

# Protected Disclosure Policy

## Policy Objective

To ensure Council is fully compliant with its obligations under the *Protected Disclosure Act 2012 (PD Act)* and the *Independent Broad-based Anti-corruption Commission Act 2011 (IBAC Act)*.

## Introduction

It is the Council's responsibility to encourage and facilitate disclosures of improper conduct by public officers and public bodies by providing protection for persons making those disclosures and persons who may suffer reprisals as a result of those disclosures.

Staff should believe that they will be adequately supported in the event they make a disclosure. This belief will primarily be based on their understanding of the nature and level of support available to them and their knowledge as to whether other staff have been appropriately supported.

To support the commitment to compliance under the *PD Act* and the *IBAC Act* Council will:

- identify a person to act as the Protected Disclosure Coordinator (PDC)
- identify a person to act as the Welfare Officer to support people who make disclosures
- have processes that maintain confidentiality
- have procedures to manage the secure receipt, storage, initial assessment and notification to IBAC of information related to protected disclosures
- raise awareness of all staff regarding their responsibilities to disclose, their rights if they do disclose and how to make disclosures
- provide a process to manage the welfare of people who have made a disclosure, those who are the subject of a disclosure and potential witnesses.
- educate all staff in relation to the welfare supports available.

## Outline of process for making a disclosure

Detailed information regarding the making, handling and assessing disclosures is provided in the companion document *Protected Disclosure Procedure*.

For a disclosure to be a protected disclosure it must be made in accordance with the requirements of Part 2 of the *PD Act* and in accordance with the procedure outlined below:

Who can make a disclosure	Disclosures can only be made by natural person(s), not companies, businesses
How to make a disclosure	Must be made verbally, in writing, or in some cases, online. It may be made anonymously. It <b>must</b> be made in private.
Who to make a disclosure to	Disclosures can only be made to specified persons
Who disclosures can be made about	Must be made only about the conduct of public bodies or public officers performing public functions
What disclosures can be made about	Must be about improper conduct or detrimental action taken against a person in reprisal for making a disclosure

#### Source documents

- *Protected Disclosure Act 2012*
- *Independent Broad-based Anti-corruption Commission Act 2011*
- *Independent Broad-based Anti-corruption Commission Victoria – Guidelines for making and handling protected disclosures, 2013*
- *Independent Broad-based Anti-corruption Commission Victoria – Guidelines for protected disclosure welfare management, 2013*
- [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)

# Protected Disclosure Procedure

## Aim of procedure

To ensure Council is fully compliant with its obligations under the *Protected Disclosure Act 2012* (PD Act) and the *Independent Broad-based Anti-corruption Commission Act 2011* (IBAC Act).

## Making a disclosure

### **What is a disclosure?**

A disclosure is a report made by a person(s) about improper conduct of public bodies or public officers. It can also be about detrimental action against a person in reprisal for making a protected disclosure.

For a complaint to be a protected disclosure it must fit all the criteria nominated in Part 2 of the PD Act.

### **Who can make a disclosure?**

Any natural person (or group of persons) can make a disclosure. A company or business cannot make a protected disclosure.

### **How can a disclosure be made?**

1. Verbally:
  - Must be in private
  - In person
  - By telephone
  - Voice mail message
  - Any other form of electronic communication that does not require writing.
  - May be made anonymously
2. In writing:
  - Personal delivery to the office
  - Mail addressed to the organization or Protected Disclosure Coordinator (PDC)
  - Email to the organisation or to the PDC
  - IBAC and the Ombudsman can also receive disclosures via an online form.
  - Facsimile is not an acceptable method.

**About whom can a disclosure be made?**

- Disclosures can be made about public bodies or public officers acting in their public role. This includes a Council and Council employees.

Refer to the *Independent Broad-based Anti-corruption Commission Victoria – Guidelines for making and handling protected disclosures, 2013* (p.10) for a complete definition.

**To whom can a disclosure be made?**

- The PD Act is very specific about who can receive disclosures depending on who is the subject of the disclosure.
- If the subject of the disclosure is a Councillor the disclosure must be made directly to the IBAC or the Victorian Ombudsman.
- Councils can only receive disclosures that relate to themselves, officers, employees and contractors.

