



**Public Interest Disclosure
(Whistleblowers)
Procedures for
Yarriambiack Shire Council**

Version 1

Ratified by Council: 27 May 2020

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

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Definitions used in these procedures

Key term/abbreviation	Definition
YSC	Yarriambiack Shire Council
Act	Public Interest Disclosures Act 2012 (PID Act)
Assessable disclosure	Any disclosure either made directly to IBAC or the Victorian Inspectorate, or if received by YSC is required under s 21 of the Act to be notified by the Council to IBAC for assessment
Detrimental action	As defined in s 3 of the Public Interest Disclosures Act 2012.
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
Guidelines	The Guidelines published by IBAC under s 57 of the Act, copies of which may be downloaded from http://www.ibac.vic.gov.au/
IBAC Act	<i>Independent Broad-based Anti-corruption Commission Act 2011</i>
IBAC	Independent Broad-based Anti-corruption Commission
Improper conduct	As defined in s 4 of the Public Interest Disclosures Act 2012
Investigative entity	Any one of the four bodies authorised to investigate a Public Interest disclosure complaint, being IBAC, the Victorian Ombudsman, the Chief Commissioner of Police and the Victorian Inspectorate
Natural person	A human being, not a legal entity like a corporate body.
Public Interest Discloser	A person who makes a disclosure of improper conduct or detrimental action in accordance with the requirements of Part 2 of the Act
Public Interest Disclosure (PID)	disclosure by a natural person of information that shows / tends to show or information that the person reasonably believes shows / tends to show improper conduct or detrimental action (previously a protected disclosure)
Public Interest Disclosure Complaint	a public interest disclosure that has been determined by IBAC, the Victorian Inspectorate or IOC to be a Public Interest Complaint (previously a protected disclosure complaint).
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.
Public Interest Disclosure Coordinator (PIDC)	The PIDC will be the primary contact point within the YSC to receive Public Interest Disclosures
Public Interest Disclosure Welfare Officer (PIDWO)	The PIDWO is responsible for looking after the general welfare of the discloser.

1. Objective of Procedures

These procedures have been developed to establish a framework for reporting disclosures of improper conduct or detrimental action by the Yarriambiack Shire Council or its Councillors, Special Committee Members, Contractors, Volunteers and employees. The framework enables such disclosures to be made to the Public Disclosure Coordinator (PIDC) 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 the YSC.

2. Responsibility

The Director of 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 Council are responsible to adhering to the policy and procedures.

3. What is a Public Interest Disclosure?

Public interest disclosures are reports about:

- a) improper conduct of public bodies or public officers (such as corrupt conduct).
- b) 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:

- a) may have already taken place.
- b) may be occurring now.
- c) may happen in the future.

3.1 Improper Conduct

Improper conduct includes corrupt conduct, criminal offences and other conduct specified in the PID Act 2012. If the conduct is trivial, it will not meet the threshold of improper conduct.

When assessing allegations of improper conduct, you need to identify that there is a link between the conduct and the official function of a public officer or public body.

What improper conduct includes:

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) A criminal offence.
- b) Serious professional misconduct.
- c) Dishonest performance of public functions.
- d) An intentional or reckless breach of public trust.
- e) 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.
- f) A substantial mismanagement of public resources.
- g) A substantial risk to health or safety of one or more persons.
- h) A substantial risk to the environment.

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Conduct of any person that:

- a) adversely affects the honest performance by a public officer or public body of their public functions.
- b) is intended to adversely affect the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body and 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 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.
- c) conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referred to above.

Other examples include: -

- a) A public officer takes a bribe or receives a payment other than his or her wages in exchange for the discharge of a public duty.
- b) A Public officer sells confidential information.
- c) A public officer favours unmeritorious applications for jobs by friends and relatives.

Less serious or trivial conduct is excluded from the definitions of improper conduct.

3.2 Specified Conduct

Specified conduct is any one of the above types of conduct, **or** conduct that involves substantial mismanagement of public resources, risk to public health or safety, or risk to the environment, which **would not** constitute "corrupt conduct" but would nevertheless, if proved, constitute either:

- a) A criminal offence; or
- b) Reasonable grounds for dismissing or terminating the employment of the officer who engaged or is engaging in that conduct.

It should be noted the risk in relation to mismanagement or public health and safety or the environment must be "substantial", requiring significant or considerable mismanagement, or significant or considerable risks to public health, safety or the environment.

3.3 Detrimental Action

The Act makes it an offence for a person to take detrimental action against a person in reprisal for making a protected disclosure. Detrimental action is defined by section 3 of the Act as including:

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

There are two essential components here: whether there is in fact "detrimental action", as defined by the Act, and whether that action is being taken in reprisal against a person for making or being connected with a Public Interest Disclosure.

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In addition, a person can have taken detrimental action without having taken the action itself, but just by threatening to take such action. Furthermore, the detrimental action need not necessarily have been taken (or threatened to be taken) against a person making a Public Interest Disclosure, but against any person connected with a Public Interest Disclosure.

Examples of detrimental action prohibited by the Act include:

- a) threats to a person’s personal safety or property, including intimidating, harassing a discloser or the discloser’s family or friends, otherwise causing personal injury or prejudice to the safety or damaging property of a discloser or the discloser’s family or friends;
- b) the demotion, transfer, isolation or change in duties of a discloser due to him or her having made a disclosure;
- c) discriminating or disadvantaging a person in their career, profession, employment, trade or business; or
- d) discriminating against the discloser or the discloser’s family and associates in subsequent applications for promotions, jobs, permits or tenders resulting in financial loss or reputational damage.

