



Public Interest Disclosure Policy

Purpose

Baw Baw Shire Council is committed to the aims and objectives of the *Public Interest Disclosures Act 2012* (the Act). It does not tolerate improper conduct by its employees, officers, or members, 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. It will also afford natural justice to the person who is the subject of the disclosure.

To achieve these aims, Council will create and maintain a Public Interest Disclosure Policy, which will establish a system for reporting disclosures of improper conduct or detrimental action by Council or its employees. The system enables such disclosures to be made to the Public Interest Disclosure Coordinator or Public Interest Disclosure Officer.

This policy supports Council in ensuring good governance and open and accountable conduct, that is in the best interest of its employees, stakeholders, and the community. It is designed to complement normal communication channels between supervisors and employees. Employees are encouraged to continue to raise appropriate matters at any time with their supervisors.

Employees may make a disclosure of improper conduct or detrimental action under *the Act* in accordance with *the Act* and this policy.

Objectives

The objective of this policy is to formalise the Council's position on public interest disclosures and other complaints.

This policy has been created in accordance with *the Act*, and the main objectives of the *Public Interest Disclosures Act 2012* are:

- a) *to encourage and facilitate disclosures of—*
 - i. *improper conduct by public officers, public bodies and other persons; and*
 - ii. *detrimental action taken in reprisal for a person making a disclosure under this Act; and*
- b) *to provide protection for—*
 - i. *persons who make those disclosures; and*
 - ii. *persons who may suffer detrimental action in reprisal for those disclosures; and*
- ba) *to ensure that those disclosures are properly assessed and, where necessary, investigated;*
- c) *to provide for the confidentiality of the content of those disclosures and the identity of persons who make those disclosures.*

Definitions

For the purposes of this policy, Council adopts the following definitions:

Assessable Disclosure

A disclosure that must be made directly, or notified, to the IBAC or the Victorian Inspectorate, and includes a police complaint disclosure. In the case of a disclosure notified to the IBAC it is a disclosure that the notifier considers may be a protected disclosure.

Detrimental Action

Any disadvantage, including but not limited to, dismissal of an employee, injury of an employee in his or her employment, alternation of an employee's position to his or her detriment, or discrimination.

Community

Community is a flexible term used to define groups of connected people. It is used to describe people of a municipality generally, including individuals or groups who live, work, play, study, visit, invest in or pass through the municipality.

Improper Conduct

Corrupt conduct, conduct that constitutes a criminal offence, dishonesty, intentional or reckless breach of public trust, misuse of information, mismanagement of public resources, risk to the health and safety of persons or the environment or that adversely affects or is intended to adversely affect the performance of a public officer.

Integrity and Oversight Committee

The printed document is an uncontrolled document. To ensure you have the latest policy visit Council's website at www.bawbawshire.vic.gov.au or contact the Governance team on 03 5624 2411.

The Integrity and Oversight Committee established by Section 5(a) of the *Parliamentary Committees Act 2003*.

Public Interest Disclosure

A disclosure of information within the government, to an authorised internal recipient or a supervisor, that shows or tends to show a person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct or that a public officer or public body has taken, is taking or proposes to take detrimental action against a person in contravention to *the Act*.

Related Disclosure

A disclosure made to an investigating entity in the course of its investigation of a public interest complaint that may concern the same subject matter as the public interest complaint being investigated by that entity.

Reprisal

Any action taken by one person to another, which causes detriment.

Transparency

The availability of all information needed to collaborate, cooperate and make decisions effectively. Notably, “transparency” is also a human rights issue: the right to have the opportunity, without discrimination, to participate in public affairs (s.58 of The Act).

Scope

This policy applies to to all staff of Baw Baw Shire Council, both former and current.

Legislative context

This policy relates to the *Public Interest Disclosures Act 2012 (the Act)*.

Related Acts, policies, and documents

The following Acts also have relevance to this policy:

- *Charter of Human Rights and Responsibilities Act 2006*
- *Freedom of Information Act 1982*
- *Independent Broad-based Anti-corruption Commission Act 2011*
- *Local Government Act 1989*
- *Local Government Act 2020*
- *Local Government (Governance and Integrity) Regulations 2020; and*
- *Equal Opportunity Act 2010*.

