<ul style="list-style-type: none"> • Member of Parliament (Legislative Assembly) 	→ Speaker of the Legislative Assembly
<ul style="list-style-type: none"> • A Public Interest Monitor • An IBAC officer 	→ The Victorian Inspectorate

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<ul style="list-style-type: none"> • A Judicial Officer or a member of VCAT who is not a Judicial Officer 	<p>→ IBAC or the Judicial Commission</p>
<ul style="list-style-type: none"> • A Victorian Inspectorate Officer 	<p>→ Integrity and Oversight Committee, the Speaker of the Legislative Assembly or the President of the Legislative Council</p>

If the subject of the disclosure is not listed in the table above, the disclosure can be made to the following organisations that are authorised to receive public interest disclosures.

Organisation	Officer who can receive disclosures
<p>Council All councils can receive disclosures that relate to the conduct of themselves, or disclosures made by their own members, officers or employees.</p> <p>Disclosures about councils can also be made to the IBAC, the Victorian Ombudsman or the Victorian Inspectorate.</p>	<ul style="list-style-type: none"> • Chief Executive Officer. • A person identified in CSC's procedures as a person who can receive a disclosure about CSC, such as the Public Interest Disclosure Coordinator. • Manager or Supervisor of the discloser. • Manager or supervisor of the person who is the subject of the disclosure.
<p>IBAC</p>	<ul style="list-style-type: none"> • The Commissioner. • A Deputy Commissioner. • The Chief Executive Officer. • An IBAC employee. • An IBAC consultant.
<p>Victorian Ombudsman</p>	<ul style="list-style-type: none"> • A Victorian Ombudsman officer.

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Victorian Inspectorate	<ul style="list-style-type: none"> • The Victorian Inspector. • A Victorian Inspectorate employee.
Public Service body Public service bodies can only receive disclosures that relate to the conduct of themselves, or disclosures made by their own members, officers or employees. Disclosures about public sector bodies can also be made to the IBAC, or the Victorian Ombudsman or the Victorian Inspectorate.	<ul style="list-style-type: none"> • Head of the relevant public service body. • A person identified in CSC's procedures as a person who can receive a disclosure about that Council, such as the Public Interest Disclosure Coordinator. • Manager or supervisor of the discloser. • Manager or supervisor of the person who is the subject of the disclosure.

3.5 Disclosures made to an organisation that is not authorised to receive public interest disclosures

If someone makes a disclosure to an agency that is not authorised to receive public interest disclosures, the disclosure will not be protected under the Act. The person should be advised what organisations can receive disclosures.

3.6 How can a disclosure be made?

A person may make a disclosure verbally or in writing. The disclosure may also be anonymous. See *Appendix C – Process for handling disclosures*.

Private verbal disclosure

Disclosures can be made in person, by telephone or by leaving a voice mail message.

Verbal disclosures must be made in private. This means the person making the disclosure must reasonably believe that only the following people (other than themselves) are present or able to listen to the conversation:

- A lawyer representing the person making the disclosure (if any).
- One or more people to whom a disclosure can be made under the PID Act or Regulations.

This does not preclude a group of individuals from making a joint disclosure.

If the disclosure is made verbally, the person receiving the disclosure should make notes at the time. This person can also record the conversation, but should give prior warning that the conversation will be recorded. The conversation should not be recorded if the discloser objects.

Written disclosure

A written disclosure can be provided to CSC by:

- Delivering it in person to the office of CSC.
- Mailing it to the office of CSC.

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- Emailing to the email address of the office of CSC, or to the official email address of a person nominated to receive a disclosure in CSC's procedures or in the Public Interest Disclosures Regulations.
- Completing the online form available on the IBAC and the Victorian Ombudsman websites.

A disclosure cannot be made by facsimile.

Anonymous disclosure

A discloser need not identify themselves to make a disclosure.

An anonymous disclosure can be made by using unverifiable email addresses, through anonymous telephone calls, or in a face-to-face conversation or meeting when the person refuses to identify themselves (provided that meeting or conversation takes place 'in private' in accordance with the Public Interest Disclosures Regulations).

If the disclosure comes from an email address and the identity of the person making the disclosure cannot be determined, the disclosure should be treated as an anonymous disclosure.

3.7 Who can receive disclosures?

Disclosures of improper conduct or detrimental action by CSC or its employees, may be made to the:

- Chief Executive Officer; or
- Public Interest Disclosure Coordinator.

The Governance Coordinator has been appointed as the Public Interest Disclosure Coordinator and is the main contact point within CSC.

4. Definitions of key terms

Disclosures can be made under the public interest disclosure regime if they relate to improper conduct or detrimental action. Definitions of these terms are set out below (see 4.1).

4.1 Improper Conduct

Improper conduct includes corrupt conduct, criminal offences and other conduct specified in the PID Act. If the conduct is considered trivial, it will not meet the threshold of improper conduct.