Other examples of detrimental action include: -

- a) A public body demotes, transfers, isolates or changes the duties of a person for making a disclosure.
- b) A person threatens, abuses or carries out other forms of harassment directly or indirectly against the person who makes a disclosure and his or her family or friends.
- c) A public body discriminates against the person who makes a disclosure or his or family and associates in subsequent applications for jobs or tenders.

4. Making a Disclosure

4.1 Who can make a Public Interest Disclosure

Anyone (both members of the public and employees of a public body) can make a disclosure about improper conduct or detrimental action relating to the council or an officer.

A disclosure can be made by an individual or by a group of individuals. A disclosure may:

- a) only be made by a natural person (or a group of individuals making joint disclosures)
- b) disclosures cannot be made by a company or an organisation
- c) be made anonymously
- d) be made even where the discloser is unable to identify precisely the individual or the organisation to which the disclosure relates
- e) also be a complaint, notification or disclosure (however described) made under another law.

A complaint or allegation that is already in the public domain will not normally be a Public Interest disclosure. Such material would, for example, include matters which have already been subject to media or other public commentary.

4.2 How to make a Public Interest Disclosure

A disclosure must be made in accordance with Part 2 of the Act, the discloser does not have to specifically refer to the Act or the protections in the Act for the disclosure to be a Public Interest Disclosure.

A person may make a disclosure verbally or in writing. The disclosure may also be anonymous.

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Private verbal disclosure

Disclosures can be made in person, by phone or by leaving a voice 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) a lawyer representing the person making the disclosure (if any)
- b) one or more people to whom a disclosure can be made under the 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 the Yarriambiack Shire Council by:

- a) delivering it in person to the office of the Yarriambiack Shire Council
- b) mailing it to the office of the Yarriambiack Shire Council
- c) emailing to the email address of the office of the Yarriambiack Shire Council, or to the official email address of a person nominated to receive a disclosure in the Yarriambiack Shire Council's procedures
- d) completing the online form available on the IBAC and the Victorian Ombudsman websites.

"A disclosure cannot be made by fax".

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 phone calls or in a face-to-face conversation or meeting where 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 where the identity of the person making the disclosure cannot be determined, the disclosure should be treated as an anonymous disclosure.

4.3 Contacts for receiving disclosures

Disclosures of improper conduct or detrimental action by the Yarriambiack Shire Council or its Employees, Volunteers, Contractors and Special Committee Members may be made to the Public Disclosure Coordinator.

The following main officers at Yarriambiack Shire Council can receive disclosures:

- a) Chief Executive Officer; and
- b) PIDC

Other officers at Yarriambiack Shire Council that may receive disclosures:

- a) PIDWO
- b) Managers or Supervisors

Other financial officers at Yarriambiack Shire Council that may receive disclosures:

- a) Audit Chairperson (contact details can be found on the Yarriambiack Shire Council website)

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Disclosures about improper or detrimental action by the Yarriambiack Shire Council Councillors must be made to IBAC or to the Ombudsman. Those disclosures must not be made to Yarriambiack Shire Council Staff.

Public Interest Disclosure Coordinator

Director Business Strategy & Performance, Yarriambiack Shire Council
34 Lyle Street, PO Pox 243, Warracknabeal Vic 3393
Email: tsmith@yarriambiack.vic.gov.au
<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

Managers / Supervisors

Public Interest Disclosures can also be made to the Manager / 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:

- a) the complaint does not involve corrupt conduct
- b) it is relevant to the performance of the Chief Municipal Inspectorates functions, and
- c) 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

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4.4 Organisations that can receive Public Interest Disclosures

