

Public Interest Disclosures Act 2012 Procedures

Date developed - December 2019

Responsible Service Area: Finance & Governance

Purpose

These procedures have been prepared in accordance with the *Public Interest Disclosures Act 2012* and the guidelines set out by the Independent Broad-based Anti-Corruption Commission (IBAC). The purpose of the procedure is to establish a system for reporting disclosure of improper conduct or detrimental action by Maroondah City Council or its employees. The system allows such disclosures to be made anonymously to the Public Interest Disclosure Coordinator or one of the nominated Public Interest Disclosure Officers and ensures the safety of any discloser. Disclosures may be made by either employees within the organisation or members of the public.

Background/context

Maroondah City Council (Council) is committed to the aims and objectives of the *Public Interest Disclosures Act 2012 (The Act)* and is committed to providing a safe and supportive environment for people who wish to make a report on known or suspected incidents of improper conduct or detrimental action.

Council does not tolerate improper conduct by its Councillors or employees and values transparency and accountability in administrative and management practices. Council supports disclosures that reveal corrupt conduct, conduct involving substantial mismanagement of public resources or conduct involving substantial risk to public health and safety of the environment.

Scope

Under section 57 of the Public Interest Disclosures Act 2012 (The Act) Maroondah City Council is required to develop procedures relating to a Public Interest Disclosure (PID).

All Councillors, employees and volunteers of Maroondah City Council are bound by the provisions of the Public Interest Disclosures Act 2012.

Policy Control Schedule

Policy Title: Public Interest Disclosures Act Procedure		Policy type:
Current version approved: January 2020	Current version number: 1	Policy review date: January 2021
Parent policy:	Child policy/policies:	Policy responsibility: Risk, Information and Integrity

Objective of the Public Interest Disclosures Act 2012

The object of this Act is:

- to encourage and facilitate the disclosure of:
 - **improper Conduct** by public officers and public bodies
 - **detrimental action** taken in reprisal for a person making a disclosure under this Act
- to provide protection for:
 - people who make those disclosures
 - people who may suffer detrimental action in reprisal for those disclosures
- to provide confidentiality of the content of the disclosure and the identity of people who make disclosures
- to provide confidentiality of all people involved and cooperating with the disclosure investigation.

Please note that:

- Disclosures relating to **Councillors** are to be made directly to **IBAC (Independent Broad-based Anti-Corruption Commission)** OR the **Victorian Ombudsman (VO)**.
- Disclosures relating to the **Chief Executive Officer** are encouraged to be made directly to **IBAC**.

Relationship to the Maroondah 2040 Community Vision

Community Outcome: A well governed and empowered community

Key Directions: Maroondah is an empowered community that is actively engaged in Council decision making through processes that consider the needs and aspirations of all ages and popular groups. Council provides strong and responsive leadership, ensures transparency, while working with the community to advocate for the 'champion' local needs.

Definition of key terms

Improper conduct	Includes corrupt conduct, criminal offences and other conduct specified in the procedure and the Act. A link is required to be identified between the conduct and the official function of a public officer or public body.
Detrimental action	Includes threats of, or an action causing, injury, loss, damage, intimidation or harassment; and discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including disciplinary action.
Public Interest Disclosure (PID)	Disclosure by a natural person of information that shows/tends to show, or information that the person reasonably believes shows/tends to show improper conduct or detrimental action.
Public Interest Complaint (PIC)	A public interest disclosure that has been determined by IBAC, The Victorian Inspectorate, or the Integrity and Oversight Committee to be a public interest complaint.

The conduct you are disclosing must be **improper conduct** and/or **detrimental conduct**.

Improper conduct is:

- corrupt conduct and/or any of the following:
 - 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
 - a substantial mismanagement of public resources
 - a substantial risk to the health or safety of one or more people
 - a substantial risk to the environment
- conduct by a third party that adversely affects the honest performance of a public officer or public body or is instead to adversely affect effective performance of a public office or public body while obtaining an advantage for the third party, and/or
- conduct by a third party that could constitute a conspiracy or attempt to engage in any of the above.

Serious professional misconduct is included with the intention to broaden the types of disclosures that receive protection under the scheme. This may include:

- a serious failure to exhibit the skills and experience required to perform functions of the office
- non-compliance with professional codes of conduct or the policies, procedures and laws that govern behaviour in the public sector and workplace.

To identify whether serious professional misconduct has occurred, consider if:

- the person has behaved in a way that is inconsistent with the expectations, skills and responsibilities of their office
- the behaviour the person engaged in was in their capacity as public officer
- the misconduct was serious.

Factors to consider when assessing whether misconduct is serious are:

- persistent, repeated or premeditated behaviour
- risks posed to others or the consequences of the behaviour
- the level of public trust and responsibility attached to the public office
- the amount of money involved (if any)
- 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.

