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▶ PUBLIC INTEREST DISCLOSURE PROCEDURES  
FOR HEPBURN SHIRE COUNCIL

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# PUBLIC INTEREST DISCLOSURE PROCEDURES FOR HEPBURN SHIRE COUNCIL

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## PUBLIC INTEREST DISCLOSURE PROCEDURES FOR HEPBURN SHIRE COUNCIL

### INTRODUCTION

The *Protected Disclosure Act 2012* was renamed the *Public Interest Disclosures Act 2012* (the Act) in March 2019. The revised legislation introduced some changes to the *Protected Disclosures Act 2012* to support people making disclosures which are in the public interest. On 1 January 2020, these changes took effect replacing existing 'protected disclosure' arrangements with 'public interest disclosures'.

The Act aims to:

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

The Act has also established a new parliamentary oversight committee. The Integrity and Oversight Committee, consolidates the oversight of a number of Victorian integrity agencies, including the Independent Broad-based Anticorruption Commission, the Victorian Ombudsman and the Office of the Victorian Information Commissioner.

### PURPOSE

These procedures establish a system for reporting disclosures of improper conduct or detrimental action by the Council, councillors or employees. The system enables such disclosures to be made to Council's Public Interest Disclosure Coordinator to the Independent Broad-based Anti-Corruption Commission (IBAC). Disclosures may be made by any person, this includes members of the public, councillors or employees of Hepburn Shire Council, but not a legal entity like a corporate body.

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### SCOPE

These procedures apply to all persons who are involved in reporting and processing of public interest disclosures made against Council employees, contractors or councillors.

### POLICY STATEMENT

The Hepburn Shire Council (Council) is committed to the intent and spirit of the *Public Interest Disclosures Act 2012* (the Act). Council does not tolerate improper conduct by its employees or councillors, nor the taking of reprisals against those who come forward to disclose such conduct.

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

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

### PROCEDURES

#### 1. Making a disclosure

##### 1.1. What is a public interest disclosure?

Public interest disclosures are reports about:

- improper conduct of public bodies or public officers (such as corrupt conduct)
- detrimental action that a public officer or public body has taken against a person in reprisal for them (or another person) having made a public interest disclosure or cooperated with the investigation of a public interest disclosure.

A disclosure can relate to conduct or action that:

- may have already taken place
- may be occurring now

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- may happen in the future.

### 1.2 Who a public interest disclosure can be about

Disclosures can be made about:

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

Public bodies include:

- a municipal council
- public sector bodies (including public entities and special bodies)
- incorporated or unincorporated bodies established under an Act for a public purpose, including universities
- the Electoral Boundaries Commission
- a body performing a public function on behalf of the State or a public body or public officer (for example, a regulatory function or a function that is publicly funded).

Public officers include:

- local government councillors and council employees
- public servants, including IBAC officers
- university employees and teachers
- Victoria Police personnel
- members of Parliament, including Ministers ministerial officers, parliamentary advisers and officers, electorate officers, judicial officers, including coroners, members of the Victorian Civil and Administrative Tribunal (VCAT), associate judges, judicial registrars
- statutory office holders, including the Auditor-General and the Victorian Ombudsman, and the Director of Public Prosecutions
- the Governor, Lieutenant-Governor or Administrator of the State.

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Further information about the types of public bodies and public officers about whom disclosures can be made is in the *Public Administration Act 2004*, and the *Independent Broad-based Anti-corruption Commission Act 2011* (IBAC Act).

Someone can still make a disclosure even if they can't identify the person or the organisation to which the disclosure relates.

### 1.3. Who can make a disclosure?

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

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

### 1.4. Organisations that can receive a public interest disclosures

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

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

Table 1: Which public bodies to report disclosures to

| Disclosures around specific public bodies or officers  | Where they should be made |
|--|---------------------------|
| <ul style="list-style-type: none"> <li>• the Chief Commissioner of Police</li> <li>• the Director of Public Prosecutions</li> <li>• the Chief Crown Prosecutor</li> <li>• the Solicitor-General</li> <li>• the Governor</li> <li>• the Lieutenant- Governor or Administrator</li> <li>• the Director, Policy Integrity</li> <li>• the Electoral Commissioner</li> <li>• a Commissioner or member of a Board of Inquiry appointed under the Inquiries Act 2014</li> <li>• a judicial employee</li> <li>• a Ministerial officer</li> <li>• a Parliamentary adviser</li> <li>• an electorate office</li> <li>• a Parliamentary officer</li> </ul> | <p>IBAC</p>               |