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

Where to make disclosures about specific public bodies or officers

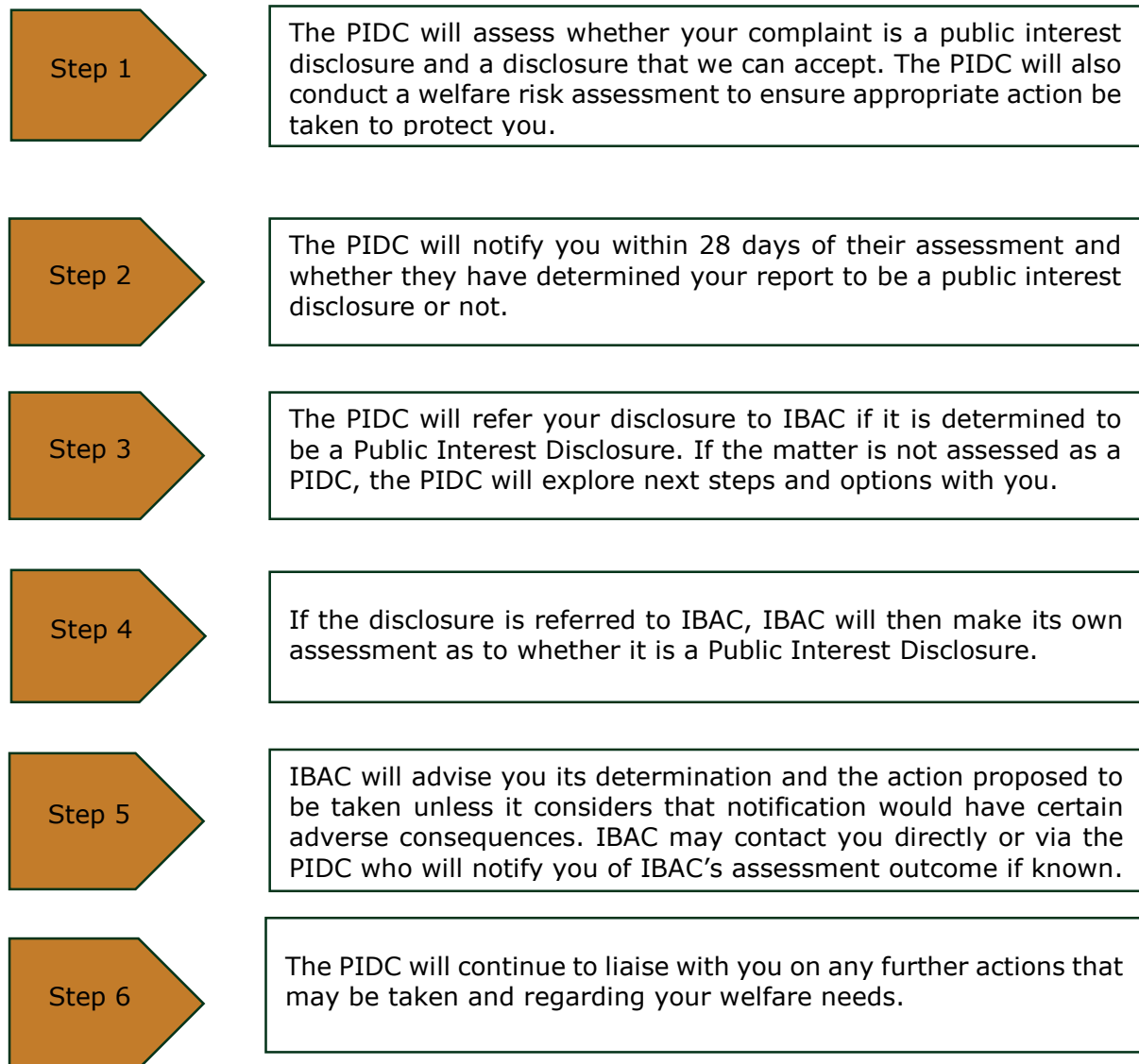
Subject of the disclosure	Report to
Chief Commissioner of Police	IBAC
Director of Public Prosecutions	
Chief Crown Prosecutor	
Solicitor General	
Governor	
Lieutenant Governor or Administrator	
Director, Police Integrity	
Electoral Commissioner	
Commissioner or member of a Board of Inquiry appointed under the <i>Inquiries Act 2014</i>	
A judicial employee	
A Ministerial officer	
A Parliamentary adviser	
An electorate officer	
A Parliamentary officer	
Minister of the Crown who is not a member of Parliament	
A Councillor	IBAC or the Victorian Ombudsman
The Information Commissioner	
Health Complaints Commissioner	
IBAC	<ul style="list-style-type: none"> • The Commissioner • A Deputy Commissioner • The Chief Executive Officer • An IBAC employee • An IBAC consultant
Victorian Ombudsman	<ul style="list-style-type: none"> • A Victorian Ombudsman officer
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 IBAC, or to the Victorian Ombudsman or the Victorian Inspectorate.	<ul style="list-style-type: none"> • Head of the relevant public service body • A person defined in the public service body's procedures as a person who can receive a disclosure about that body, eg PIDC • Manager or supervisor of the discloser • Manager or supervisor of the person who is the subject of the disclosure

Organisation	Officers who can receive disclosures
<p>Council</p> <p>All councils can receive disclosures that relate to the conduct of themselves, or disclosures made by their own members, officers or employees. Disclosures about councils can also be made to IBAC, or to the Victorian Ombudsman or the Victorian Inspectorate.</p>	<ul style="list-style-type: none"> • Chief Executive Officer • A person identified in the council's procedures as a person who can receive a disclosure about that council, e.g. PIDC • PIDWO • Manager or supervisor of the discloser • Manager or supervisor of the person who is the subject of the disclosure
<p>The Chief Examiner or an Examiner appointed under the <i>Major Crimes (Investigative Powers) Act 2004</i></p> <p>A Victorian Ombudsman officer</p> <p>A Victorian Auditor-General's Office officer</p> <p>Judicial Commission officer (other than a judicial member of the Board of the Judicial Commission)</p>	<p>IBAC or the Victorian Inspectorate</p>
<p>A member of police personnel (other than the Chief Commissioner)</p>	<p>IBAC or a prescribed member of police personnel</p>
<p>Member of Parliament (Legislative Council)</p>	<p>President of the Legislative Council</p>
<p>Member of Parliament (Legislative Assembly)</p>	<p>Speaker of the Legislative Assembly</p>
<p>A Public Interest Monitor</p> <p>An IBAC officer</p>	<p>Victorian Inspectorate</p>
<p>A Victorian Inspectorate Officer</p>	<p>Integrity and Oversight Committee, the Speaker of the Legislative Assembly or the President of the Legislative Council</p>
<p>Judicial officer or a member of VCAT who is not a judicial officer</p>	<p>IBAC or the Judicial Commission</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.

If someone makes a disclosure to an agency that isn't authorised to receive Public Interest Disclosures, the disclosure will not be protected under the PID Act. The person should be advised what organisations can receive disclosures.

4.5 Steps in making a Public Interest Disclosure



5. Handling Disclosures

5.1 Receiving a disclosure

When the Yarriambiack Shire Council receives a complaint, report or allegation of improper conduct or detrimental action, the first step will be to ascertain whether it has been made in accordance with Part 2 of the Act.

If the disclosure satisfies Part 2 of the Act, the discloser is entitled to receive protections under Part 6 of the Act (see section 9 of these procedures).