Refer to the *Independent Broad-based Anti-corruption Commission Victoria – Guidelines for making and handling protected disclosures, 2013* (pp.11-12) for a comprehensive list.

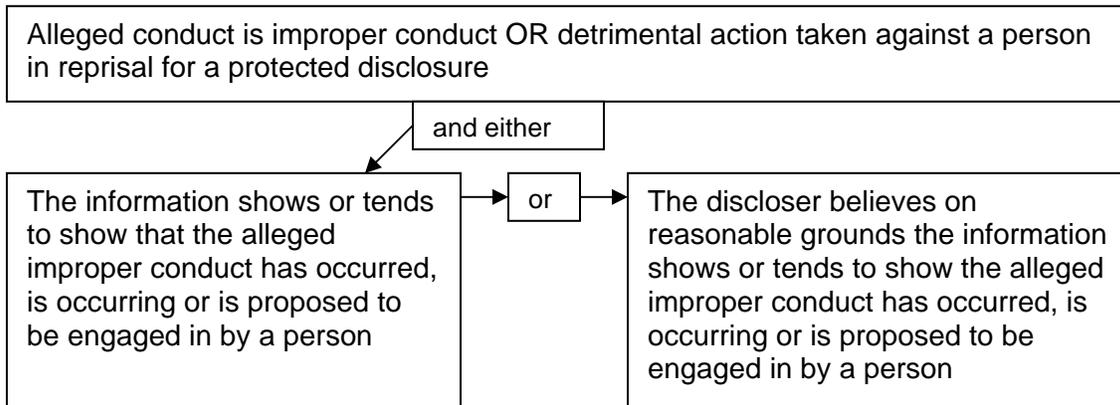
**Who can receive disclosures within Council?**

- CEO
- Council’s nominated PDC
- Manager of the discloser
- Manager of the person who is the subject of the disclosure

**About what can a disclosure be made?**

A disclosure must be made about the conduct of a person, public officer or public body in their capacity as a public body or officer. Refer Figure 1.

**Figure 1 – Improper conduct**



### **Definition of improper, corrupt or specified conduct by public officers or entities**

Improper conduct can be either corrupt or specified conduct and be either criminal conduct or conduct serious enough to result in a person's dismissal.

- Dishonest performance of a public officer
- Knowingly breaching public trust by a public officer
- Misuse of information obtained by a public officer in that capacity
- Conspiracy to commit or attempt to commit any of the above
- Conduct that implies:
  - Substantial (level determined per case) mismanagement of public resources
  - Substantial (level determined per case) risk to public health or safety
  - Substantial (level determined per case) risk to the environment