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|   |  |
|---|--|
| <ul style="list-style-type: none"> <li>• a Minister of the Crown who is not a member of Parliament.</li> </ul>  |  |
| <ul style="list-style-type: none"> <li>• a councillor</li> <li>• the Information Commissioner</li> <li>• the Health Complaints Commissioner</li> </ul>  | IBAC or the Victorian Ombudsman  |
| <ul style="list-style-type: none"> <li>• the Chief Examiner or an Examiner appointed under the Major Crimes (Investigative Powers) Act 2004</li> <li>• a Victorian Ombudsman officer</li> <li>• a Victorian Auditor-General's officer</li> <li>• a Judicial Commission officer (other than a judicial member of the Board of the Judicial Commission).</li> </ul> | IBAC or the Victorian Inspectorate   |
| <ul style="list-style-type: none"> <li>• a member of police personnel (other than the Chief Commissioner).</li> </ul>   | IBAC or a Prescribed Member of Police Personnel  |
| <ul style="list-style-type: none"> <li>• a member of Parliament (Legislative Assembly).</li> </ul>  | The Victorian Inspectorate   |
| <ul style="list-style-type: none"> <li>• a Judicial officer or a member of VCAT who is not a judicial officer</li> </ul>  | IBAC or the Judicial Commission  |
| <ul style="list-style-type: none"> <li>• a Victorian Inspectorate Officer.</li> </ul>   | Integrity and Oversight Committee, the Speaker of the Legislative Assembly of the President of the Legislative Council |

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

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Table 2 – List of organisations authorised to receive public interest disclosures (if not listed in previous diagram).

| Organisation  | Officer 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"> <li>• Chief Executive Officer</li> <li>• A person identified in the council's procedures as a person who can receive a disclosure about that council, e.g. Public Interest Disclosure Coordinator</li> <li>• Manager or supervisor of the discloser</li> <li>• Manager or supervisor of the person who is the subject of the disclosure.</li> </ul>                  |
| IBAC  | <ul style="list-style-type: none"> <li>• The Commissioner</li> <li>• A Deputy Commissioner</li> <li>• The Chief Executive Officer</li> <li>• An IBAC employee</li> <li>• An IBAC consultant.</li> </ul>   |
| Victorian Ombudsman   | <ul style="list-style-type: none"> <li>• A Victorian Ombudsman officer</li> </ul>   |
| Victorian Inspectorate  | <ul style="list-style-type: none"> <li>• The Victorian Inspector</li> <li>• A Victorian Inspectorate employee</li> </ul>  |
| <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"> <li>• Head of the relevant public service body</li> <li>• A person identified in the council's procedures as a person who can receive a disclosure about that council, e.g. Public Interest Disclosure Coordinator</li> <li>• Manager or supervisor of the discloser</li> <li>• Manager or supervisor of the person who is the subject of the disclosure.</li> </ul> |

### 1.5. Disclosures made to an organisation that is not 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 Act. The person should be advised what organisations can receive disclosures.

### 1.6. How can a disclosure be made?

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 mail message.

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

- a lawyer representing the person making the disclosure (if any)
- one or more people to whom a disclosure can be made under the 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 Council by:

- delivering it in person to Council offices at 1 Duke Street, Daylesford VIC 3460
- mailing it to the PO Box 21, Daylesford Victoria 3460
- emailing to the email address [PublicInterestDisclosure@hepburn.vic.gov.au](mailto:PublicInterestDisclosure@hepburn.vic.gov.au) or [shire@hepburn.vic.gov.au](mailto:shire@hepburn.vic.gov.au)
- 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).

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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.

### 1.7. Who can receive disclosures?

Disclosures of improper conduct or detrimental action by the Council or its employees, may be made to the Public Interest Disclosure Coordinator.