5.2 Assessing a disclosure for improper conduct or detrimental action

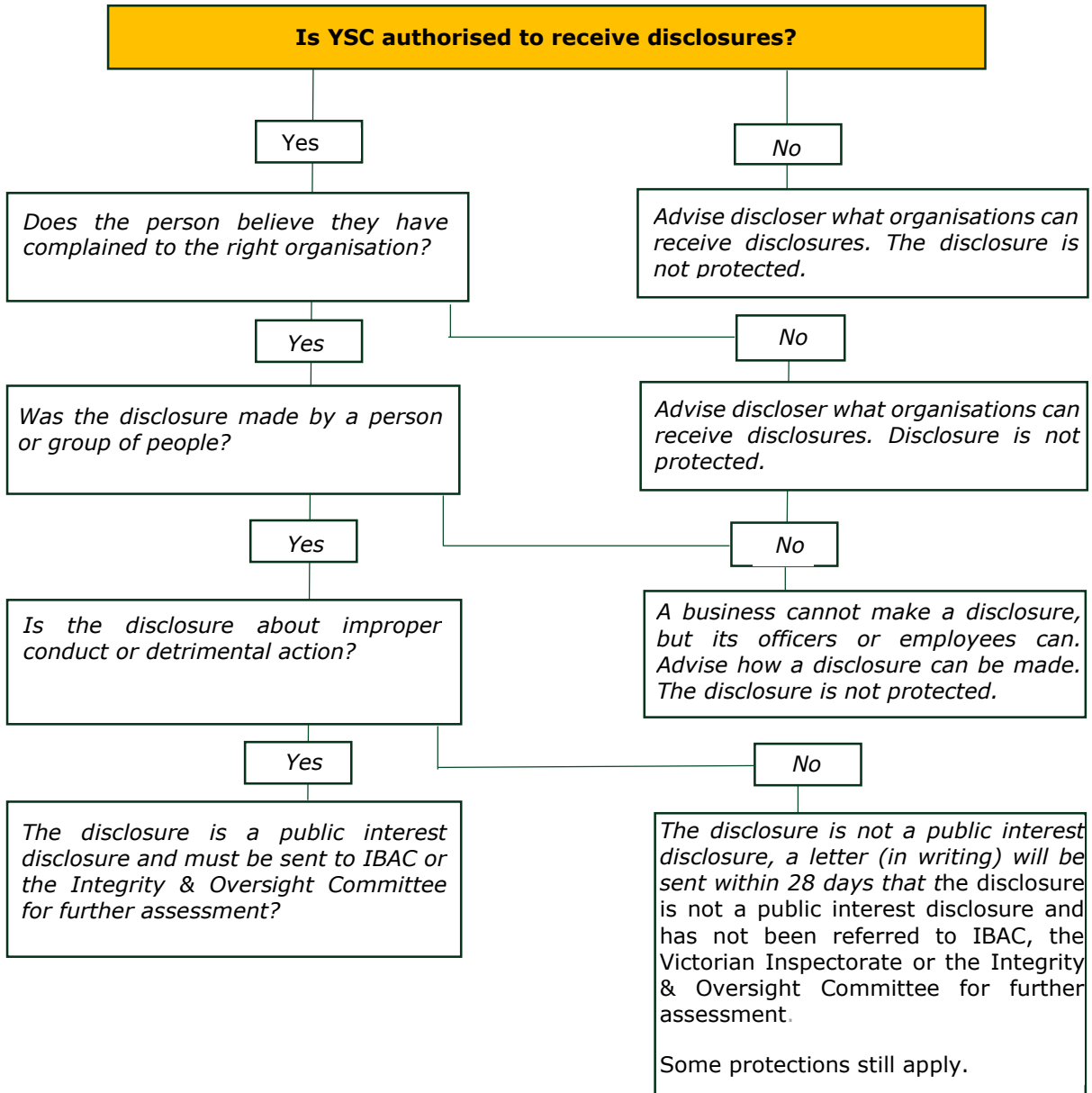
A disclosure needs to be assessed to decide if it is about improper conduct or detrimental action (Refer to Section 3).

In assessing whether there is improper conduct or detrimental action, the PIDC will look critically at all available information about the alleged conduct and about the discloser. The below table highlights the standards that should be considered in making a decision on a disclosure.

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Shows or tends to show improper conduct or detrimental action	Reasonable belief that improper conduct or detrimental action has occurred
<p>Does the information provided show or tend to show there is improper conduct or detrimental action?</p> <p>Reliability of the information</p> <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>Does the discloser believe on reasonable grounds that improper conduct or detrimental action has occurred?</p> <p>Reasonable belief</p> <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 like ‘I know XYZ is corrupt’.</p> <p>The test is whether a reasonable person, possessed 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. You can consider how the person would have obtained the information and the amount of detail that has been provided.</p> <p>You can also consider the credibility of the discloser or the people who provided the discloser with information.</p>

The following flowchart provides guidance for how the disclosure will be handled to decide if it is a Public Interest Disclosure.



At the conclusion of the assessment, YSC must decide whether it considers the disclosure to be a Public Interest Disclosure. If YSC decides it may be a Public Interest Disclosure, it must notify IBAC of the disclosure. If YSC does not consider it be a Public Interest Disclosure, then it may be a matter that YSC otherwise deals with through any other relevant internal complaint or grievance management process.

5.3 Notifications

If YSC does not consider the disclosure to be a Public Interest Disclosure

If YSC determines the disclosure is not a Public Interest Disclosure, and the discloser has indicated to YSC (or it otherwise appears to YSC) that the discloser wishes to receive the protections that apply to a Public Interest Disclosure under the Act, the discloser will be notified in writing, within 28 days of YSC receiving the disclosure, that:

- YSC considers the disclosure is not a Public Interest Disclosure;
- the disclosure has not been referred to IBAC for assessment under the Act; and
- regardless of whether the disclosure is referred to IBAC for assessment under the Act, the protections under Part 6 of the Act apply.