When assessing allegations of improper conduct, a link between the conduct and the official function of a public officer or public body must be identified.

Improper conduct includes

Corrupt conduct and/or any of the following conduct by a public officer or public body in their capacity as a public officer or public body:

- A criminal offence.
- Serious professional misconduct.
- Dishonest performance of public functions.
- An intentional or reckless breach of public trust.

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- An intentional or reckless misuse of information or material acquired in the course of the performance of the functions of the public officer or public body.
- A substantial mismanagement of public resources.
- A substantial risk to the health or safety of one or more persons.
- A substantial risk to the environment.
- Conduct of any person that:
 - Adversely affects the honest performance by a public officer or public body of their public functions.
 - Is intended to adversely affect the effective performance or exercise by a public officer or public body, of the functions or power of the public officer or public body, and results in the person, or an associate of the person, obtaining:
 - A licence, permit, approval, authority or other entitlement under any Act or subordinate instrument.
 - An appointment to a statutory officer 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 gain.
 - Any other direct or indirect monetary or proprietary gain.
 that the person or associate would not have otherwise obtained.
- Conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referred to above.

4.2 Detrimental action

It is an offence for a person to take, threaten to take, or allow another person to take detrimental action against another person in reprisal for making a public interest disclosure.

Detrimental action includes:

- Action 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.

The person need not have actually taken the detrimental action, they may have threatened to take action or incited someone else to do so.

When assessing a disclosure for detrimental action the following will be considered as part of the assessment.

- Both the nature of the detrimental action and whether it is being taken in reprisal for a public interest disclosure.
- Did the person take or threaten the action (or incite or permit another person to take or threaten the action) because (or in the belief) that:
 - The other person (or anyone else) has made, or intends to make, the disclosure.

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- The other person (or anyone else) has cooperated, or intends to cooperate, with an investigation of the disclosure.

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

4.3 Serious professional misconduct

Serious professional misconduct is not defined in the PID Act. For the purpose of this procedure it will be considered where there is a serious failure to exhibit the skills and experience required to perform the responsibilities of the office, or if there is a serious breach of the professional conduct expected in the workplace.

To identify whether serious professional misconduct has occurred, the following will be considered:

- Did the person behave in a way that is inconsistent with the expectations, skills and responsibilities of their office?
- Did they engage in that behaviour in their capacity as a public officer?
- Was the misconduct serious?

The following factors will be considered when assessing whether the misconduct is serious:

- Persistent, repeated or premeditated behaviour.
- Risks posed to others or the consequences of the behaviour (including for the public officer and others).
- The level of public trust and responsibility attached to the public office.
- The amount of money involved in the wrongdoing.
- How the conduct is perceived by the person's peers.
- Whether the conduct would result in significant disciplinary or potentially criminal penalties.
- The size of the discrepancy between what the person should have done, and what they did.
- Whether it should have been apparent to the person that they were wrong.

5. Assessing the disclosure

Within 28 days of receipt, CSC will assess the disclosure to decide if it is about improper conduct or detrimental action. There are two factors that should be considered.

Shows or tends to show improper conduct or detrimental action	Reasonable belief that improper conduct or detrimental action has occurred
Does the information provided show, or tend to show, there is improper conduct or detrimental action?	Does the discloser believe, on reasonable grounds, that improper conduct or detrimental action has occurred?

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Reliability of the information	Reasonable belief
<p>In assessing if there is improper conduct or detrimental action, look at all the information provided about the alleged conduct and about the discloser:</p> <ul style="list-style-type: none"> • What is the discloser’s connection to the alleged conduct? Are they a victim, a witness, or a participant? • How did they come to know about the conduct? Were they directly involved in it? Did they observe it happening to another person? Did someone else tell them about it? • How detailed is the information provided? Is there sufficient information to enable you to consider whether there is improper conduct or detrimental action? • How reliable is the information? Is it supported by other information? 	<p>A person making a disclosure must reasonably believe that improper conduct or detrimental action has occurred or is going to occur.</p> <p>This requires more than a suspicion, the belief must have supporting facts and circumstances. For example, it would not be sufficient for a person’s disclosure to consist simply of a one sentence statement such as “<i>I know XYZ is corrupt</i>”.</p> <p>The test is whether a reasonable person, who was in possession of the same information, could believe that the improper conduct had occurred.</p> <p>Other matters that can be considered to determine if there are reasonable grounds for the discloser’s belief is the reliability of the information they have provided, even if it is second or third hand.</p> <p>Consider how the person would have obtained the information and the amount of detail that has been provided.</p> <p>Consider the credibility of the discloser or the people who provided the discloser with the information.</p>

6. Handling disclosures

6.1 Receiving a disclosure

When CSC receives a complaint, report or allegation of improper conduct or detrimental action, the first step is to determine whether the disclosure may be a public interest disclosure by conducting the assessment process set out in the previous section.

