

PUBLIC INTEREST DISCLOSURE POLICY AND PROCEDURES

Disclosure Agreement

(the "Agreement") is entered into by and between the Shire of Yarriambiack and its principal offices at _____, located at _____, for the purpose of preventing the unauthorized disclosure of certain information ("Information").

For purposes of this Agreement, the Information shall include any information or data in the possession or control of the Shire of Yarriambiack which is confidential, proprietary, or otherwise subject to a duty of confidentiality.



Yarriambiack
SHIRE COUNCIL

Public Interest Disclosure Policy

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

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1. 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.

2. 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.

3. Responsibilities

The Director Business Strategy and Performance and the Manager People and Culture 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.

4. Related documents and References

- *Local Government Act 2020*
- *Freedom of Information Act 1982*
- *Occupational Health and Safety Policy*
- *Information Privacy Policy*
- *Occupational Health and Safety Act (2004)*

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- *Public Interest Disclosure Act 2012*
- *The Charter of Human Rights and Responsibilities Act 2006*
- *IBAC – Guidelines for handling public interest disclosures January 2020*
- *Victorian Public Sector Commission*
- *Employee Code of Conduct*
- *Councillor Code of Conduct*

5. 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 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.

6. Definitions

Act	Public Interest Disclosures Act 2012 (PID Act)
Accessible Disclosure	Any disclosure either made directly to IBAC or the Victorian Inspectorate, or if received by Yarriambiack Shire Council is required under the Act to be notified by the Council to IBAC for assessment
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.
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 of 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

Guidelines	the Guidelines published by IBAC under s57 of the Act, copies of which may be downloaded from http://www.ibac.vic.gov.au/
IBAC Act	Independent Broad-based <i>Anti-corruption Commission Act 2011</i>
IBAC	Independent Broad-based Anti-corruption Commission
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 <p>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</p>
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	<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

	<ul style="list-style-type: none"> that relates entirely or in substance to a disagreement in relation to a policy about amounts, purposes or priorities of public expenditure.
Public Interest Disclosure Complaint PIC	A Public Interest Disclosure 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.
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.
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 Organisational Performance)	The welfare manager is responsible for looking after the general welfare of any person making Public Interest Disclosures.

7. 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 People and Culture, 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: tsmith@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.

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:

- 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

Confidential Chat Line: 03 9613 6222

Deaf or Hearing Impaired: 133 677 then 1800 806 314

Interpreter Services 131 450

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

8. 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.

9. Publication of Policy and Procedure

YSC reports on the number of disclosures notified to IBAC for assessment under s21 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

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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.

10. Consistency with Governance Principles Local Government Act 2020

Governance Principle	Section of policy where covered
(a) Council decisions are to be made and actions taken in accordance with the relevant law;	Section 4 – Related Documents and References.
(b) priority is to be given to achieving the best outcomes for the municipal community, including future generations;	Section 1 - Objective
(c) the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted;	Section 5 – Policy Statement and Scope.
(d) the municipal community is to be engaged in strategic planning and strategic decision making;	The policy and procedures supports Council's public Transparency Policy ensuring accountability in decision making.
(e) innovation and continuous improvement is to be pursued;	This policy and procedure has been revised to support continuous review and improvement to enhance practices and procedures.
(f) collaboration with other Councils and Governments and statutory bodies is to be sought;	This policy and procedure is based on the guidelines on handling public interest disclosures distributed by IBAC.
(g) the ongoing financial viability of the Council is to be ensured;	This policy and procedure as a whole covers the governance and transparency requirements to ensure the best outcome for the municipal community.
(h) regional, state and national plans and policies are to be taken into account in strategic planning and decision making;	Section – Related Documents and References - IBAC: Guidelines for handling public interest disclosures.
(i) the transparency of Council decisions, actions and information is to be ensured.	This policy and procedure as a whole covers the governance and transparency requirements to ensure the best outcome for the municipal community.

In giving effect to the overarching governance principles, a Council must take into account the following supporting principles—

- the community engagement principles;
- the public transparency principles;
- the strategic planning principles;
- the financial management principles;
- the service performance principles.

11. 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.

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 may be 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.

12. 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.

13. 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.

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.

14. 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.

15. 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.

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.

16. Making a Disclosure

16.1 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.

16.2 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.

16.3 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.

16.4 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".

16.5 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.