Notifications to a discloser do not need to be provided by YSC in response to an anonymously made disclosure.

If YSC considers the disclosure may be a Public Interest Disclosure

If YSC considers the disclosure may be a Public Interest Disclosure under the Act, YSC will, within 28 days of receiving the disclosure:

- a) notify IBAC that:
 - YSC considers the disclosure may be a Public Interest Disclosure; and
 - YSC is notifying the disclosure to IBAC for assessment under s 21 of the Act; and
- b) notify the discloser that:
 - the disclosure has been referred to IBAC for assessment under the Act.

In addition, at the time of notifying IBAC under s 21 of the Act or at any later time, YSC may also provide IBAC with any information obtained by YSC regarding the disclosure in the course of its enquiries leading up to its notification of the disclosure to IBAC.

5.4 Where urgent action is required while a disclosure is being assessed

In some circumstances, the disclosure may be about improper conduct that may pose an immediate threat to health and safety of one or more persons, preservation of property, or may consist of serious criminal conduct.

Examples of this include where the disclosure may be about:

- a) a child protection worker allegedly sexually assaulting children in care
- b) a council worker allegedly lighting bush fires; or
- c) a person threatening to poison the water supply.

In these cases, YSC can take immediate action while considering whether or not it is an assessable disclosure that must be notified to IBAC or awaiting IBAC's decision on a notified matter.

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

The Act allows YSC to disclose the content of the disclosure by a person or body

"to the extent necessary for the purpose of taking lawful action in relation to the conduct that is the subject of an assessable disclosure including disciplinary process or action".

However, this does not allow the identity of the discloser to be revealed. Reporting the alleged conduct to the Victoria Police as criminal conduct or taking legitimate management action against the subject of the disclosure in order to prevent future conduct, may be appropriate courses of action in these circumstances.

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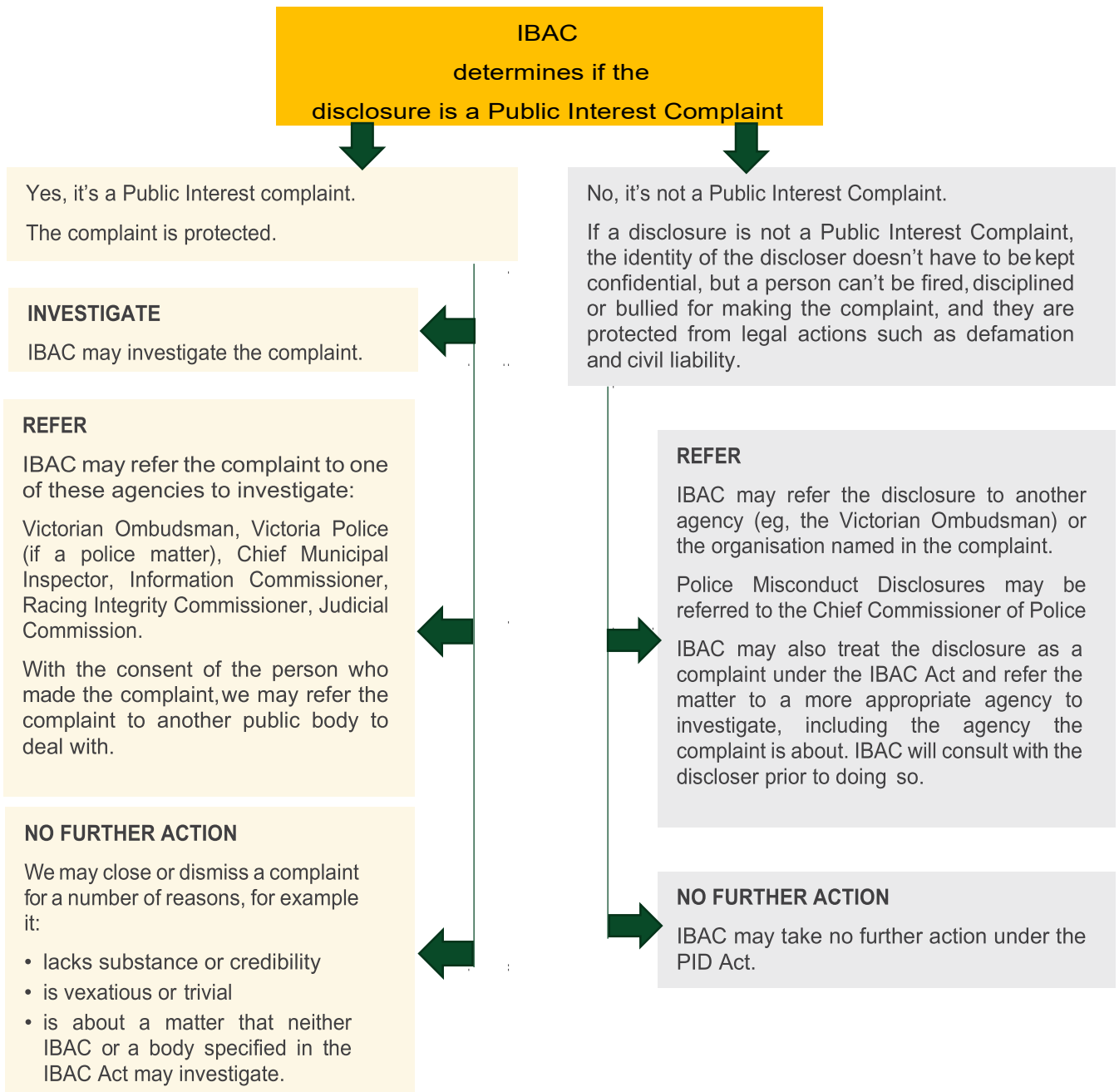
6. IBAC Assessment

Once a notification is made to IBAC, then IBAC must assess whether, in IBAC’s view, the assessable disclosure is a Public Interest **Disclosure** complaint. If IBAC is of the view that the assessable disclosure is a PIDC, then the discloser is protected.

