Making a Public Interest Disclosure

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Making a Public Interest Disclosure
What is a public interest disclosure?

The Public Interest Disclosure Act 2012 (the Act) encourages and facilitates the disclosure of improper conduct of public bodies, including councils and public officers. The Act enables people who report improper conduct and corruption to be protected, including keeping their identity confidential and protecting them from reprisals. Such reports are called public interest disclosures.

Who can make a public interest disclosure?

Any person can make a public interest disclosure, including members of the public, council employees or employees of another public sector body.

You can make a disclosure as an individual or together with a group of individuals. A company or business cannot make a public interest disclosure.

You can ask someone else to make a disclosure on your behalf. However, if you do so, only that person will receive the full protection of the Act in relation to that disclosure. Your protection will be limited to confidentiality and protection against detrimental action taken against you in reprisal for the disclosure that has been made.

What can I make a public interest disclosure about?

Under the Act, a public interest disclosure must be regarding:

- improper conduct of public bodies or public officers and / or
- detrimental action taken by public bodies or public officers in reprisal against a person for making a public interest disclosure

Examples of improper conduct include:

- Corrupt conduct
- Any of the following 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 breach or reckless breach of public trust
  - An intentional or reckless misuse of information or material acquired in the course of the performance of public functions
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- A substantial mismanagement of public resources
- A substantial risk to the health or safety of one or more persons
- A substantial risk to the environment

- Conduct by any person that is intended to adversely affect the honest performance of a public officer or public body in their public functions
- Conduct by any person that is intended to adversely affect the effective performance of a 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 otherwise have obtained
- Conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referred to above

Examples of detrimental action include:

- A public body demoting, transferring, isolating or changing the duties of a person for making a disclosure
- A person threatening, abusing or carrying out other forms of harassment directly or indirectly against a person who has made a disclosure and their family or friends
- A public body discriminating against a person who makes a disclosure and/or their family and/or associates in subsequent applications for jobs or tenders

What protections will I receive as a public interest discloser?

In accordance with the Act, protections provided to public interest disclosers include:

- immunity from civil or criminal liability, as well as administrative action (including disciplinary action) for making the disclosure
- immunity from committing an offence under the Constitution Act 1975 or any other act that imposes obligations of confidentiality or otherwise restricts the disclosure of information
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- immunity from breaching any other obligation (made by oath or rule of law or practice) requiring the maintenance of confidentiality or otherwise restricting the disclosure of information
- protection from an action for defamation

These protections apply to a disclosure from the time you make the disclosure and continue to apply even if Council determines the disclosure does not comply with the requirements of the Act, or the Independent Broad-based Anti-Corruption Commission (IBAC) determines that the disclosure is not a public interest disclosure.

The protections will also apply to further information relating to a public interest disclosure, provided to:

- Council
- IBAC
- an investigating entity

These protections do not apply if you provide false or misleading information, or claim that a matter is the subject of a public interest disclosure knowing that claim to be false.

How do I make a public interest disclosure?

Public interest disclosures can be made to Council or other government agencies:

- in person
- by telephone
- by leaving a voicemail message
- in writing by post, personal delivery or email
- by any other form of electronic communication
- by completing the online form available on the IBAC and Victorian Ombudsman websites

A public interest disclosure cannot be made by fax.

A public interest disclosure must be made in private, so it is important that only the person to whom you are making the disclosure can hear or receive your disclosure.

You do not have to specifically refer to the Act or the protections in the Act for your disclosure to be a public interest disclosure. You may also advise that you do not want your disclosure to be treated as a public interest disclosure.

Disclosures can be made even where you are unable to precisely identify the individual or the organisation to which the disclosure relates.
Disclosures can also be a complaint, notification or disclosure (however described) made under another law.

**Making a disclosure to Council**

Public interest disclosures about Council should only be in relation to:

- The function of Council’s public officers
- Council’s function as a public body
- The conduct of a person who is not a public officer or 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 or public officers include Council and its employees and Councillors.

