

Public Interest Disclosure Policy

Yarriambiack Shire Council encourages a working environment which promotes gender equality and models non-violent and respectful relationships

Background

Legislative changes commencing 01 January 2020 required all agencies to update their policies and procedures in relation to Public Interest Disclosures (PIDs). Victoria's Public Interest Disclosure scheme is vitally important in ensuring that people who report improper conduct and corruption can do so in the knowledge that they will be protected.

Protection includes keeping the identity of the person reporting improper conduct confidential and protecting them from reprisals including bullying, harassment or legal action.

Overall, the new PID scheme aims to provide a lower threshold for making PIDs to IBAC, a 'no wrong door' principle for handling PIDs made to a receiving agency, and increased flexibility and alternative pathways for how investigating agencies handle PIDs.

Major name changes include The Protected Disclosure Act 2012 renamed to the Public Interest Disclosure Act 2012. In addition, the terms protected disclosure and protected disclosure complaint have been replaced with Public Interest Disclosure and Public Interest Complaint.

Objective

Yarriambiack Shire Council is required to establish a policy and procedure for reporting and handling Public Interest Disclosures of improper or corrupt conduct, or detrimental action by Council's Councillors, Special Committee Members, Contractors, Volunteers or Employees, and to ensure Council's compliance against the Public Disclosure Act 2012 (the Act) including its associated regulations.

Procedures will include reasonable steps to deal with Public Interest Disclosures such as:

- a) PID's made to the entity are properly assessed and, when appropriate, properly handled, investigated and referred on when necessary.
- b) Reasonable support is available for public officers of the entity who make PID's.
- c) Public officers of the entity are offered protection from reprisals by the organisation or other public officers of the organisation.

Responsibility

The Director Business Strategy and Performance and the Manager Organisational Performance are responsible for implementing the policy and procedures. All Councillors, Special Committee Members, Contractors, Volunteers and Employees of YSC are responsible for adhering to the policy and procedures.

Policy Statement and Scope

Yarriambiack Shire Council is committed to the aims and objectives of the Public Interest Disclosure Act 2012 (PID Act). It does not tolerate improper conduct by its Councillors, Member of Committees, Contractors, Volunteers or Employees, nor the taking of reprisals against those who report or disclose such conduct.

Yarriambiack Shire Council recognises the value of transparency and accountability in its administrative and management practices, and supports the

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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.

Yarriambiack Shire Council will take all reasonable steps to protect people who make such disclosures from any detrimental action in reprisal for making the disclosure, including the welfare of the person making the disclosure and confidentiality of information.

Council will ensure a framework is in place that:

- a) encourage reporting.
- b) ensures accessibility both internally and externally to the organisation.
- c) educates staff in how to make a disclosure and ensures guidance is available on the website for external parties.
- d) ensure a Public Disclosure Coordinator is in place to receive and handle disclosures.
- e) information is treated with confidentiality.
- f) disclosures are forwarded to the relevant investigating body in a timely manner.
- g) protects disclosures from reprisals, including appointment of a Welfare Officer (where appropriate).
- h) investigations are conducted or supported in a way that complies with the Act.
- i) ensure compliance with records management and reporting requirements.

Definitions

Public Interest Disclosure	<p>A disclosure by a natural person of information that shows or information 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. A Public Interest Disclosure does not include a disclosure of information by a person:-</p> <ul style="list-style-type: none"> • that the person knows is false or misleading; or • that relates entirely or in substance to a disagreement in relation to a policy about amounts, purposes or priorities of public expenditure.
Public Interest Complaint	<p>A PID that has been determined by IBAC, the Victorian Inspectorate, or the integrity and Oversight Committee to be a PIC. PICs were previously known as protected disclosure complaints.</p>
Natural Person	<p>A human being, not a legal entity like a corporate body.</p>
Improper Conduct	<p>Conduct that amounts to any of the following:</p> <ul style="list-style-type: none"> • corrupt conduct • a criminal offence • serious professional misconduct • dishonest performance of public functions • intentional or reckless breach of public trust • substantial mismanagement of public resources • substantial risk to health or safety of a person • substantial risk to the environment • conduct of any person that adversely affects the honest performance by a public officer of their functions