The following officers of Council can receive disclosures:

- Chief Executive Officer
- Public Interest Disclosure Coordinator (Manager Governance and Risk).

The Public Interest Disclosure Coordinator will be the main contact point within the Council.

## 2. Definitions of key terms

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

### 2.1. Improper conduct

Improper conduct includes corrupt conduct, criminal offences and other conduct specified in the Act. 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.

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

- a criminal offence
- serious professional misconduct
- dishonest performance of public functions
- an intentional or reckless breach of public trust

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- an intentional or reckless misuse of information or material acquired in the course of the performance of the functions of the public officer or public body
- a substantial mismanagement of public resources
- a substantial risk to health or safety of one or more persons
- a substantial risk to the environment
- conduct of any person that:
  - adversely affects the honest performance by a public officer or public body of their public functions
  - is intended to adversely affect the effective performance or exercise by a public officer or public body of the functions or 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.
- conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referred to above.

## 2.2. Detrimental action

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

Detrimental action includes:

- action causing injury, loss or damage
- intimidation or harassment

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- discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action

The person need not have actually taken the detrimental action but can just have threatened to do so or incited someone else to do so.

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

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

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

### 2.3. Serious professional misconduct

Serious professional misconduct is conduct that constitutes a serious breach of an established professional code of conduct and/or other serious departures from the person's professional responsibilities. This may include a serious failure to exhibit the skills and experience required to perform the functions of the office, as well as non-compliance with professional codes of conduct or the policies, procedures and laws that govern behaviour in the public sector and the workplace.

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

- if the person has behaved in a way that is inconsistent with the expectations, skills and responsibilities of their office

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- the behaviour the person engaged in was in their capacity as a public officer
- the misconduct was serious.

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

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

### 3. What standard needs to be applied?

The disclosure needs to be assessed to decide if it is about improper conduct or detrimental action. There are two standards that should be considered.

Table 3 – Standards to be applied when deciding if improper conduct or detrimental action

| It is a public interest disclosure   | It is NOT a public interest disclosure  |
|--|---|
| <p>Notify the appropriate agency</p> <p>Council will notify the appropriate agency in writing, within 28 days after the disclosure was made, that:</p> <ul style="list-style-type: none"> <li>• the disclosure may be a public interest disclosure</li> <li>• Council is sending the disclosure for assessment.</li> </ul> <p>Council will also provide the agency with any information obtained regarding the disclosure in the course of inquiries. Note, this</p> | <p>Council will advise the discloser in writing, within 28 days after the disclosure was made, that:</p> <ul style="list-style-type: none"> <li>• Council does not consider the disclosure shows or tends to show improper conduct or detrimental action</li> <li>• the disclosure has not been sent to IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee for assessment</li> <li>• the discloser’s identity doesn’t have to be kept confidential, but protections under Part 6 of the Act apply, for example:</li> </ul> |

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information can be provided at the time of notification or at any later time.

IBAC is the appropriate agency for all disclosures except the following:

- Disclosures about IBAC or the Public Interest Monitor must be notified to the Victorian Inspectorate.
- Disclosures about the Victorian Inspectorate must be notified to the Integrity and Oversight Committee.

Notify the discloser

Council will notify the discloser in writing, within 28 days after the disclosure was made, that the disclosure has been sent to IBAC for assessment.

- they can't be fired, disciplined or bullied for making the disclosure
- they are protected from legal actions such as defamation and civil liability.

Note, Council does not have to provide the discloser with this information unless the discloser has indicated, or it otherwise appears to the Council that they wish to receive the protections that apply to a public interest disclosure under the Act. Council will consider whether the disclosure could be dealt with according to your organisation's normal complaint handling procedures.

### 3.3. Can a discloser ask that a complaint not be dealt with as a public interest disclosure?

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

### 3.4. Protection for public officers

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

### 3.5. If urgent action is required while a disclosure is being assessed

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

Examples could include a child protection worker allegedly assaulting children in care, a council worker allegedly lighting bush fires, or a person threatening to poison the water supply.

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In these cases, Council will take immediate action while considering whether or not it is a disclosure that must be notified to IBAC. Council may also take immediate action while awaiting IBAC's decision on a notified matter.