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

If IBAC determines that a disclosure is a Public Interest Disclosure Complaint, it will investigate or refer a disclosure, or it may take no further action.

The following flow chart outlines the process followed when IBAC receives a notification of a public interest disclosure.



6.1 IBAC's determination

Once IBAC has determined whether a disclosure is a Public Interest Disclosure, it:

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

Information IBAC will provide to a discloser following its determination

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

It is a Public Interest Complaint	It is NOT a Public Interest Complaint
<p>IBAC must advise the discloser of the determination and the action it will take. This includes advising the discloser whether IBAC has decided to investigate or refer the complaint or take no further action.</p> <p>If IBAC decides to take no further action it must give reasons for its decision.</p> <p>If IBAC decides to investigate or refer the complaint it must provide a written statement advising the discloser that it is an offence to disclose IBAC's action.</p> <p>IBAC must notify the discloser in writing and within a reasonable time. However, 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 IBAC Act.</p>	<p>IBAC must advise the discloser in writing within a reasonable time, that:</p> <ul style="list-style-type: none"> • IBAC has determined their disclosure is not a public interest complaint • the disclosure will not be investigated as a Public Interest Complaint • their identity does not have to be kept confidential. <p>IBAC will advise the notifying entity of its determination.</p> <p>IBAC may also consider treating the disclosure as a complaint under the IBAC Act which engages its powers to refer the matter to a more appropriate agency to investigate, including the agency the complaint is about.</p> <p>IBAC will consult with the discloser prior to doing so.</p>

6.2 IBAC - investigating complaints

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

6.3 Confidentiality and welfare issues

During the investigation of a Public Interest Complaint, 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 Act.

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 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.

For further information on how to manage the welfare of disclosers, witnesses and any person who is the subject of a public interest disclosure investigation refer to the 'Welfare Management' Procedures within section 7 of these procedures.

6.4 IBAC - referring a complaint

IBAC may refer a PIDC 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), IBAC may refer the complaint to that body if the person who made the complaint gives their consent.

6.5 IBAC - no further action

If IBAC dismisses a Public Interest Complaint, it must do so for reasons set out in the Act, for example if the complaint:

- a) lacks substance or credibility.
- b) is vexatious or trivial.
- c) is about a matter that neither IBAC or a body specified in the IBAC Act may investigate.

6.6 IBAC's obligations - providing information to the discloser at the end of an investigation

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

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, IBAC must not provide any information that is likely to lead to a discloser being identified.

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.

7. Welfare Management

YSC is committed to the protection of genuine disclosers against detrimental action taken in reprisal for the making of Public Interest Disclosures.

The PIDC 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 protected disclosures being made.

7.1 Support available to disclosers and co-operators

YSC will support disclosers and co-operators by keeping them informed, by providing:

- confirmation that the disclosure has been received.
- the legislative or administrative protections available to the person.
- a description of any action proposed to be taken.
- if action has been taken by YSC, details about results of the action known to YSC.

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- a) Providing active support by:
 - acknowledging the person for having come forward.
 - assuring the discloser or co-operator that they have done the right thing, and YSC appreciates it.
 - making a clear offer of support.
 - assuring them that all reasonable steps will be taken to protect them.
 - giving them an undertaking to keep them informed as far as YSC is reasonably able to.
- b) Managing their expectations by undertaking an early discussion with them about:
 - what outcome they seek
 - whether their expectations are realistic
 - what YSC will be able to deliver
- c) Maintaining confidentiality by:
 - ensuring as far as is possible that other people cannot infer the identity of the discloser or co-operator
 - reminding the discloser or co-operator not to reveal themselves or to reveal any information that would enable others to identify them as a discloser or co-operator
 - ensuring that hardcopy and electronic files relating to the disclosure are accessible only to those who are involved in managing disclosures at YSC
 - proactively assessing the risk of detrimental action being taken in reprisal (rather than reactively waiting for a problem to arise and a complaint made by the discloser or co-operator), that is, actively monitor the workplace, anticipating problems and dealing with them before they develop as far as is possible.
- d) protecting the discloser or co-operator by:
 - examining the immediate welfare and protection needs of the person and seeking to foster a supportive work environment
 - listening and responding to any concerns the person may have about harassment, intimidation or victimisation in reprisal for their actions
 - assessing whether the concerns the person may have about harassment, intimidation or victimisation might be due to other causes other than those related to the Public Interest disclosure
 - preventing the spread of gossip and rumours about any investigation into the Public Interest disclosure; and
 - keeping contemporaneous records of all aspects of the case management of the person, including all contact and follow-up action.

The protection of persons making genuine Public Interest Disclosures about improper conduct or detrimental action is essential for the effective implementation of the Act.

*In addition, the Act extends the need for welfare management to people who have cooperated or intend to cooperate with an investigation of a Public Interest disclosure complaint ("**co-operators**"). Persons who are the subject of allegations will also have their welfare looked after.*

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YSC must ensure disclosers and co-operators of a Public Interest Disclosure are protected from direct and indirect detrimental action being taken against them in reprisal for the Public Interest Disclosure.