	<ul style="list-style-type: none"> conduct of any person that is intended to adversely affect the effective performance by a public officer of their functions for the benefits of the other person
Public Officer	A public officer includes Local Government Employees and Councillors.
Public body	An organisation that delivers a public service.
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>Under the PID Act 2012 it is an offence for an employer to take, or threaten to take, detrimental action against a person because the employer believes that the person has given information to the office of the Ombudsman.</p> <p>Section 3 of the PID Act defines detrimental action as including:-</p> <p>Action causing injury, loss or damage, intimidation or harassment; and discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action.</p> <p>The person need not have actually taken the action, but can just have threatened to do so. The person need not have taken or have threatened to take the action against the person themselves, but can have incited or permitted someone else to do so. The detrimental action need not be taken against a disclosure, but against any person.</p> <p>The PID Act 2012 makes it an offence for a person to take detrimental action against a person in reprisal for a Public Interest Disclosure. Detrimental action can be taken by any person. However, a disclosure made under the PID Act can only be made about detrimental action by a public officer or public body.</p>
Discloser	A person who (purports to) make (s) a complaint, allegation or disclosure (however described) under the Act
Disclosure	Any complaint, concern, matter, allegation or disclosure (however described) purported to be made in accordance with Part 2 of the Act
Confidentiality Obligations	The obligations on those receiving information relating to a public interest disclosure to not disclose the information, unless authorised by law. The primary obligations in relation to PIDs and PICs are contained in section 52,53 and 54 of the Public Interest Disclosures Act 2012, 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.
Public Interest Disclosure Coordinator (Director Business Strategy & Performance)	The Public Interest Disclosure Coordinator will be the contact point for advice about the operation of the PID Act and has a role in distributing information and assisting in the internal reporting system.
Welfare Officer(Manager)	The welfare manager is responsible for looking after the general welfare of any person making Public Interest Disclosures.

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What is a Public Interest Disclosure?

A Public Interest Disclosure is a report about:

- a) 'improper conduct' by a public officer or body (or person trying to influence a public officer or body.
- b) 'detrimental action' taken, or threatened to be taken, by a public officer or body against a person in reprisal for a Public Interest Disclosure.

Conduct that may be improper conduct varies in degree and seriousness. For example, it can include serious corrupt conduct of a public officer or public body that constitutes an indictable offence (punishable by imprisonment for five years or more). It can also include dishonest conduct, such as misusing a corporate credit card, or conduct that is a substantial risk to public health or safety, such as ignoring safety problems with public infrastructure (PID Act, section 4).

A disclosure can relate to conduct or action that has already taken place, may be occurring now, or may happen in the future.

Detrimental action is action taken against a person for making a Public Interest Disclosure or cooperating with an investigation into one. It includes intimidation, harassment, and adverse treatment in relation to a person's employment (PID Act, section 43(1)). Detrimental action is, or threatened to be, taken against a person because that person or another person has made, or intends to make a disclosure or has cooperated, or intends to cooperate, with the investigation of one.

Who can make a Public Interest Disclosure?

Any natural person can make a disclosure about improper conduct or detrimental action – including members of the public (including group of individuals), members of the public and employees of Council.

A Corporation or body cannot make a Public Interest Disclosure.

Contacts

Public Interest Disclosure Coordinator

Director Business Strategy & Performance, Yarriambiack Shire Council

34 Lyle Street, PO Pox 243, Warracknabeal Vic 3393

<https://yarriambiack.vic.gov.au/>

Public Interest Disclosure Welfare Officer

Manager Organisational Performance, Yarriambiack Shire Council

34 Lyle Street, PO Box 243, Warracknabeal Vic 3393

Email: bschilling@yarriambiack.vic.gov.au

Chief Executive Officer

Public Interest Disclosures can be made directly to the Chief Executive Officer.