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

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

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

### 4. 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 complaint. If IBAC is of the view that the assessable disclosure is a public interest complaint, then the discloser is protected.

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

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

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**4.1. IBAC’s determination**

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

Table 4 – Information provided by IBAC when making a 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. 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>These adverse consequences include putting a person’s safety at risk, or prejudicing an investigation under the IBAC Act</p> | <p>IBAC must advise the discloser in writing within a reasonable time, that:</p> <ul style="list-style-type: none"> <li>• IBAC has determined their disclosure is not a public interest complaint</li> <li>• the disclosure will not be investigated as a public interest complaint</li> <li>• their identity does not have to be kept confidential.</li> </ul> <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> |

**4.2. IBAC – investigating complaints**

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

*Confidentiality and welfare issues*

During the investigation of a public interest complaint, 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

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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.

### 4.3. IBAC – referring a complaint

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

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

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

### 4.4. 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:

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

### 4.5. 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.

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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.

### 5. Protections for persons making disclosure

The following types of disclosures are protected:

- any disclosure assessed as 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.
- any notification that IBAC receives and determines to be a public interest complaint.

How the discloser is protected is set out below:

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

### 5.1. Confidentiality – content and identity of a person making a public interest disclosure

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

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

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Table 5 – Protecting the confidentiality of a person making a public interest disclosure.

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

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

*5.1.1. Exceptions to confidentiality requirements*

There are certain circumstances where the confidentiality requirements do not apply.

These are:

- when a body is exercising its functions under the Act
- it is disclosed by an investigating entity for the purpose of the exercise of functions under the Act that authorises that investigating entity to investigate a public interest complaint
- IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee determines the disclosure is not a public interest complaint
- when a disclosure is to Victoria Police where an investigating entity has previously disclosed information to the Chief Commissioner of Police relating to actual or potential criminal conduct and the information is relevant to an investigation by Victoria Police of the criminal conduct
- it is for the purpose of a proceeding or for a disciplinary process under a relevant Act
- the disclosure is necessary for the discloser to obtain legal advice or representation, interpretive services, the advice of a parent or guardian (for disclosers under 18 years), the advice of an independent person (for disclosers who are illiterate or have mental or physical impairments)

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- 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
- the disclosure is to WorkCover for a workers compensation claim or to the Fair Work Commission for an application.

### *5.1.2. Additional exceptions to confidentiality of the content of a public interest disclosure*

Confidentiality doesn't apply if:

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

### *5.1.3. Additional exceptions to confidentiality of the identity of a person making a public interest disclosure*

Confidentiality doesn't apply if the discloser gives written consent.

## 5.2. Limits on protections

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

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

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

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

## 6. 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.

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

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

Council 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.

## 7. The reporting system

### 7.1. Contact persons within Council

Disclosures of improper conduct or detrimental action by Council or its employees, may be made to the Public Interest Disclosure Coordinator or the Chief Executive Officer.

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

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

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### 7.2 Alternative contact persons

A disclosure about improper conduct or detrimental action by the Council or its employees may also be made directly to IBAC.

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

## 8. Roles and responsibilities

### 8.1. Employees

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

All employees of the Hepburn Shire Council 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.

### 8.2. Public Interest Disclosure Coordinator

The Public Interest Disclosure Coordinator will be a contact point within Council and will:

- Establish and manage a confidential filing system
- Receive all disclosures
- Receive phone calls, emails and letters from members of the public or Council employees seeking to make a disclosure
- 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
- Make arrangements for a disclosure to be made privately and discreetly and, if necessary, away from the workplace
- Receive any disclosure made orally or in writing (from internal and external person)
- Commit to writing any disclosure made orally

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- Impartially assess the allegation and determine whether it is a disclosure made in accordance with the Act (that is, a public interest disclosure)
- Take all necessary steps to ensure the identity of the person making the disclosure and the identity of the person who is the subject of the disclosure are kept confidential
- Impartially assess each disclosure to determine whether it is a public interest disclosure
- Refer all public interest disclosures to IBAC
- Appoint a Welfare Manager to support the person making the disclosure and to protect him or her from any reprisals
- Collate and provide statistics on disclosures made

### 8.3. Receipt of disclosures by staff

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

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.