The following Baw Baw Shire Council Policies have relevance to this policy:

- Staff Code of Conduct
- Councillor Code of Conduct
- Information Privacy Policy
- Complaints Handling Policy; and
- Public Transparency Policy.

The following documents also have relevance to this policy:

- IBAC Guidelines for Handling Public Interest Disclosures; and
- IBAC Guidelines for Public Interest Disclosure Welfare Management.

Policy Detail:

Who can Make a Public Interest Disclosure

Anyone can make a disclosure about improper conduct or detrimental action generally – both members of the public and employees of a public body. However, to be considered a public interest disclosure, 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.

This policy is designed to specifically support the staff of Baw Baw Shire Council in relation to Public Interest Disclosures. A public interest disclosure that relates to the conduct of a Council or of a member, officer or employee of a Council may be made to that Council.

Protections for Disclosers

Any disclosure assessed as a public interest disclosure (where the assessment has been made by an organisation that is authorised to receive disclosures) will be afforded protections under *the Act*. The protections apply even if the public body receiving the disclosure does not notify the IBAC. Some protections are summarised below:

- An individual is not subject to any civil, criminal, or administrative liability for making a public interest disclosure.
- An individual cannot be fired, disciplined, or bullied for making a disclosure.
- It is an offence to take a reprisal, or to threaten to take a reprisal, against a person because of a public interest disclosure (including a proposed or a suspected public interest disclosure).
- An individual employee of a public service body or a public entity who has made a public interest disclosure and who believes on reasonable grounds that detrimental action will

The printed document is an uncontrolled document. To ensure you have the latest policy visit Council's website at www.bawbawshire.vic.gov.au or contact the Governance team on 03 5624 2411.

be, is being or has been taken against him or her may request a transfer of employment in accordance with *the Act*.

- A court may make orders for civil remedies (including compensation, injunctions, and reinstatement of employment) if a reprisal is taken against a person because of a public interest disclosure (including a proposed or a suspected public interest disclosure).
- It is an offence to disclose the identity of an individual who makes a public interest disclosure.
- An individual is not subject to any civil or criminal liability or any liability arising by way of administrative process (including disciplinary action for making the disclosure)
- An individual does not breach an oath, rule of law or agreement regarding confidentiality when making the disclosure
- An Individual cannot be held liable for defamation in relation to information included in a public interest disclosure.

An individual still must assume personal liability if they knowingly make a disclosure that is false or misleading or if the disclosure relates to the individuals own conduct. The individual is also not protected from any legitimate management action relating to their role.

If an individual 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.

Disclosable Conduct

The IBAC *Guidelines for Handling Public Interest Disclosures* issued under section 57 of *the Act* provide comprehensive guidance on where to make disclosures about specific public bodies or officers.

Section 4 of *the Act* identifies the kinds of improper conduct, summarised below:

- Corrupt Conduct,
- A criminal offence,
- Serious professional misconduct,
- Dishonest performance of public functions,
- An intentional or reckless breach of public trust,
- 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,
- 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 that adversely or intends to adversely affect the honest performance by a public officer or public body of their functions as a public officer or public body, or

The printed document is an uncontrolled document. To ensure you have the latest policy visit Council's website at www.bawbawshire.vic.gov.au or contact the Governance team on 03 5624 2411.

- Conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referred to in paragraph.

It is important to note that a disagreement with or opinion on proposed policy or action by government, or valid expenditure does not constitute disclosable conduct.

It is a requirement of the council CEO to mandatorily report suspected corrupt conduct to IBAC pursuant to Section 57(1) of the *Independent Broad-based Anti-corruption Commission Act 2011*.