6.2 Notifying the outcome of the assessment

CSC will make an assessment as to whether the disclosure is a public interest disclosure, or it is not a public interest disclosure.

<u>It is</u> a public interest disclosure	It is <u>not</u> a public interest disclosure
<p>Notify the appropriate agency CSC will notify the appropriate agency in writing, within 28 days after the disclosure was made, that:</p>	<p>CSC will advise the discloser in writing, within 28 days after the disclosure was made, that:</p>

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<ul style="list-style-type: none"> • The disclosure may be a public interest disclosure. • CSC is forwarding the disclosure for assessment. <p>CSC will also provide the agency with any information obtained regarding the disclosure in the course of inquiries. Note: this information can be provided at the time of notification or at any later time.</p> <p>The IBAC is the appropriate agency for all disclosures except the following:</p> <ul style="list-style-type: none"> • Disclosures about the IBAC or the Public Interest Monitor must be notified to the Victorian Inspectorate. • Disclosures about the Victorian Inspectorate must be notified to the Integrity and Oversight Committee. <p>Notify the discloser CSC will notify the discloser in writing, within 28 days after the disclosure was made, that the disclosure has been sent to the IBAC for assessment.</p>	<ul style="list-style-type: none"> • CSC does not consider the disclosure shows or tends to show improper conduct or detrimental action. • The disclosure has not been sent to the IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee for assessment. • The discloser's identity does not have to be kept confidential, but protections under Part 6 of the Act apply, for example: <ul style="list-style-type: none"> ○ The discloser cannot be dismissed, disciplined or bullied for making the disclosure. ○ The discloser is protected from legal actions such as defamation and civil liability. <p>CSC does not have to provide the discloser with this information unless the discloser has indicated, or it otherwise appears to CSC, that they wish to receive the protections that apply to a public interest disclosure under the Act.</p> <p>CSC will consider whether the disclosure could be dealt with according to their complaint handling procedures.</p>
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6.3 Can a discloser ask that a complaint not be dealt with as a public interest disclosure?

Yes. A discloser can advise that they do not want the disclosure treated as a public interest disclosure by stating in writing "the disclosure is not a public interest disclosure" at the time of making the disclosure, or within 28 days of making the disclosure.

6.4 Protection for public officers

If a public officer acts in good faith and in accordance with the public interest disclosure scheme, they do not commit an offence under section 95 of the *Constitution Act 1975* or any other Act that imposes a duty to maintain confidentiality, and do not breach confidentiality obligations or information disclosure restrictions.

6.5 If urgent action is required while a disclosure is being assessed

In some circumstances, the disclosure may be about conduct that may pose an immediate threat to the health and safety of individuals, the preservation of property, or may consist of serious criminal conduct. Examples could include a child protection worker allegedly assaulting children in care, a council worker allegedly lighting bush fires, or a person threatening to contaminate the water supply. In such cases, CSC will take immediate action, while considering whether or not it is a disclosure that must be notified to the IBAC. CSC may also take immediate action while awaiting the IBAC's decision on a notified matter.

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It may be necessary to report criminal conduct to Victoria Police for immediate investigation, or take management action against an employee to prevent future conduct.

While the PID Act limits the release of information about disclosures, it allows CSC to disclose the content of the disclosure *'to the extent necessary for the purpose of taking lawful action'* in relation to conduct that is the subject of a disclosure, including disciplinary processes. However, this does not allow CSC to reveal the identity of the discloser.

There is also an exception that allows both disclosure content and the discloser's identity to be shared with Victoria Police - when an investigating entity has previously disclosed information to the Chief Commissioner of Police relating to actual, or potential, criminal conduct and the information is relevant to an investigation by Victoria Police of the criminal conduct.

7. IBAC assessment

Once a notification is made to the IBAC, then the IBAC must assess whether, in the IBAC's view, the assessable disclosure is a public interest complaint. If the IBAC is of the view that the assessable disclosure is a public interest complaint, then the discloser will be protected.

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

If the IBAC determines that a disclosure is a public interest complaint, it will investigate or refer a disclosure, or it may take no further action.

7.1 The IBAC's determination

Once the IBAC has determined whether a disclosure is a public interest complaint, it will:

- Advise the relevant notifying entity of its determination.
- Advise the discloser of the determination, and the action it intends to take (this applies to disclosers who have made their disclosures directly to the IBAC and those who have had their disclosures notified to the IBAC).

Information the IBAC will provide to a discloser following its determination

The IBAC will provide the following information to a discloser following its determination:

<u>It is a public interest complaint</u>	<u>It is <u>not</u> a public interest complaint</u>
<p>The IBAC must advise the discloser of the determination and the action it will take. This includes advising the discloser whether the IBAC has decided to investigate, refer the complaint, or take no further action.</p> <p>If the IBAC decides to take no further action it must give reasons for its decision.</p> <p>If the IBAC decides to investigate or refer the complaint, it must provide a written statement</p>	<p>The IBAC must advise the discloser in writing within a reasonable time, that:</p> <ul style="list-style-type: none"> • The IBAC has determined their disclosure is not a public interest complaint. • The disclosure will not be investigated as a public interest complaint. • The discloser's identity does not have to be kept confidential.