Key contacts for public interest disclosures to Council are:

- Kendrea Pope
  General Manager Operations (Council’s appointed Public Interest Disclosure Coordinator)
  03 9243 8898 or k pope@mvcc.vic.gov.au
- Allison Watt
  Executive Manager Corporate Governance (Council’s appointed Public Interest Disclosure Officer)
  03 9243 1073 or awatt@mvcc.vic.gov.au
- Bryan Lancaster
  Chief Executive Officer
  9243 8713 or blancaster@mvcc.vic.gov.au

Public interest disclosures to Council can be made:

- In person at 9 Kellaway Avenue, Moonee Ponds
- By telephone directly to a key contact as listed above, or by contacting 9243 8888 and requesting the appropriate employee
- In writing, delivered in person to 9 Kellaway Avenue, Moonee Ponds
- In writing, delivered by post to Moonee Valley City Council, PO Box 126, Moonee Ponds VIC 3039
- In writing, sent by email to Council at council@mvcc.vic.gov.au
- In writing, sent by email to the email address of:
  - Council’s appointed Public Interest Disclosure Coordinator
  - Council’s appointed Public Interest Disclosure Officer
o your direct or indirect supervisor or manager, if you are an employee of Council
o the direct or indirect supervisor or manager of the person to whom your disclosure relates, where that person is an employee of Council

**Oral disclosures (in person or by telephone)**

Oral disclosures to Council must be made to one of the following persons:

- Council’s Chief Executive Officer
- Council’s appointed Public Interest Disclosure Coordinator
- Council’s appointed Public Interest Disclosure Officer
- your direct or indirect manager, if you are an employee of Council
- the direct or indirect manager of the person to whom the disclosure relates, if that person is an employee of Council

**Written disclosures**

Written disclosures to Council must be sealed in an envelope clearly marked with one or more of the following:

- Re: Confidential Public Interest Disclosure
- For the personal attention of the Chief Executive Officer: Confidential Public Interest Disclosure
- For the personal attention of the Public Interest Disclosure Coordinator
- For the attention of the Public Interest Disclosure Officer

**Anonymous disclosures**

Council employees can make protected disclosures confidentially and anonymously to an independent Whistleblower Hotline on 1800 411 871 or online at talkintegrity.com/mooneevalley

**Disclosures about a Councillor**

Public interest disclosures relating to a Councillor must be made to IBAC or the Victorian Ombudsman.

Council has no authority under the Act to investigate a disclosure relating to a Councillor. Any disclosures received by Council that relate to a Councillor will be referred to IBAC.

**Disclosures about another government agency or its employees (misdirected disclosure)**

A misdirected disclosure is where a disclosure is made to Council, relating to another government agency or its employees.
If the Council employee receiving your public interest disclosure believes that it is a misdirected disclosure, they may direct you to another organisation to make your disclosure, or refer the matter to IBAC for determination.

**Making a disclosure to a government agency**

**IBAC**
Disclosures to IBAC can be made:

- by telephone to 1300 735 135
- in person or in writing delivered in person to Level 1, North Tower, 459 Collins Street, Melbourne VIC 3001
- in writing, delivered by post to IBAC, GPO Box 24234, Melbourne, VIC 3000
- in writing via an [online form](#) on IBAC’s website

**Victorian Ombudsman**
Disclosures to the Victorian Ombudsman can be made:

- in person or in writing delivered in person to Level 2, 570 Bourke Street, Melbourne VIC 3000
- in writing, delivered by post to the Victorian Ombudsman at the address listed above
- in writing, sent by email to ombudvic@ombudsman.vic.gov.au
- in writing, submitted via an [online form](#) on the Victorian Ombudsman’s website

**Local Government Inspectorate**
Disclosures to the Victorian Local Government Inspectorate can be made:

- in person or in writing delivered in person to Level 27, 1 Spring Street, Melbourne VIC 3000
- in writing, delivered by post to the Local Government Inspectorate, GPO Box 4912, Melbourne VIC 3001
- in writing, sent by email to inspectorate@lgi.vic.gov.au
- in writing, submitted via an [online form](#) on the Victorian Local Government Inspectorate’s website

**What happens with my public interest disclosure?**
Please note, this section relates only to disclosures made to Council. Disclosures made to IBAC or another agency will be handled in accordance with their own adopted procedures and IBAC’s guidelines and processes.

**Receipt of disclosures**

Council’s Public Interest Disclosure Coordinator will acknowledge your disclosure orally, or in writing (if a postal or email address is known). You will also be advised of the key steps involved in the process for handling your disclosure, including the timeframes involved.

**Assessing disclosures**

The Public Interest Disclosure Coordinator will assess whether the disclosure complies with the requirements of the Act.

At this time, the Public Interest Disclosure Coordinator may also discuss with you the welfare support that Council will provide (for example, the appointment of a welfare manager). The Public Interest Disclosure Coordinator will outline the precautions Council will take to prevent detrimental action being taken in reprisal for you having made a disclosure.