17. Organisations that can receive Public Interest Disclosures

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

17.1 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

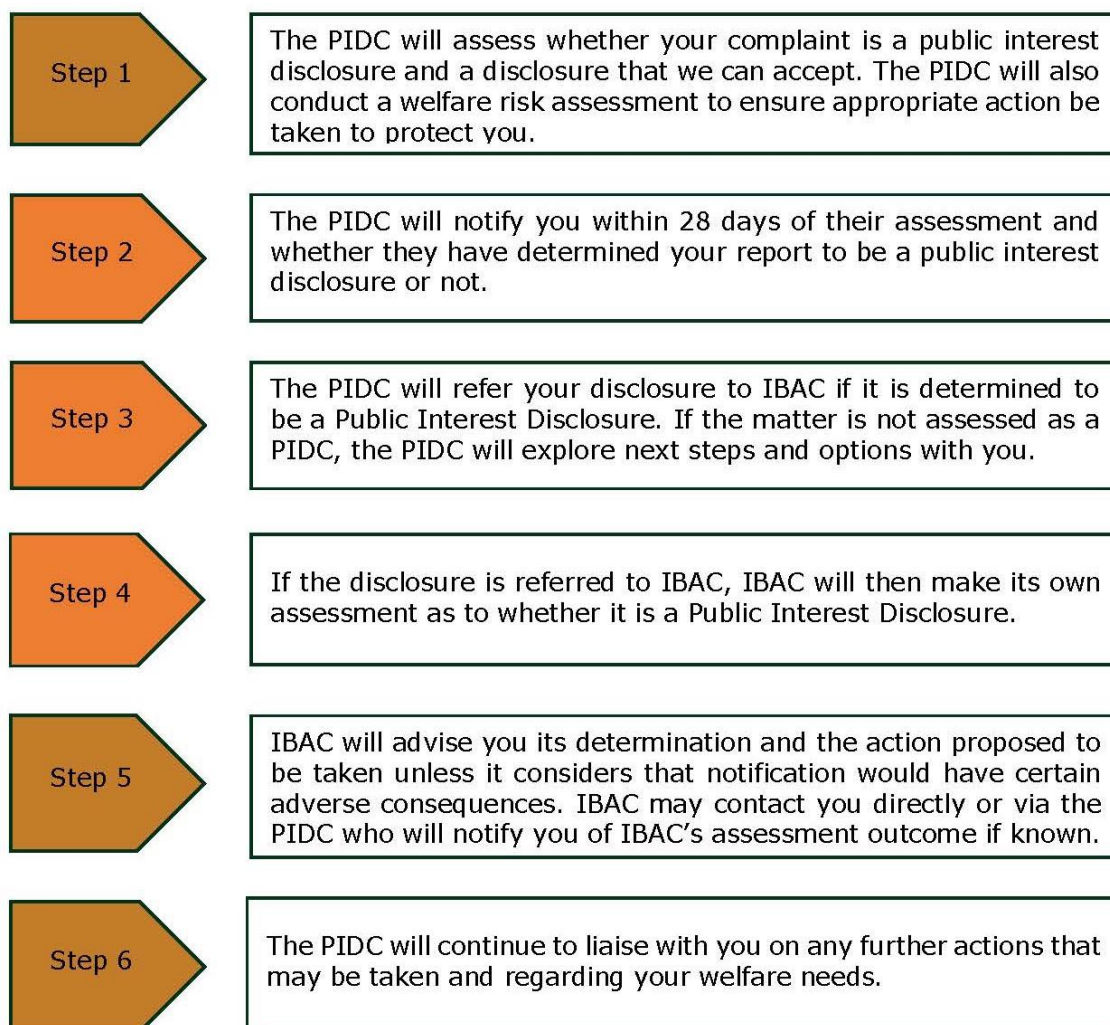
Victorian Ombudsman	<ul style="list-style-type: none"> • A Victorian Ombudsman officer
Victorian Inspectorate	<ul style="list-style-type: none"> • The Victorian Inspector • A Victorian Inspectorate employee
<p>Public service body</p> <p>Public service bodies can only receive disclosures that relate to 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.</p>	<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
The Chief Examiner or an Examiner appointed under the <i>Major Crimes (Investigative Powers) Act 2004</i>	IBAC or the Victorian Inspectorate
A Victorian Ombudsman officer	
A Victorian Auditor-General's Office officer	
Judicial Commission officer (other than a judicial member of the Board of the Judicial Commission)	
A member of police personnel (other than the Chief Commissioner)	IBAC or a prescribed member of police personnel
Member of Parliament (Legislative Council)	President of the Legislative Council
Member of Parliament (Legislative Assembly)	Speaker of the Legislative Assembly
A Public Interest Monitor	Victorian Inspectorate
An IBAC officer	
A Victorian Inspectorate Officer	Integrity and Oversight Committee, the Speaker of the Legislative Assembly or the President of the Legislative Council

Judicial officer or a member of VCAT who is not a judicial officer	IBAC or the Judicial Commission
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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.

18. Steps in making a Public Interest Disclosure



19. Handling Disclosures

19.1 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).