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<p>advising the discloser that it is an offence to disclose the IBAC's action.</p> <p>The IBAC must notify the discloser in writing and within a reasonable time. However, the IBAC may decide not to notify the discloser, or the entity that has notified the disclosure, if it considers that notifying would have one of the adverse consequences set out in the <i>IBAC Act</i>.</p> <p>The adverse consequences include putting a person's safety at risk, or prejudicing an investigation under the <i>IBAC Act</i>.</p>	<p>The IBAC will advise the notifying entity of its determination.</p> <p>The IBAC may also consider treating the disclosure as a complaint under the <i>IBAC Act</i>, which engages its powers to refer the matter to a more appropriate agency to investigate, including the agency the complaint is about.</p> <p>The IBAC will consult with the discloser prior to doing so.</p>
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7.2 The IBAC – investigating complaints

The IBAC may choose to investigate the alleged conduct if it is corrupt conduct that is serious or systemic.

Confidentiality and welfare issues

During the investigation of a public interest complaint, the IBAC or another investigating entity may need to contact the public body that is the subject of the complaint.

If so, the public body or public officer, will be able to disclose information about the public interest complaint without breaching the confidentiality requirements of the PID Act. The IBAC or the relevant investigating entity may also disclose the identity of the discloser, and the content of the complaint if necessary. If so, the public body or public officer to whom the information has been disclosed, is bound by the confidentiality requirements of the PID Act.

In addition, if the public body or public officer is advised of the identity of the discloser, then they will be required to look after the welfare of the discloser and provide protection against possible detrimental action.

7.3 The IBAC – referring a complaint

The IBAC may refer a public interest complaint to another investigating entity:

- Complaints about the conduct of a member of Victoria Police may be referred to the Chief Commissioner of Police.
- Other complaints may be referred to the Victorian Ombudsman, or depending on the nature of the complaint, the Chief Municipal Inspector, the Judicial Commission, the Racing Integrity Commissioner or the Information Commissioner.

If there is another public body that may be more suited to investigating a complaint (for example, a Council or Victorian Government department), the IBAC may refer the complaint to that body, if the person who made the complaint gives their consent.

7.4 The IBAC – no further action

If the IBAC dismisses a public interest complaint, it must do so for reasons set out in the PID Act, for example if the complaint:

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- Lacks substance or credibility.
- Is vexatious or trivial.
- Is about a matter that neither the IBAC nor a body specified in the *IBAC Act* may investigate.

7.5 The IBAC's obligations – providing information to the discloser at the end of an investigation

The IBAC must provide the discloser with information about the results of its investigation. This will include any action taken by the IBAC, and any recommendation by the IBAC that action or further action be taken.

The IBAC may provide written information to the relevant principal officer about the commencement, conduct or result of an investigation. This includes any actions taken, and any recommendations for action or further action. However, the IBAC must not provide any information that is likely to lead to a discloser being identified.

The IBAC does not have to provide this information to either the discloser or the relevant principal officer if it considers the disclosure might result in any of the possible adverse outcomes specified in section 163(4) of the Act.

8. Protections for persons making disclosure

The following types of disclosures are protected:

- Any disclosure assessed as a public interest disclosure (when the assessment has been made by an organisation that is authorised to receive disclosures). The protections apply even if the public body receiving the disclosure does not notify the IBAC.
- Any notification that the IBAC receives and determines to be a public interest complaint.

The discloser is protected as follows:

- Cannot be terminated, disciplined or bullied for making a disclosure.
- Is not subject to any civil or criminal liability for making a disclosure.
- Is not committing an offence against the *Constitution Act 1975* or any other Act that imposes obligations of confidentiality, or any other restriction on the disclosure of information.
- Is not breaching any other obligation (made by oath, rule of law or practice) requiring him or her to maintain confidentiality or otherwise restrict confidentiality.
- Cannot be held liable for defamation in relation to information included in a public interest disclosure.

8.1 Confidentiality – content and identity of a person making a public interest disclosure

Confidentiality is another way that disclosers and other people involved in public interest complaint investigations are protected.

There are two main restrictions on disclosing information. Breaching either of these restrictions is an offence.

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Content of a public interest disclosure must be confidential	Identity of a person making a public interest disclosure must be confidential
<p>The PID Act prohibits the disclosure of the content, or information about the content, of any disclosure that has been assessed as a public interest disclosure.</p> <p>This restriction applies to a person or body that receives a disclosure, or is provided with information about the disclosure, by an investigating entity assessing or investigating it. The restriction does not apply to the discloser.</p>	<p>The PID Act prohibits the disclosure of information that would be likely to lead to the identification of a person who has made a public interest disclosure.</p> <p>This restriction applies to any person or body, other than the discloser.</p>

These restrictions and their exceptions are set out in sections 52, 53 and 54 of the PID Act.