In some circumstances, it may be necessary for Council to report your disclosure to Victoria Police for immediate investigation. It may also be necessary for Council to act to prevent certain future conduct, including acting against the person you have made the disclosure about.

**Notification to IBAC**

If the Public Interest Disclosure Coordinator determines that your disclosure complies with the requirements of the Act, Council will notify your disclosure to IBAC, in writing, within 28 days of you making the disclosure to Council.

Council may also provide information to IBAC that it obtained while it was assessing whether your disclosure should be referred to IBAC.

If Council determines that your disclosure does not comply with the requirements of the Act, it will advise you of this within 28 days of you making the disclosure. In that event, you may wish to have your disclosure dealt with under Council’s complaints handling process.

**Assessment by IBAC**

IBAC is responsible for identifying, investigating, exposing and preventing serious corrupt conduct in the Victorian public sector.

Once Council notifies your disclosure to IBAC, IBAC must assess within a reasonable time whether (in its view) your disclosure is a public interest disclosure. IBAC may seek additional information from you and/or Council to make its decision.
If IBAC determines that your disclosure is a public interest disclosure, it must decide to:

- dismiss your disclosure
  or
- investigate your disclosure
  or
- refer your disclosure to another body for investigation, such as the Victorian Ombudsman or the Local Government Inspectorate

Regardless of whether IBAC determines your disclosure is a public interest disclosure, you will still receive protections under the Act. This includes protection from detrimental action taken in reprisal for you making the disclosure.

However, if IBAC determines that your disclosure is not a public interest disclosure, the confidentiality requirements described below will no longer apply in relation to your disclosure.

**Welfare management**

Council will consider appointing a welfare manager when a person has made a public interest disclosure or is cooperating, or intending to cooperate, with the investigation of a disclosure.

A welfare manager is responsible for:

- examining the discloser’s and/or witness’ immediate welfare and protection needs and, where that person is an employee, fostering a supportive work environment
- providing practical advice and support
- advising the discloser and/or witness of the protections available under the Act
- receiving and responding to any disclosures of detrimental action in reprisal for making the disclosure (for example, harassment, intimidation or victimisation)
- ensuring that the discloser’s and/or witness’ expectations of the process and outcomes are realistic
- maintaining confidentiality
- operating discreetly to protect the discloser and/or witness from being identified as being involved in a public interest disclosure
Confidentiality

Council will take all reasonable steps to protect the identity of the discloser and the matters disclosed by a discloser. Maintaining confidentiality in relation to public interest disclosure matters is crucial, among other things, in ensuring reprisals are not made against a discloser.

Disclosers should consider whether it is in their best interest to not discuss any related matters other than with authorised persons within Council, officers of IBAC or other persons authorised by law.

If you repeat your disclosure to someone other than those listed within these guidelines or permitted by the Act, you may lose the protections provided under the Act. If you are considering sharing information about your disclosure, you may wish to seek advice from the Public Interest Disclosure Coordinator or your welfare manager, and / or obtain legal advice first.

Council will only disclose information about you or your disclosure in accordance with the law, including the Act. The Act also prohibits disclosing information that is likely to lead to your identification, unless permitted to do so in accordance with the Act.

Collating and publishing statistics

Council is required to publish certain statistics about the Act in its annual reports. This information relates to the number of disclosures notified to IBAC for assessment during the financial year.

What if I’m not satisfied with the handling of my public interest disclosure?

A person who has made a public interest disclosure and is not satisfied with the way it has been handled can contact an external party to express their grievance. This is called an external disclosure.

The Act allows for people who have made a disclosure, and would usually be subject to confidentiality restrictions relating to that disclosure, to contact unauthorised external parties (such as a journalist or politician) if:

- The original disclosure was not made anonymously
- The original disclosure was determined to be a public interest disclosure and notified as such by Council or IBAC
- One of the following situations apply:
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- The discloser has not been notified of any action taken in relation to the disclosure within six months of determination as a public interest disclosure, and has not received a response within 30 days of requesting an update on progress.
- An investigation has not been completed by 12 months after determination as a public interest disclosure, and the discloser has not received a response within 30 days of requesting an update on progress.
- An investigation has not been completed by 12 months after determination as a public interest disclosure and, although the discloser has received a response within 30 days of requesting an update on progress, the discloser received no further update advising the investigation had been completed six months after that response.

Some exemptions apply. For example, external disclosures may not be made in relation to information that:

- may prejudice a criminal investigation or proceeding
- may prejudice any other legal proceeding
- is likely to lead to the disclosure of an investigative method

The protections provided to public interest disclosures under the Act will also apply to external disclosures.