Authorised Disclosure Recipients

Council is not the only organisation that can receive Public Interest Disclosures, the list of organisation and officers is summarised below:

Organisation	Officers who can receive disclosures
IBAC	<ul style="list-style-type: none"> • The Commissioner • A Deputy Commissioner • The Chief Executive Officer • An IBAC employee • An IBAC consultant
Victorian Ombudsman	A Victorian Ombudsman officer
Victorian Inspectorate	<ul style="list-style-type: none"> • The Victorian Inspector • A Victorian Inspectorate employee
Public Service Body	<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, such as the Public Interest Disclosure Coordinator • Manager or supervisor of the discloser • Manager or supervisor of the person who is the subject of the disclosure
Council	<ul style="list-style-type: none"> • Chief Executive Officer • A person identified in the council's procedures as a person who can receive a disclosure about that council, such as the Public Interest Disclosure Coordinator

- | | |
|--|--|
| | <ul style="list-style-type: none"> • Manager or supervisor of the discloser • Manager or supervisor of the person who is the subject of the disclosure |
|--|--|

Treatment and Investigation of Public Interest Disclosures

Under Section 58 of the Act, all public bodies that may receive disclosures, must have procedures to facilitate the making of those disclosures; for the handling of those disclosures and, where appropriate, the notification of those disclosures to an appropriate entity. The procedures must also protect persons from detrimental action in contravention of section 45 taken by the public body or members, officers or employees of the public body.

Council operates its Public Interest Disclosure processes through a centralised reporting system in order to:

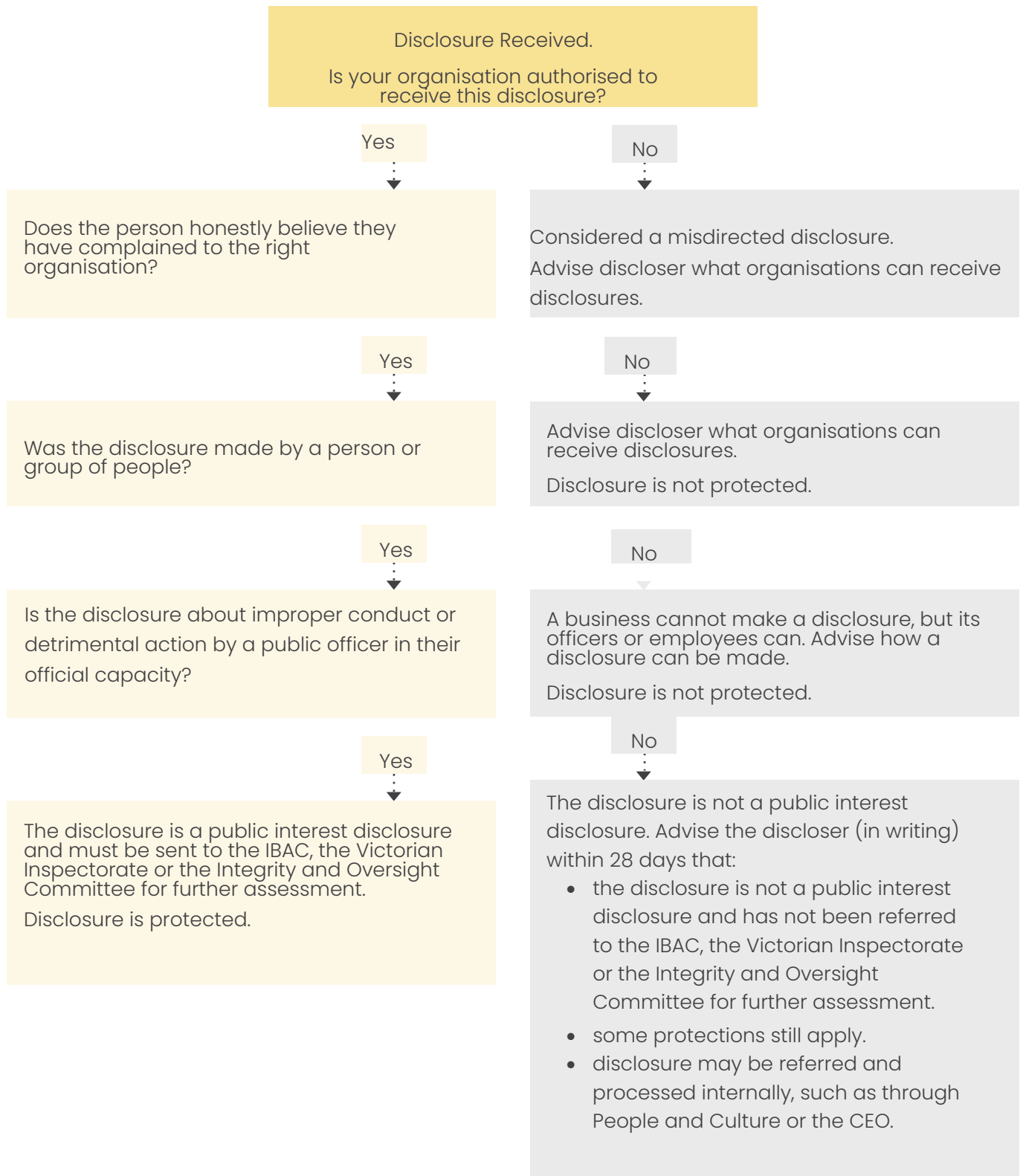
- Ensure disclosures are handled by the least amount of people as possible to protect confidentiality and to reduce the likelihood of reprisals being taken against a person making public interest disclosures;
- Avoid conflicts of interest by excluding line managers from the assessment and investigation of any disclosure where possible;
- Have clearly defined liaison points for the IBAC and other investigative agencies so information flows are able to be managed.