Exceptions to confidentiality requirements

There are certain circumstances when the confidentiality requirements do not apply. These are when:

- A body is exercising its functions under the PID Act.
- It is disclosed by an investigating entity, for the purpose of the exercise of functions under the PID Act, which authorises that investigating entity to investigate a public interest complaint.
- The IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee determines the disclosure is not a public interest complaint.
- A disclosure is to Victoria Police, when an investigating entity has previously disclosed information to the Chief Commissioner of Police relating to actual or potential criminal conduct, and the information is relevant to an investigation by Victoria Police of the criminal conduct.
- It is for the purpose of a proceeding, or for a disciplinary process under the relevant Act.
- The disclosure is necessary for the discloser to obtain legal advice or representation, the advice of a parent or guardian (for disclosers under 18 years), and the advice of an independent person (for disclosers who are illiterate or have mental or physical impairments).
- The disclosure is for the purpose of assisting the discloser to seek advice or support from a registered health practitioner, trade union, or employee assistance program.
- The disclosure is to WorkCover for a workers compensation claim or to the Fair Work Commission for an application.

Additional exceptions to confidentiality of the content of a public interest disclosure

Confidentiality does not apply if:

- It is in accordance with a direction, or authorisation, from the investigating entity that is investigating the public interest complaint.
- The disclosure is necessary for taking lawful action in relation to the conduct that is the subject of the disclosure.

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Additional exceptions to confidentiality of the identity of a person making a public interest disclosure

Confidentiality does not apply if the discloser gives written consent.

8.2 Limits on protections

A number of the protections in the PID Act do not apply if a discloser:

- Knowingly provides false or misleading information.
- Claims that a matter is the subject of a public interest disclosure, knowing the claim to be false.

The Act also specifically states that a person is still liable for their own conduct, even if they disclose that conduct.

A person who makes a disclosure is not protected against legitimate management action being taken in relation to them.

An employee who has made a public interest disclosure and believes on reasonable grounds that detrimental action will be, is being, or has been taken against them, may request a transfer of employment.

9. Offences

Taking disciplinary, or other action, against a person who has made a disclosure, creates the perception that it is being taken in reprisal for the disclosure.

If disciplinary or other action is being contemplated, the Chief Executive Officer or other responsible public officer, must be able to clearly demonstrate that:

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

Legal advice may be obtained before taking any action against the person making a public interest disclosure.

Vigilance will be taken to thoroughly document the process. This includes recording the reasons why the disciplinary or other action is being taken, and the reasons why the action is not in retribution for making the disclosure.

The person making a public interest disclosure should be clearly advised of the proposed action to be taken, and of any mitigating factors that have been taken into account.

See *Appendix B* for the civil and criminal penalties under the PID Act.

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10. The reporting system

10.1 Contact persons within Campaspe Shire Council

Disclosure of improper conduct or detrimental action by CSC or its employees, may be made to the Public Interest Disclosure Coordinator or the Chief Executive Officer. A Welfare Manager may be appointed to disclosers who have made a public interest disclosure (see 11.4 below). The Welfare Manager is responsible for looking after the general welfare of the discloser.

All correspondence, telephone calls and emails from internal or external persons making a disclosure must be referred to the Public Interest Disclosure Coordinator.

When a person is contemplating making a disclosure and is concerned about approaching the Public Interest Disclosure Coordinator in the workplace, he or she can contact the Public Interest Disclosure Coordinator and request a meeting in a discreet location away from the workplace.

Advice about reporting any improper conduct or detrimental action may be obtained from the Public Interest Disclosure Coordinator. See *Appendix A* for contact details.

10.2 Alternative contact persons

A disclosure about improper conduct or detrimental action by CSC or its employees may also be made directly to the IBAC. See *Appendix A* for contact details.

The following roles and responsibilities sets out where disclosures about persons, other than employees or Councillors of CSC, should be made. Disclosures relating to Councillors must be made to the IBAC or the Victorian Ombudsman.

11. Roles and Responsibilities

11.1 Employees

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

All employees of CSC 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.

11.2 Public Interest Disclosure Coordinator

The Public Interest Disclosure Coordinator will be the contact point within CSC and will:

- Establish and manage a confidential filing system.
- Receive all disclosures.
- Receive telephone calls, emails and letters from members of the public or CSC employees seeking to make a disclosure.