34 Lyle Street, PO Box 243, Warracknabeal Vic 3393

Email: jholmes@yarriambiack.vic.gov.au

Supervisors

Public Interest Disclosures can also be made to the supervisor of the discloser or the supervisor of the person who is the subject of the disclosure.

Ombudsman/IBAC

A disclosure about improper conduct or detrimental action by the Yarriambiack Shire Council Councillors, Special Committees, Contractors, Volunteers or Employees may also be made directly to the Ombudsman or IBAC. Public Interest Disclosures relating to Councillors can only be made directly to the Ombudsman or IBAC.

IBAC are able to refer Public Interest Complaints (PIC) to the Chief Municipal Inspector where it considers:

- the complaint does not involve corrupt conduct
- it is relevant to the performance of the Chief Municipal Inspectorates functions, and
- certain other conditions are met

Victorian Ombudsman

Level 2, 570 Bourke Street, Melbourne Vic 3000

Online: www.ombudsman.vic.gov.au

Email: ombudvic@ombudsman.vic.gov.au

Telephone: 03 9613 6222; Toll-free (regional only) 1800 806 314

IBAC

Level 1, North Tower, 459 Collins Street, Melbourne Vic 3000

Online: www.inbac.vic.gov.au

Email: info@ibac.vic.gov.au

Telephone: 1300 735 135

Receiving a Public Interest Disclosure

If an employee receives something that they believe may be a Public Interest Disclosure they must direct the information directly to the Public Interest Disclosure Coordinator.

Administrative Updates

It is recognised that, from time to time circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter this document, such a change maybe made administratively. Examples include a change to the name of a Council department, a change to the name of a State Government department, and a minor update to legislation which does not have a material impact. However, any change or update which materially alters this document must be by a Resolution of Council.

Confidentiality

Council takes its obligations under the Act very seriously. This includes the requirement to protect the identity of the discloser and the matters disclosed by a disclosure. Maintaining confidentiality in relation to Public Interest Disclosure matters is crucial, in ensuring reprisals are not made against a discloser. It is a criminal offence under the Act to disclose information connected with a disclosure made in accordance with the Act, including the identity of the discloser. The penalties for breaching confidentiality obligations include financial penalties and imprisonment.

Human Rights Statement

It is considered that this policy does not impact negatively on any right identified in the Charter of Human Rights Act 2006. Yarriambiack Shire Council is committed to consultation and cooperation between management and staff. YSC will formally involve elected employee Health and Safety Representatives in any workplace change that may affect the health and safety on any of its employees.

Review

The Director of Business Strategy and Performance and Manager Organisational Performance will review this policy for any necessary amendments no later than 3 years after adoption of this current version.

Publication of Policy and Procedure

YSC reports on the number of disclosures notified to IBAC for assessment under s 21 of the Act during the financial year.

A copy of the Public Interest Disclosure Policy and Procedures will be made available for access via the Yarriambiack Shire Council Website www.yarriambiack.vic.gov.au

A hardcopy of the Public Interest Disclosure Policy and Procedures may be obtained on request from the Main Office of the Yarriambiack Shire Council, located at 34 Lyle Street, Warracknabeal Vic 3393.

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References

- *Occupational Health and Safety Policy*
- *Information Privacy Policy*
- *Occupational Health and Safety Act (2004)*
- *Public Interest Disclosure Act 2012*
- *The Charter of Human Rights and Responsibilities Act 2006*
- *IBAC-Information Sheet: Key changes in relation to public interest disclosures (8/10/2019)*

Related Procedures

Public Interest Disclosure Procedures

Policy Adopted:	Ordinary Meeting 27 May 2020	Minute Book Page 319	
Policy Reviewed:	Ordinary Meeting [date]	Minute Book Page [number]	