### Initial assessment of a disclosure

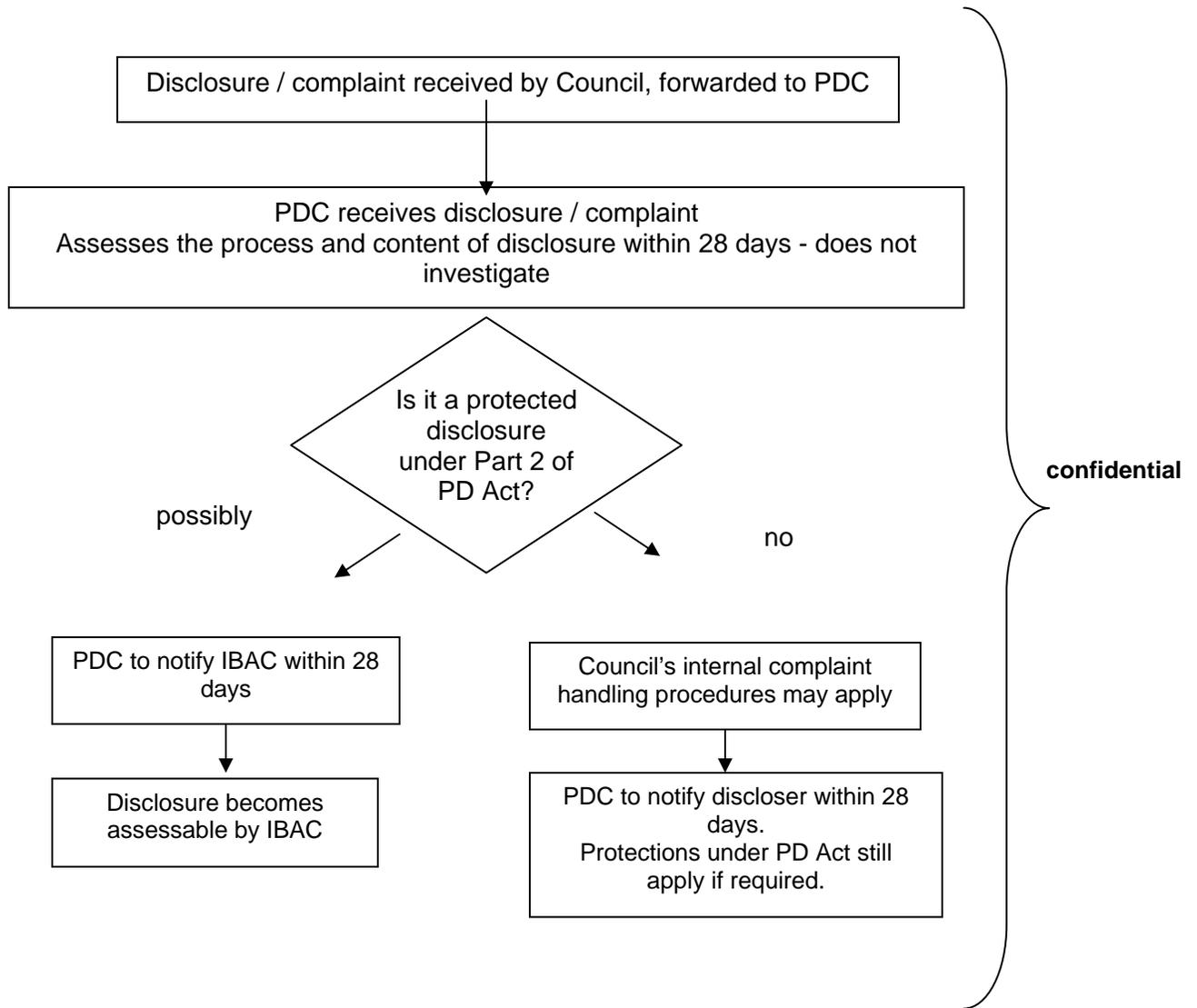
For a disclosure to be considered assessable by IBAC it must meet all the requirements for a protected disclosure in Part 2 of the PD Act. If it does not meet all the requirements then it is not a protected disclosure and should be dealt with under Council's complaint handling process.

In summary the requirements to be assessable are:

- made verbally in private or in writing by mail or email
- must not be made via fax
- must be made to the CEO, the PDC, the discloser's manager or the manager of the subject of the disclosure
- must be made about public officer or public body in the performance of their public functions
- must be made about alleged improper conduct or detrimental action taken in reprisal for a protected disclosure
- A complaint about a Councillor cannot be taken by staff in the Council – it must go straight to IBAC or the Ombudsman

When a complaint or disclosure is received within Council it should immediately be forwarded to the PDC for assessment to determine if it is required to be forwarded to IBAC for investigation. Refer to Figure 2 for a summary of the process.

**Figure 2 – Internal Council procedure for dealing with disclosures**



## Making a notification to IBAC

If the PDC decides that the disclosure may be protected then it becomes an assessable disclosure and IBAC must be notified within 28 days.

The PDC must also notify the discloser in writing within 28 days that:

- The disclosure has been notified to IBAC for assessment
- That it is an offence to disclose that the disclosure has been notified to IBAC.

## IBAC assessment

IBAC undertakes an assessment to determine if the disclosure is a PD complaint. IBAC may dismiss the complaint under section 68 of the IBAC Act.

Whether or not IBAC dismisses the disclosure the protections under Part 6 of the PD Act apply to the discloser. Following IBAC's assessment it must notify Council of its determination and the actions it intends to take.