19.2 Assessing a disclosure for improper conduct or detrimental action

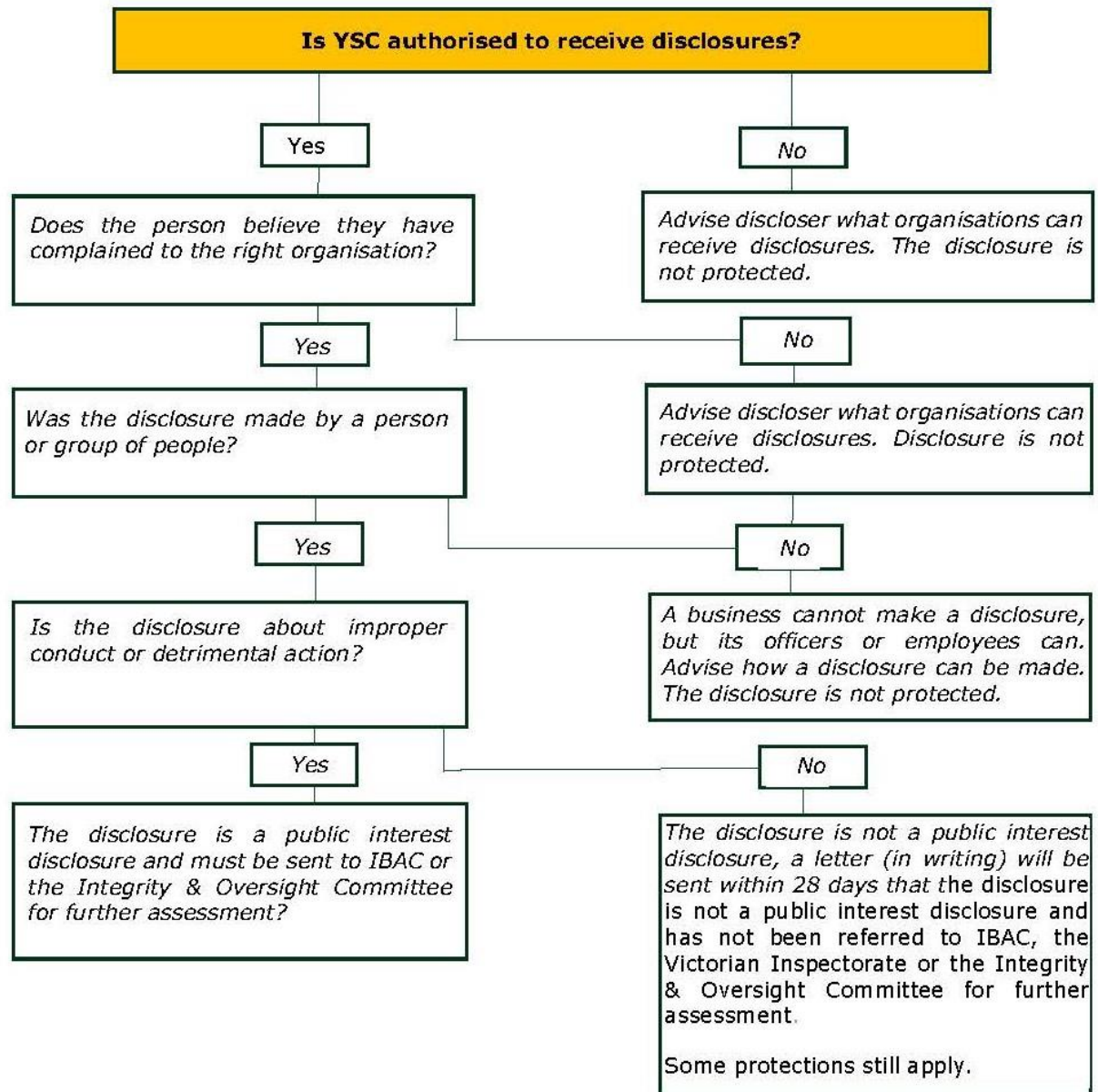
A disclosure needs to be assessed to decide if it is about improper conduct or detrimental action (Refer to Section 3).

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.

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</p> <p>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>

20. How a Public Interest Disclosure is handled

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.

21. Notifications

21.1 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.

21.2 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.