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- Be a contact point for general advice about the operation of the PID 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 persons).
- Commit to transcribing any disclosure made orally.
- Impartially assess the allegation, and determine whether it is a disclosure made in accordance with the PID Act (that is, a public interest disclosure).
- 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.
- Impartially assess each disclosure to determine whether it is a public interest disclosure.
- Refer all public interest disclosures to the IBAC.
- With the consent of the discloser, appoint a Welfare Manager to support them and to protect him or her from any reprisals.
- Collate and provide statistics on disclosures made.

11.3 Receipt of disclosures by staff

CSC staff receiving telephone calls must not enquire into the circumstances of the disclosure and must immediately refer the caller to the Public Interest Disclosure Coordinator. If the disclosure is received in the mail or in some other written form, the letter, email or document must be immediately and personally delivered to the Public Interest Disclosure Coordinator **without** recording any details of the disclosure in the electronic document management system.

The contents of disclosure, telephone calls or mail are confidential and a person divulging any matter relating to a disclosure is subject to prosecution for offences and any penalties under the PID Act.

11.4 Welfare Manager

In appropriate circumstances, the Public Interest Disclosure Coordinator will appoint a Welfare Manager to disclosers who have made a public interest disclosure. The Welfare Manager is responsible for looking after the general welfare of the discloser. The Welfare Manager will:

- Examine the immediate welfare and protection needs of the discloser and seek to foster a supportive work environment.
- Advise the discloser of the legislative and administrative protections available to him or her.
- Listen and respond to any concerns, harassment, intimidation or victimisation in reprisal for making a disclosure.
- Ensure the expectations of the discloser are realistic.

The Welfare Manager may be a person from within CSC or a third party engaged for that purpose. For further information refer to CSC's Welfare Management – Public Interest Disclosures.

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11.5 The Freedom of Information Act

Documents may not be subject to the *Freedom of Information Act 1982* if they disclose information that:

- Relates to a public interest disclosure or police complaint disclosure.
- Is likely to identify a person who has made a public interest disclosure.

Public bodies must ensure that any officers handling Freedom of Information requests are aware of this section. Therefore, council's Freedom of Information Officer will give consideration to contacting the IBAC prior to providing any document originating from the IBAC, or relating to a protected disclosure, if requested under the *Freedom of Information Act*.

12. Confidentiality

CSC will take all reasonable steps to protect the identity of the discloser. Maintaining confidentiality is crucial to ensuring reprisals are not made against a discloser.

The PID Act requires any person who receives information due to the handling or investigation of a public interest disclosure, not to disclose the information except in limited circumstances.

12.1 Information management

CSC will ensure all files, whether paper or electronic, are kept in a secure room and can only be accessed by the Public Interest Disclosure Coordinator, or Welfare Manager (in relation to welfare matters). All printed material will be kept in files that are clearly marked as a *Public Interest Disclosures Act 2012* matter, and warn of the civil and 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 stand-alone computer and be given password protection. Backup files will be kept on an encrypted memory stick. All materials relevant to an investigation, such as tapes from interviews, will also be stored securely with the public interest disclosure file(s).

CSC will not email documents relevant to a disclosure matter to any computer that general staff can access, and will ensure all telephone calls and meetings are conducted in private.

13. Managing the welfare of the discloser

13.1 Commitment to protecting a discloser

CSC is committed to the protection of genuine disclosers against detrimental action taken in reprisal for the making of public interest disclosures. The Public Interest Disclosure Coordinator has the primary responsibility for ensuring the discloser is protected from direct and indirect detrimental action, and that the culture of the workplace is supportive of public interest disclosures being made.

In appropriate circumstances, the Public Interest Disclosure Coordinator will appoint a Welfare Manager to disclosers who have made a protected disclosure. For further information please refer to CSC's Welfare Management – Public Interest Disclosures.

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14. Collating and publishing statistics

CSC is required to publish certain statistics about the PID Act in its Annual Report. The information relates mainly to how these procedures may be accessed and the number of disclosures notified to the IBAC for assessment under the PID Act during the financial year.

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

15. Review

These procedures will be reviewed regularly to ensure they meet the objectives of the Act and Regulations and accord with the IBAC guidelines.

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Appendix A – Contact Details

For reporting improper conduct or detrimental action under the *Public Interest Disclosures Act 2012*

Deidre Madill, Governance Coordinator

Address: Confidential Telephone: (03) 5481 2831
Public Interest Disclosure
Campaspe Shire Council
PO Box 35
ECHUCA VIC 3564
Email: publicinterestdisclosure@campaspe.vic.gov.au

Independent Broad-based Anti-corruption Commission (IBAC)

Address: GPO Box 24234 Telephone: 1300 735 135
MELBOURNE VIC 3564
Internet: www.ibac.vic.gov.au
Email: info@ibac.vic.gov.au

Victorian Ombudsman

Address: Ombudsman Victoria Telephone: (03) 9613 6222
Level 2, 570 Bourke Street Toll Free: 1800 806 314
MELBOURNE VIC 3000
Internet: www.ombudsman.vic.gov.au
Email: ombudvic@ombudsman.vic.gov.au