At the conclusion of its investigation IBAC may provide information about the conduct and result of the investigation to Council but it must not provide any information that might lead to the identification of a discloser.

## Freedom of Information Act

Council will ensure the Records Coordinator is aware that the *Freedom of Information Act 1982* does not apply to any document that relates to a protected disclosure, an assessable disclosure or that is likely to lead to the identification of a person who has made an assessable disclosure.

## Managing welfare

Protections provided under Part 6 of the PD Act:

- Discloser not subject to any civil or criminal liability or administrative action for making the disclosure
- Discloser is not committing an offence under the *Constitution Act 1975* or any other oath, rule of law or practice for breaching confidentiality
- Discloser cannot be held liable for defamation in relation to information included in a protected disclosure

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

Limitation on protection:

If the discloser has made a false disclosure or provided false information, he/she is not protected.

There is also no protection for a discloser against legitimate management action and the discloser will still be held liable for their own conduct.

Disclosers commit an offence against the PD Act if they make it publicly known that their disclosure has been notified to IBAC and / or that their complaint has been determined by IBAC to be a PD.

### **Appointment of Protected Disclosure Coordinator**

The Chief Executive Officer appoints the General Manager Corporate and Community to act as the Protected Disclosure Coordinator (PDC) to:

- Coordinate and determine all requirements under the PD Act and the IBAC Act
- Make initial assessment in accordance with the Acts
- Notify IBAC of an assessable disclosure, or if not assessable, refer to Council's complaints process

### **Appointment of Welfare Officer**

The Chief Executive Officer appoints the Manager People and Performance to act as the Welfare Officer to:

- Examine and respond to the needs of the discloser and the subject of the disclosure (welfare and protection)
- Advise all parties of their rights
- Record 'Case Management' information
- Ensure expectations are realistic

If the disclosure is in relation to the General Manager Corporate and Community then the Chief Executive Officer will retain the authority for all aspects of the Acts or appoint an officer to advise on the process.

If the disclosure is in relation to the Welfare Officer then the General Manager Corporate and Community will act as the Welfare Officer or appoint an officer to act as the Welfare Officer.

### Glossary of terms used

**Assessable disclosure** – a disclosure that must be forwarded to IBAC or the Victorian Inspectorate

**corrupt conduct** – is conduct that would, if proved beyond reasonable doubt at trial, constitute an indictable offence or the common law offence of attempting to pervert the course of justice or bribery of a public official

**IBAC** – Independent Broad-based Anti-corruption Commission

**improper conduct** – the combination of both corrupt conduct as defined in the *IBAC Act* and specified conduct as defined in the PD Act.

**investigating entity** – IBAC, the Ombudsman, the Chief Commissioner of Police and the Victorian Inspectorate. Only these entities can investigate a protected disclosure complaint.

**protected disclosure** – a report made by a person or group of persons about improper conduct of public officers or public bodies

**protected disclosure complaint** – a disclosure that has been determined by IBAC to be a protected disclosure complaint

**protected disclosure coordinator** – Council Officer appointed by the Chief Executive Officer to receive and make initial assessment on protected disclosures

**public body** – includes Councils among others

**public officer** – includes among others a member of Council staff that is performing a public function on behalf of the State or a public officer or public body (whether under contract or otherwise); an employee of, or any person otherwise engaged by, or acting on behalf of, or acting as a deputy or delegate of, a public body or a public officer

**specified conduct** – conduct that would, if proved, constitute a criminal offence or reasonable grounds for dismissal

**urgent action** – when there is immediate threat to personal health and safety, property or the disclosure refers to serious criminal conduct

### Source documents

- *Protected Disclosure Act 2012*
- *Independent Broad-based Anti-corruption Commission Act 2011*
- *Independent Broad-based Anti-corruption Commission Victoria – Guidelines for making and handling protected disclosures, 2013*
- *Independent Broad-based Anti-corruption Commission Victoria – Guidelines for protected disclosure welfare management, 2013*
- [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)

Responsible Officer for procedure

General Manager Corporate and Community

Date approved by Council

25 September 2013