21.3 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 child protection worker allegedly sexually assaulting children in care
- a council worker allegedly lighting bush fires; or
- 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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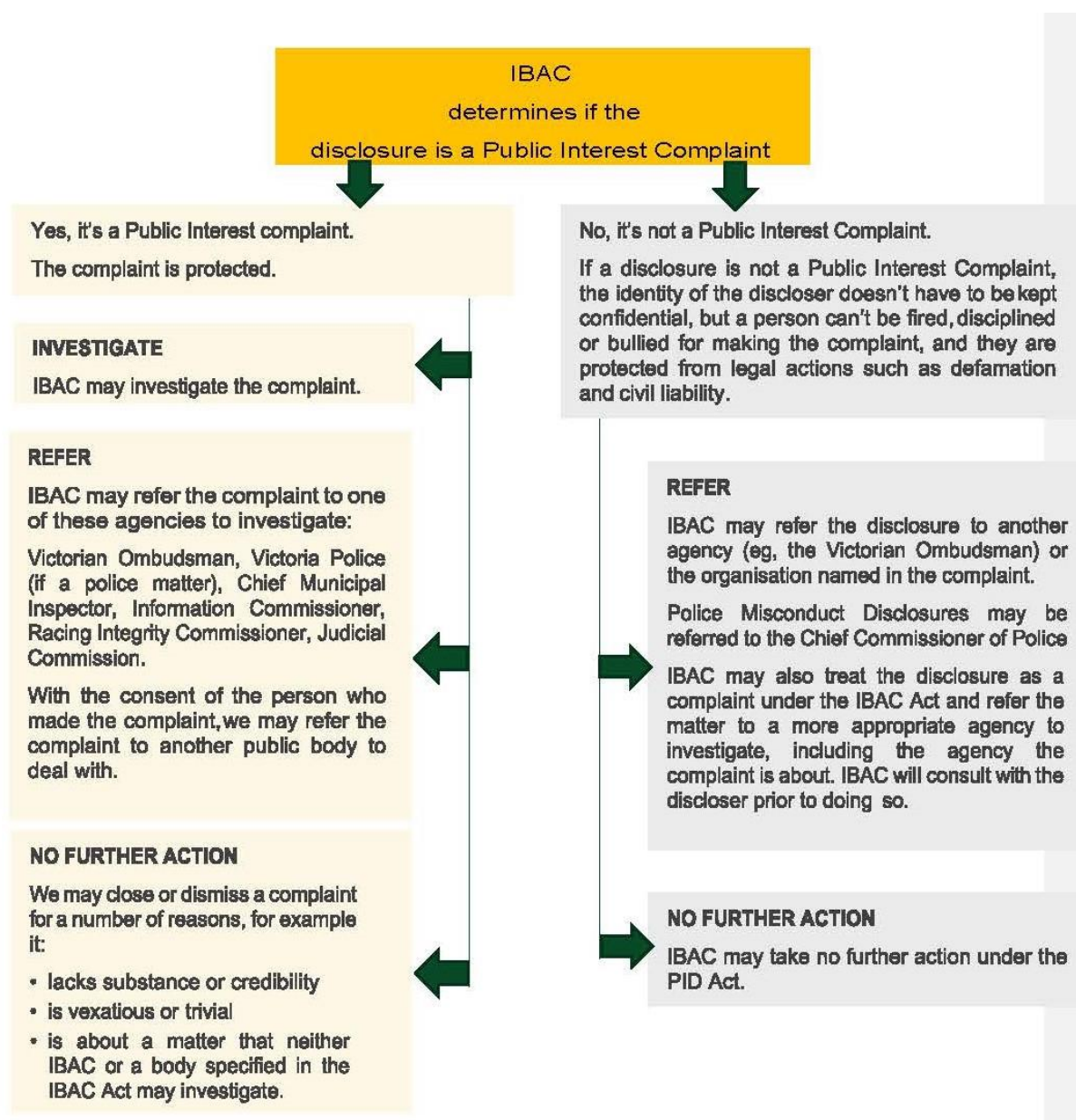
22. IBAC Assessment

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



23. IBAC's determination

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

- advises the relevant notifying entity of its determination
- 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).

23.1 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, 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>

23.2 IBAC - investigating complaints

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

23.3 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.

23.4 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.

23.5 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.

23.6 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.

24. Welfare Management

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

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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.

25. 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.
- 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.*

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.

26. 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.

27. Information management

- d) 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.
- e) 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).
- f) 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.

28. 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.

28.1 Limits on protections

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

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- 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.

28.2 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.

28.3 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.

29. 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.

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.

30. 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.

31. 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.

32. 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:

- 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.

33. Roles and Responsibilities

33.1 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.

33.2 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.

34. 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

35. 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.

36. 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.

37. 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.

Council adopted Policy and Procedure

Adopted:	Ordinary Meeting 27 May 2020	Page number 319
Reviewed:	Ordinary Meeting	Minute Book Page.

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

Specific offences	Penalties
Detrimental action	
Liability of an individual It is an offence for a person to take or threaten action in reprisal when: <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 	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.
Vicarious liability of their employer An employer may also be held to be liable for the detrimental action of their employee or agent	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.
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	<ul style="list-style-type: none"> • 120 penalty units or 12 months' imprisonment or both (person) • 600 penalty units (body corporate)
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	<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 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	120 penalty units or 12 months imprisonment or both



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