The Public Interest Disclosure Coordinator has a Central role in managing the integrity of this process, and is responsible for the following actions, aided by the Public Interest Disclosure Officer:

- Impartially assessing each disclosure to determine whether it appears to be a public interest disclosure;
- Coordinating the reporting system used by the organisation;
- Be a contact point for general advice about the operation of the Act and for integrity agencies such as the IBAC;
- Be responsible for ensuring that the public body carries out its responsibilities under the Act and the guidelines issued by the IBAC;
- Liaise with the IBAC in regard to the Act;
- Establish and maintain a confidential filing system;
- Collate statistics on disclosures made and appropriately provide these for annual reporting;
- Where possible, acknowledge receipt of all public interest disclosure;

- Advise the person making a public interest disclosure of the progress of an investigation into the disclosed matter;
- Where necessary, arrange for appropriate welfare support for the person making a public interest disclosure;
- Take all necessary steps to ensure the identity of the person making a public interest disclosure and the identity of the person who is the subject of the disclosure are kept confidential;
- When necessary, take immediate action to preserve the health and safety of individuals, to ensure the preservation of property, or notify the authorities of serious criminal conduct when assessing a public interest disclosure, this action can be taken by a Public Interest Disclosure Coordinator while they decide whether the matter needs to be taken to the IBAC;
- Ensure that within 28 days of a disclosure being received, where it is determined to be a public interest disclosure, the appropriate agency is notified in writing that the a disclosure has been received that may be a public interest disclosure and that the disclosure is being sent for assessment, and that the discloser is notified in writing within 28 days that the disclosure has been sent to the IBAC for assessment;
- Ensure that within 28 days of a disclosure being received, where it is determined to not be a public interest disclosure, the discloser is notified of the next steps and relevant information in writing;
- Liaise with the Chief Executive Officer of the Council; and
- When necessary, make enquiries of employees within the organisation.

The following flowchart outlines the procedure for managing Public Interest Disclosures:



If the IBAC determines that a disclosure is a public interest complaint, the IBAC must deal with the disclosure in accordance with the *Independent Broad-based Anti-corruption Commission Act 2011*.

If the Victorian Inspectorate determines that a disclosure is a public interest complaint, the Victorian Inspectorate must deal with the disclosure in accordance with the *Victorian Inspectorate Act 2011*.

If the Integrity and Oversight Committee determines that a disclosure is a public interest complaint, the Committee must engage an independent person to investigate the disclosure in accordance with Part 4A of *the Act*.

Under Section 34 – 37A of *the Act* related disclosures may be pursued by the investigating entity if such disclosures comply with *the Act*, either in relation to the initial disclosure or as a new disclosure.