YSC will ensure its workplace culture supports disclosers and co-operators. Such support will extend to the relevant persons regardless of whether they are internal to the organisation (e.g., employees, Councillors, other officers) or external members of the public. However, different legislative responsibilities (including those external to the Act) apply to persons internal to the organisation, and to persons who may be clients or users of YSC's services. Those derive from various legislative and administrative obligations to:

- *ensure the health and wellbeing of employees of a public sector body under laws including those relating to Occupational Health and Safety, the Charter of Human Rights and Responsibilities Act 2006, the Public Administration Act 2004, and various Victorian Public Sector Codes of Conduct (as relevant); and*
- *comply with various relevant laws, policies and practices when making administrative and other decisions or taking particular actions affecting a customer, client or user of the public body's services.*

Generally, for internal persons, YSC will ensure a supportive work environment and respond appropriately to any reports of intimidation or harassment against these persons.

For external persons, YSC will take reasonable steps to provide appropriate support. YSC will discuss reasonable expectations with all persons receiving welfare management in connection with a Public Interest Disclosure.

8. Confidentiality

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

The Public Interest Disclosure Act 2012 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. The restrictions do not apply to the discloser.

Exemptions to confidentiality requirements may include:

- a) it is for the purpose of a proceeding or for a disciplinary process under a relevant Act
- b) the disclosure is for the purpose of assisting the discloser to seek advice or support from a registered health practitioner or trade union or employee assistance program
- c) confidentiality doesn't apply if the discloser gives written consent.

8.1 Information management

YSC will ensure all files, whether paper or electronic, are kept secure and can only be accessed by the PIDC, or PIDWO (in relation to welfare matters). All printed material will be kept in files that are clearly marked as a Public Interest Disclosures Act matter, and warn of the civil and criminal penalties that apply to any unauthorised divulging information concerning a Public Interest Disclosure.

All electronic files will be produced and stored on a computer and be given password protection. All materials relevant to an investigation, such as tapes (if utilised) from interviews, will also be stored securely with the Public Interest Disclosure file(s).

YSC will not email documents relevant to a disclosure matter to any computer where general staff have access and will ensure all phone calls and meetings are conducted in private.

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9. Protections

Protections provided by the Public Interest Disclosure Act 2012:

- a) Any disclosure assessed as a Public Interest Disclosure (where 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 IBAC.
- b) Any notification that IBAC receives and determines to be a Public Interest Complaint.

How the disclosure is further protected:

- a) cannot be fired, disciplined or bullied for making a disclosure
- b) is not subject to any civil or criminal liability for making a disclosure
- c) is not subject to any administrative action (including disciplinary action) for making the Public Interest Disclosure
- d) 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
- e) 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
- f) cannot be held liable for defamation in relation to information included in a Public Interest Disclosure.

9.1 Limits on protections

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

- a) knowingly provides false or misleading information
- b) claims that a matter is the subject of a public interest disclosure knowing the claim to be false.

The PID 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.

9.2 An employee may request a transfer of employment

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.

9.3 Protection for public officers

A public officer is given specific protections under the Act to provide information to other public officers or to IBAC in dealing with a disclosure they have received. When a public officer acts in good faith and in accordance with the Act, Regulations and IBAC's Guidelines, the public officer does not commit an offence under laws imposing a duty to maintain confidentiality or restricting the disclosure of information.

10. Misdirected Disclosures

YSC receives any disclosures which do not meet all the requirements of Part 2 of the Act or the prescribed procedures in the Regulations, YSC will not be required to consider whether it is a public interest disclosure under the Act. However, YSC will always consider whether it would be appropriate to inform the discloser about how to make the disclosure in a way that complies with the requirements of the Act and the Regulations. This could include advising the discloser what organisations can receive disclosures, thus providing the discloser an opportunity to receive appropriate protections under the Act.

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In addition, YSC is required to consider whether a disclosure that does not meet the requirements of the Act and the Regulations should be treated as a complaint, notification or referral to YSC in accordance with any other laws or internal policies and procedures.

11. External Disclosures

A discloser may disclose the details of a PIDC to an external person or body (who is not able to receive disclosures) if the assessing entity does not notify the discloser about any action taken in response to the original disclosure within six months and has not responded to a request for advice within 30 days.

An external disclosure may also be made if the investigation of the original disclosure is not completed within 12 months, and the investigating entity has not responded to a request for advice within 30 days.

An external disclosure may be made where the investigation of the original disclosure was not completed within 12 months, the discloser has received an update within 30 days of requesting it, but the discloser has then not received any further update advising that the investigation has been completed within a further six months of that response.

However, exemptions apply, for example, in relation to any information that may prejudice a criminal investigation or proceeding, or other legal proceeding, or information that is likely to lead to the disclosure of an investigative method. A practical example of this could be a discloser who reports the nature of a PIDC to a journalist if the assessing entity (for example, IBAC) does not provide an outcome letter to a discloser within six months of the disclosure being made and does not respond within 30 days to a further request for advice from the discloser.

12. 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.

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

- a) the fact that a person has made a Public Interest Disclosure is not any part of the reason for taking action against the employee
- b) there are good and sufficient grounds that fully justify action against any other person in the same circumstances
- c) there are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

YSC may obtain legal advice before taking any action against the person making a Public Interest Disclosure.

Care 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 A** for the civil and criminal penalties under the Act.

13. Freedom of Information Act 1982 – Exemption

The FOI Act provides a general right of access for any person to seek documents in the possession of YSC.

However, the Act provides that certain information related to Public Interest Disclosures as contained in documents in the possession of YSC will be exempt from the application of the FOI Act.