### 8.4. Welfare manager

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

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

## PUBLIC INTEREST DISCLOSURE PROCEDURES FOR HEPBURN SHIRE COUNCIL

- Ensure the expectations of the discloser are realistic.

The Welfare Manager may be a person from within Council or a third party engaged for that purpose.

### 8.5. The Freedom of Information Act

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

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

Public bodies should ensure that any officers handling freedom of information requests are aware of this section.

Council's Freedom of Information Officer will give consideration to contacting IBAC prior to providing any document originating from IBAC or relating to a public interest disclosure, if requested under the FOI Act.

## 9. Confidentiality

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

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

### 9.1. Information Management

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

## PUBLIC INTEREST DISCLOSURE PROCEDURES FOR HEPBURN SHIRE COUNCIL

All electronic files will be produced and stored on a stand-alone computer and be given password protection. Backup files will be kept on an encrypted memory stick. All materials relevant to an investigation, such as tapes from interviews, will also be stored securely with the public interest disclosure file(s).

Council 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.

### 10. Managing the welfare of the discloser

#### 10.1. Commitment to protecting discloser

Council is committed to the protection of genuine disclosers against detrimental action taken in reprisal for the making of public interest disclosures. The Public Interest Disclosure Coordinator has the primary responsibility for ensuring the discloser is protected from direct and indirect detrimental action, and that the culture of the workplace is supportive of public interest disclosures being made. The Public Interest Disclosure Coordinator will appoint a Welfare Manager to all disclosers who have made a public interest disclosure.

In addition to these procedures, the Welfare Manager will in accordance with Council's 'Welfare Management Procedures - Public Interest Disclosures' manage the welfare of persons associated with a public interest disclosure.

### 11. Compliance reporting

Council is required to publish certain statistics about the Act in its annual report. That information relates mainly to how the procedures may be accessed and the number of disclosures notified to the IBAC for assessment under the Act during the financial year.

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

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## REVIEW

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

## REFERENCES

*Independent Broad-Based Anti-Corruption Act 2011*

*Public Interest Disclosures Act 2012*

*Public Interest Disclosures Regulations 2019*

*Ombudsman Act 1973*

The Independent Broad-Based Anti-Corruption Commission Guidelines for Making and Handling Public Interest Disclosures

The Independent Broad-Based Anti-Corruption Commission Guidelines for Public Interest Disclosures Welfare Management

APPENDIX 1 - Civil and criminal penalties under the *Public Interests Disclosure Act 2012*

| Specific offences  | Penalties   |
|--|---|
| Detrimental action   |   |
| <p>Liability of an individual</p> <p>It is an offence for a person to take or threaten action in reprisal when:</p> <ul style="list-style-type: none"> <li>• another person has made or intends to make a public interest disclosure</li> <li>• the person believes another person has made or intends to make a public interest disclosure</li> <li>• another person has cooperated or intends to cooperate with the investigation of a public interest disclosure</li> <li>• the person believes another person has cooperated or intends to cooperate with the investigation of a public interest disclosure</li> </ul> | <p>Criminal penalty: 240 penalty units or two years imprisonment or both</p> <p>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.</p> <p>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</p> <p>An employer may also be held to be liable for the detrimental action of their employee or agent</p>  | <p>Criminal penalty: 240 penalty units or two years imprisonment or both</p> <p>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.</p> <p>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 police complaint disclosure A person/body must not disclose content of a disclosure or information about its content</p>   | <ul style="list-style-type: none"> <li>• 120 penalty units or 12 months imprisonment or both (person)</li> <li>• 600 penalty units (body corporate)</li> </ul>  |

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|  |   |
|--|---|
| <p>Disclosure of identity of person making a public interest disclosure or police complaint disclosure</p> <p>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"><li>• 120 penalty units or 12 months imprisonment or both (person)</li><li>• 600 penalty units (body corporate)</li></ul> |
| <p>Making false disclosure or providing false further information</p> <p>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 claiming a disclosure is a public interest disclosure</p> <p>A person must not falsely claim a matter is the subject of a public interest disclosure or the subject of a disclosure determined to be a public interest disclosure</p>                                       | <p>120 penalty units or 12 months imprisonment or both</p>  |