Treatment of Information relating to Disclosures

Council will take all reasonable steps to protect the identity of the person making a public interest disclosure. Under *the Act* a person or body must not disclose information likely to lead to the identification of a person who has made an assessable disclosure. Maintaining confidentiality is crucial in ensuring reprisals are not made against a person making a disclosure.

The Act requires any person who receives information due to the handling or investigation of a disclosure, not to disclose that information except in certain limited circumstances. These include:

- When a body is exercising its functions under the *the Act*;
- When 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;
- When the 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;
- When it is for the purpose of a proceeding or for a disciplinary process under a relevant Act;

- When it is for the purpose of, or in the course of, a restorative engagement process, with the written consent of the person participating in the process who alleges that they are the victim of sex discrimination or sexual harassment;
- When it is necessary for the discloser to obtain legal advice or representation, interpretive services, the advice of a parent or guardian (for individuals under 18 years), the advice of an independent person (for individuals who are illiterate or have mental or physical impairments);
- When 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; or
- When the disclosure is to WorkCover for a worker's compensation claim or to the Fair Work Commission for an application.

However, *the Act* prohibits the inclusion of particulars in any report or recommendation that is likely to lead to the identification of the person making the disclosure. The Act also prohibits the identification of the person who is the subject of the disclosure in any particulars included in an annual report or other reports to Parliament.

Section 78 of the PID Act excludes the application of the Freedom of Information Act 1982 to any document that relates to a disclosure made under the PID Act. The Public Interest Disclosure Coordinator will ensure that any officers handling freedom of information requests are aware of this section.

Under Section 70 of *the Act* Council must include in its Annual Report information about how to access the public interest disclosure procedures and the number of disclosures notified to the IBAC during the financial year, however the information in the annual report must not include information that is likely to lead to the identification of a person who made an assessable disclosure. The IBAC also observes stringent confidentiality measures in its annual reporting.

To prevent breaches of the confidentiality requirements and to minimise the possibility of detrimental action, Council will ensure that it has established a secure electronic and paper filing system. The following measures are in place:

- Council ensures all files, whether paper or electronic, are kept in a secure room and can only be accessed by the public interest disclosure coordinator, public interest disclosure officer, the investigator or welfare support person (in relation to welfare matters).
- All printed material is kept in files that are clearly marked as a public interest disclosure material, and warn of the criminal penalties that apply to any unauthorised divulging of information concerning a public interest disclosure;
- All electronic files are password protected or have limitations on access rights to authorised officers only;

- All materials relevant to an investigation, such as tapes from interviews, are also be stored securely with access only to authorised officers;
- Sensitive information or documents are never emailed or faxed to a machine to which staff have general access;
- To ensure confidentiality, personal delivery of documents is used; and
- Any mail addressed to the Public Interest Disclosure Coordinator is handed directly to the Public Interest Disclosure Coordinator unopened or scanned in the normal system. The Public Interest Disclosure Coordinator registers the correspondence in accordance with this procedure.

Managing the Welfare of Disclosers

Council is committed to creating and promoting a workplace culture where employees feel they can speak up in regard to public interest disclosures and reports of improper conduct.

Council's Growing Culture work and is part of a broader organisational push towards clarity on what conduct is acceptable and unacceptable, reassuring staff that improper conduct is not tolerated or acceptable, and that detrimental action or reprisal towards those who report such conduct will not be tolerated.

All employees are encouraged to seek advice confidentially and anonymously from the Public Interest Disclosure Coordinator, Public Interest Disclosure Officer, or Chief Executive Officer if they are considering making a disclosure or reporting improper conduct. Council as a public body has an obligation to protect disclosers and anyone assisting a discloser.

Once a disclosure has been received, the Public Interest Disclosure Coordinator and Public Interest Disclosure Officer will contact the discloser during numerous parts of the process to offer support and to ensure they have clarity on what the discloser hopes to achieve. The Public Interest Disclosure Coordinator and Public Interest Disclosure Officer will also actively monitor the workplace, with a view to anticipating problems and dealing with them before they develop into serious matters. This can include monitoring any concerns the person may have about harassment, intimidation, or victimisation in reprisal for their actions, and monitoring any office gossip or rumours about the disclosure or the matter in which the disclosure relates to. Records will be kept throughout the period of the disclosure and assessment.