Such information excluded from the operation of the FOI Act includes:

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- a) any information relating to a disclosure made in accordance with the Act;
- b) any information relating to a disclosure notified to IBAC by YSC under s 21 of the Act for assessment; and any information that is likely to lead to the identification of a discloser.

14. Roles and Responsibilities

14.1 Employees (including Managers, Coordinators, Supervisors, Contractors, & Volunteers).

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

All employees of YSC 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.

14.2 Receipt of disclosures by staff

YSC staff receiving telephone calls must not enquire into the circumstances of the disclosure and must refer the caller to the PIDC. 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 PIDC without recording any details of the disclosure in the YSC electronic management system.

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

14.3 Public Interest Disclosure Coordinator (PIDC)

The PIDC will be the primary contact point within the YSC and will:

- a) Establish and manage a confidential filing system
- b) Receive all disclosures
- c) Receive phone calls, emails and letters from members of the public or YSC employees seeking to make a disclosure
- d) Be a contact point for general advice about the operation of the Act for any person wishing to make a disclosure about improper conduct or detrimental action
- e) Make arrangements for a disclosure to be made privately and discreetly and, if necessary, away from the workplace
- f) Receive any disclosure made orally or in writing (from internal and external person)
- g) Commit to writing any disclosure made orally
- h) Impartially assess the allegation and determine whether it is a disclosure made in accordance with the Act (that is, a public interest disclosure)
- i) Take all necessary steps to ensure the identity of the person making the disclosure and the identity of the person who is the subject of the disclosure are kept confidential
- j) Impartially assess each disclosure to determine whether it is a protected disclosure
- k) Refer all public interest disclosures to IBAC
- l) Appoint a PIDWO to support the person making the disclosure and to protect him or her from any reprisals; and
- m) Collate and provide statistics on disclosures made

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14.4 Public Interest Disclosure Welfare Officer (PIDWO)

The PIDWO is responsible for looking after the general welfare of the discloser. The Welfare Officer will:

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

15. Training

Yarriambiack Shire Council will:

- a) ensure that Employees, Contractors, Volunteers and Councillors have access to procedures
- b) incorporate into its induction procedures training about Council's general obligations under the Act and the rights and obligations of all Employees, Staff, Contractors and Councillors;
- c) introduce periodic refresher courses for existing Staff, Employees and Councillors about their rights and obligations under the Act; and
- d) provide additional training and assistance to any members of YSC with specific responsibilities and functions to handle and manage protected disclosures under the Act, including the PIDC and people involved in Welfare Management – the appointed PIDWO
- e) ensure that its complaint handling staff deal with any complaints received consistently and in accordance with the Act as required
- f) ensure that any staff with functions and duties under the FOI Act or with responsibilities for information management do not disclose prohibited information and that there is appropriate liaising with the staff of IBAC or other investigating agencies where required in response to a request for access under the FOI Act.

16. Reporting

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

The PIDC will establish a secure register to record such information, and to generally keep account of the status of disclosures made under the Act.

A copy of the Public Interest Disclosure Policy and Procedures will be made available for access via the YSC 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 YSC, located at 34 Lyle Street, Warracknabeal Vic 3393.

17. 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. YSC will aim to ensure they meet the objectives of the Act and Regulations and accord with IBAC guidelines.

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18. Related Policy Documents and References
Public Interest Disclosure Act 2012

- Local Government Act 1989
- Freedom of Information Act 1982
- The Charter of Human Rights and Responsibilities Act 2006
- Occupational Health and Safety policy
- Information Privacy policy
- IBAC-Information Sheet: Key changes in relation to public interest disclosures (8/10/2019)
- IBAC - Guidelines for handling public interest disclosures January 2020
- Victorian Public Sector Commission
- Public Interest Disclosure Policy
- Employee Code of Conduct
- Councillor Code of Conduct

Adopted:	Ordinary Meeting 27 May 2020	Minutes Book No.	
Reviewed:	Ordinary Meeting May 2023	Minute Book Page.	

APPENDIX A - CIVIL AND CRIMINAL PENALTIES UNDER THE PUBLIC INTERESTS DISCLOSURE ACT 2012

Specific offences	Penalties
Detrimental action	
<p>Liability of an individual 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 • 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 PID 	<p>Criminal penalty: 240 penalty units or two years' imprisonment or both. AND (if person is convicted or found guilty of an offence) possible order of court for reinstatement or reemployment of person subjected to detrimental action. Civil penalty: Order of court for offender to pay appropriate level of damages to compensate for injury, loss or damage.</p>
<p>Vicarious liability of their employer 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. AND (if person is convicted or found guilty of an offence) possible order of court for reinstatement or reemployment of person subjected to detrimental action. Civil penalty: Order of court for offender to pay appropriate level of damages to compensate for injury, loss or damage.</p>
<p>Disclosure of content of a Public Interest Disclosure or Public Interest Disclosure Complaint 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)
<p>Disclosure of identity of person making a Public Interest Disclosure or Public Interest Disclosure Complaint A person/body must not disclose information likely to lead to the identification of a person who has made a disclosure</p>	<ul style="list-style-type: none"> • 120 penalty units or 12 months' imprisonment or both (person) • 600 penalty units (body corporate)
<p>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</p>	<p>120 penalty units or 12 months imprisonment or both</p>
<p>Falsely claim a disclosure is a Public Interest Disclosure or Public Interest Complaint A person must not claim that a matter is the subject of a Public Interest Disclosure knowing that claim to be false</p>	<p>120 penalty units or 12 months imprisonment or both</p>