Victorian Inspectorate

Address: PO Box 617 Telephone: (03) 8614 3225
Collins Street West
MELBOURNE VIC 8007
Internet: www.vicinspectorate.vic.gov.au
Email: info@vicinspectorate.vic.gov.au

Public Interest Disclosures Procedure

Appendix B - Civil and Criminal Penalties under the Public Interest Disclosures Act 2012

Specific offences	Penalties
Detrimental action	
<p>Liability of an individual</p> <p>It is an offence for a person to take or threaten action in reprisal when:</p> <ul style="list-style-type: none"> • Another person has made or intends to make a public interest disclosure. • The person believes another person has made or intends to make a public interest disclosure. • The person believes another person has made or intends to make a public interest disclosure. • Another person has cooperated or intends to cooperate with the investigation of a public interest disclosure. • The person believes another person has cooperated or intends to cooperate with the investigation of a public interest disclosure. 	<p>Criminal penalty: 240 penalty units or two years imprisonment or both.</p> <p>If a person is convicted or found guilty of an offence the Court may in addition to imposing a penalty:</p> <ul style="list-style-type: none"> • Order that the offender pay damages to compensate for any loss or damage. • Possible order of Court for reinstatement or reemployment of the person subjected to detrimental action.
<p>Vicarious liability of their employer</p> <p>An employer may also be held to be liable for the detrimental action of their employee or agent.</p>	<p>Criminal penalty: 240 penalty units or two years imprisonment or both.</p> <p>If a person is convicted or found guilty of an offence the Court may in addition to imposing a penalty:</p> <ul style="list-style-type: none"> • Order that the offender pay damages to compensate for any loss or damage. • Possible order of Court for reinstatement or reemployment of the person subjected to detrimental action.
Disclosure of content of a public interest disclosure or Police complaint disclosure	
<p>A person/body must not disclose content of a disclosure or information about its content.</p>	<ul style="list-style-type: none"> • 120 penalty units or 12 months imprisonment or both (person). • 600 penalty units (body corporate).

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Disclosure of identity of person making a public interest disclosure or Police complaint disclosure	
A person/body must not disclose information likely to lead to the identification of a person who has made a disclosure.	<ul style="list-style-type: none"> • 120 penalty units or 12 months imprisonment or both (person). • 600 penalty units (body corporate).
Making false disclosure or providing false further information	
A person must not provide information intending it be acted on as a public interest disclosure, or further information that relates to a public interest disclosure, knowing it to be false or misleading.	120 penalty units or 12 months imprisonment or both.
Falsely claiming a disclosure is a public interest disclosure	
A person must not falsely claim a matter is the subject of a public interest disclosure or the subject of a disclosure determined to be a public interest disclosure.	120 penalty units or 12 months imprisonment or both.

Public Interest Disclosures Procedure

Appendix C

Process for handling Public Interest Disclosures

When making a public interest disclosure consider:

Is the disclosure being made by an individual or group of people? A company or business cannot make a disclosure, but its officers or employees can.

Is the disclosure being made verbally (in private) or in writing? The disclosure may be made to Council's Public Interest Disclosure Coordinator or Chief Executive Officer. Disclosures can also be anonymous. A disclosure cannot be made via facsimile.

Is the disclosure about a public body, public officer, or a person whose conduct is adversely affecting the honest and effective performance of a public body or public officer?

If you have answered YES to all of the above questions

The disclosure must be assessed to decide if it is about improper conduct (corrupt conduct) or detrimental action (taken against another person in reprisal for making a public interest disclosure).

Does the disclosure show, or tend to show there is improper conduct or detrimental action?

OR

Does the discloser believe on reasonable grounds that improper conduct has occurred?

'Simply stating that improper conduct or detrimental action is occurring without providing any supporting information, is not a sufficient basis for having a reasonable belief. A belief cannot be based on a mere allegation, suspicion or conclusion unsupported by any further facts or circumstances' - the Independent Broad-based Anti-corruption Commission.

Yes

No

The disclosure **MAY BE** a public interest disclosure under the *Public Interest Disclosures Act 2012*. The Public Interest Disclosure Coordinator does not investigate disclosures but will, within 28 days of receiving the disclosure:

- Notify the IBAC, under section 21 of the Act, that the disclosure may be a public interest disclosure; and
- Notify the discloser in writing that their disclosure has been forwarded to the IBAC for assessment. If the disclosure was made anonymously, then this notification is not required.

It is an offence for a person to take, threaten to take, or allow another person to take detrimental action in reprisal for making a public interest disclosure. In appropriate circumstances, the Public Interest Coordinator may appoint a Welfare Manager to disclosers who have made a protected disclosure.

Once a notification is made to IBAC, they must assess whether, in their view, the disclosure is a public interest complaint.