Disclosers are encouraged to access the organisations Employee Assistance Program, or to appoint their own support person to assist the throughout the process. Council's Contact Officers also receive regular training in relation to the support of disclosers.

The IBAC Guidelines for *Public Interest Disclosure Welfare Management*, issued under section 57 of *the Act* provide comprehensive guidance on where to make disclosures about specific public bodies or officers.

Making a Disclosure to Baw Baw Shire Council's Authorised Disclosure Recipients

Public interest disclosures may be made orally or in writing, and can be made anonymously.

Under Section 19 of *the Act*, a disclosure is not a public interest disclosure if the person making the disclosure expressly states in writing that the disclosure is not a public interest disclosure. Under Section 20 of *the Act* a disclosure is not a public interest disclosure if the disclosure is made by an officer or employee of an investigating entity in the performance of the officer's or the employee's functions or duties unless they expressly state in writing that the disclosure is a public interest disclosure.

Disclosures of improper conduct or detrimental action by Council, its employees or a person acting on behalf of Council may be made to:

Mr Martin Hopley
Public Interest Disclosure Coordinator
Acting Executive Manager Corporate and Customer Service
–
T +61 3 5624 2808 | M +61 409 549 747
[E Martin.Hopley@bawbawshire.vic.gov.au](mailto:E.Martin.Hopley@bawbawshire.vic.gov.au)

Miss Dominique Foenander
Public Interest Disclosure Officer
Governance Coordinator
–
T +61 3 5625 0252 | M +61 439 410 194
[E Dominique.Foenander@bawbawshire.vic.gov.au](mailto:E.Dominique.Foenander@bawbawshire.vic.gov.au)

Disclosures can also be made by Mail (marked Confidential) to the Public Interest Disclosure Coordinator PO Box 304 Warragul VIC 3820 or by Email (marked Confidential) to protected.disclosure@bawbawshire.vic.gov.au.

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

A disclosure about improper conduct or detrimental action by Council or its employees may also be made directly to the IBAC. You can make a disclosure to the IBAC in person, in writing, by telephone or via email.

Disclosures about Councillors should be referred to the IBAC or the Victorian Ombudsman. Further details are available online at www.ibac.vic.gov.au or by contacting the IBAC on 1300 735 135; or online at <https://www.ombudsman.vic.gov.au/contact-us/> or by contacting the Ombudsman on 03 9613 6222.

Non-Compliance with *the Act* and this Policy

There are a number of civil and criminal penalties under the Act; relating to detrimental action and the liability of an individual and the vicarious liability of their employer, the disclosure of content of a public interest disclosure or police complaint disclosure, the disclosure of identity of person making a public interest disclosure or police complaint disclosure, making a false disclosure or providing false further information and falsely claiming a disclosure is a public interest disclosure.

Council may take appropriate management action where an employee breaches *the Act* or this policy.

Monitoring, Evaluation and Review

Council is committed to monitoring processes and decision making in order to understand the overall level of success of the policy's implementation.

A periodic review of this policy will be undertaken to ensure its relevance is in line with the interests of potential disclosers.

Due to the serious nature of public interest disclosures and the low occurrence of these, Council's Public Interest Disclosure Coordinator and Public Interest Disclosure Officer will complete public interest disclosure refresher training with a certified legal practitioner, and subsequently review this policy every two years.

Periodic information sessions will also be held every two years (at a minimum), in line with the policy review, to educate staff on the disclosure process, a fact sheet is available to staff on this process, and regular updates on the disclosure process are provided in the organisational newsletter.

Review

Approval date	29 March 2021
Approval authority	Risk Management Committee
Effective from	30 March 2021
Review term	2 years
Next review date	29 March 2023
Responsible position	Governance Coordinator
Responsible Director	Corporate and Community Services
Version	1