If it is a public interest complaint IBAC will notify the discloser of their determination and advise whether they have decided to investigate, refer the complaint, or take no further action.

If it is not a public interest complaint IBAC will notify the discloser and Council that the matter will not be investigated. The discloser's identity does not have to be kept confidential.

If you have answered NO to one or more of the above questions

The disclosure is probably **NOT** a public interest disclosure under the *Public Interest Disclosures Act 2012*. The Public Interest Coordinator will, within 28 days of receiving the disclosure, notify the discloser that:

- Council considers the disclosure is not a public interest disclosure;
- The IBAC has not been notified of the disclosure;
- The discloser's identity does not have to be kept confidential, but protections under Part 6 of the Act apply – the discloser cannot be dismissed, disciplined or bullied for making the disclosure.

Does the disclosure constitute a complaint which can be dealt with in accordance with Council's complaint handling procedures?

Yes
The complaint will be referred for consideration

No
The disclosure will be closed

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Appendix D - Glossary of key terms

Key Term	Definition
Public Interest Disclosure (PID)	A disclosure by a natural person of information that shows or tends to show, or information that the person reasonably believes shows or tends to show, improper conduct or detrimental action (where the particular disclosure relates to an earlier PID). PIDs were previously known as protected disclosures.
Public Interest Complaint (PIC)	A PID that has been determined by the IBAC, the Victorian Inspectorate, or the Integrity and Oversight Committee to be a PIC. PICs were previously known as protected disclosure complaints.
Natural person	A human being, not a legal entity such as a corporate body.
Public officer	<ul style="list-style-type: none"> • An IBAC Officer. • A Victorian Public Inspectorate Officer. • A Public Interest Monitor. • A person employed in any capacity or holding any office in the public sector with the meaning of section 4(1) of the <i>Public Administration Act 2004</i>. • A person to whom a provision of the <i>Public Administration Act 2004</i> applies as a result of the application of Part 7 of that Act. • An ongoing employee or temporary employee in the teaching service under Division 3 Part 6 of the <i>Education and Training Reform Act 2006</i>. • A judicial employee employed under Division 3 of Part 6 of the <i>Public Administration Act 2004</i>. • A Ministerial officer employed under Division 1 of Part 6 of the <i>Public Administration Act 2005</i>. • An electorate officer within the meaning of the <i>Parliamentary Administration Act 2005</i>. • A Parliamentary adviser employed under Division 2 of Part 6 of the <i>Public Administration Act 2004</i>.

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	<ul style="list-style-type: none"> • A Parliamentary officer within the meaning of the <i>Parliamentary Administration Act 2005</i>. • A member of Victoria Police personnel. • A responsible Minister of the Crown. • A member of the Legislative Assembly or the Legislative Council. • A Councillor within the meaning of section 3(1) of the <i>Local Government Act 1989</i>. • A member of Council staff employed under the <i>Local Government Act 1989</i>. • A judge, magistrate, coroner or a member of VCAT. • An associate judge or judicial registrar. • A Crown Prosecutor. • The Chief Crown Prosecutor. • The Director of Public Prosecutions. • The Governor, Lieutenant Governor or the Administrator of the State. • The Auditor General. • The Ombudsman. • The Electoral Commissioner. • The holder of any other statutory office or any other prerogative office. • Any other person in the service of the Crown or a public body. • A person that is performing a public function on behalf of the State or a public officer or public body (whether under contract or otherwise). • A person who holds, or a person who is a member of a class of persons who hold, an office prescribed to be a public office for the purposes of this definition. • An employee of, or any person otherwise engaged by, or acting on behalf of, or acting as a deputy or delegate of, a public body or a public officer.
<p>Public body</p>	<ul style="list-style-type: none"> • The IBAC. • The Victorian Inspectorate. • A public sector body within the meaning of section 4(1) of the <i>Public Administration Act 2004</i>. • A body whether corporate or unincorporated, established by or under an Act for a public purpose, including a university. • The Electoral Boundaries Commission constituted under the <i>Electoral Boundaries Commission Act 1982</i>.

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	<ul style="list-style-type: none"> • A Council. • A body that is performing a public function on behalf of the State or a public body or public officer (whether under contract or otherwise). • Any other body or entity prescribed for the purposes of this definition.
Serious professional misconduct	Conduct that constitutes a serious breach of an established professional code of conduct and/or other serious departures from the person's professional responsibilities.
Detrimental action	<p>Includes:</p> <ul style="list-style-type: none"> • Action 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.
Confidentiality obligations	<p>The obligations on those receiving information relating to a public interest disclosure to not disclose that information, unless authorised by law. The primary obligations in relation to PIDs and PICs are contained in section 52, 53 and 54 of the <i>Public Interest Disclosures Act 2012</i>, and section 184 of the IBAC Act. Note also that confidentiality notices may also be issued in an investigation of a PIC. Breaches of these confidentiality obligations include criminal sanctions.</p>