Certain degrees of bullying, or management's failure to action a complaint, may constitute serious professional misconduct.

Detrimental conduct is defined as action taken, or threatened action, against a person who has made a protected disclosure that causes:

- injury, loss or damage
- intimidation or harassment
- discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business (including disciplinary action).

Considerations of detrimental action include:

- the nature of the detrimental action and whether it is being taken in reprisal for a public interest disclosure
- a person threatening, taking action or inciting permission for another to take action because:
 - a person has made, or intends to make, a disclosure
 - a person has cooperated or intends to cooperate with an investigation of a disclosure.

Detrimental action is NOT:

- legitimate management action where there are good and sufficient grounds that would justify the action against any other person in the same circumstances.

Examples of improper conduct and detrimental action

Examples of improper conduct

- A Council employee takes a bribe or receives a payment other than their wages in exchange for the discharge of a public duty.
- An employee sells/exchanges confidential information for a personal gain.
- An employee favours an application for jobs or permits by friends and relatives.

Examples of a detrimental action

- A manager demotes, transfers, isolates a discloser in the workplace or changes the duties of a person who has made a disclosure as a result of making a disclosure.
- A person threatens, abuses or carries out other forms of harassment directly or indirectly against the person who makes or is suspected of making a disclosure and their family or friends.
- A public body discriminates against the person who makes a disclosure or their family and associates in subsequent applications for jobs, permits or tenders.

Roles and responsibilities

Title	Responsibility
Coordinator Risk, Information and Integrity	Public Interest Disclosure Coordinator
Manager Finance & Governance	Public Interest Disclosure Officer
Manager Workplace, People & Culture	Public Interest Disclosure Officer
Risk and Integrity Officer	Public Interest Disclosure Officer

Public Interest Disclosure Coordinator

The PID Coordinator has a pivotal role in the disclosure reporting system. They will:

- be the main contact point for general advice about the operation of the Act
- document and record any disclosure made
- receive all disclosures submitted by members of the public and/or employees
- receive all disclosures forwarded from PID Officers
- accommodate disclosures requested to be made privately, discreetly and away from the workplace if necessary
- assess each disclosure to determine whether it could meet the criteria of a PIC
- take all necessary steps to ensure the identity of all people involved remain confidential
- notify IBAC of all suspected PIDs made to Maroondah City Council within 28 days
- appoint a Welfare Manager (if appropriate) to support the discloser, in particular, from detrimental action
- advise the discloser of the progress of an investigation
- liaise with the Chief Executive Officer.

Public Interest Disclosure Officers

PID Officers will:

- be a further contact point for general advice about the operation of the Act
- inherit the functions of the PID Coordinator where necessary
- accommodate disclosures requested to be made privately, discreetly, and away from the workplace if necessary
- document and record any disclosure made and forward disclosure to the PID Coordinator
- maintain confidentiality
- liaise with Chief Executive Officer.

Where the PID Coordinator is unavailable, a relief Coordinator will be appointed by the Director Corporate Services to carry out the full powers, duties and functions of the PID Coordinator in their absence.

Welfare Manager

Maroondah City Council will provide support to a discloser as the circumstances require. The PID Coordinator will appoint a Welfare Manager to assist in offering this support. The Welfare Manager will:

- examine the immediate welfare and protection needs of a discloser and/or witness
- advise the discloser and/or witness of the protections available under the Act
- liaise with and provide recommendations to PID Coordinator regarding appropriate support
- if the discloser and/or witness is an employee of Maroondah City Council, refer to the Employee Assistance Program (EAP) if agreed to
- engage in external support networks if appropriate and requested (i.e. preferred/external psychologists or counselling services)
- provide support with any concerns of detrimental action taken for making a disclosure or cooperating with an investigation
- facilitate the appropriate support in conjunction with the PID Coordinator
- maintain confidentiality.

Independent Broad-Based Anti-Corruption Commission (IBAC)

In relation to local government, a suspected disclosure will be forwarded to IBAC, who determine if a disclosure meets the criteria to be a Public Interest Complaint. IBAC will only investigate complaints of the most serious, systemic wrongdoing.

A complaint may be actioned by:

- being referred to the Victorian Ombudsman or Victoria Police to consider investigating the issues raised (if the discloser and other investigating body agrees)
- referring the disclosure back to Council to manage the issue under Council's internal complaints or grievance processes
- IBAC may investigate the issue if they are the most appropriate agency, and it falls within their investigation threshold
- IBAC may take no further action if too much time has passed since the conduct occurred, the complaint has already been dealt with, or there is no new evidence to consider.

For further information on how IBAC assess and determine if a disclosure meets the criteria of a public interest complaint, see IBAC's website:

<https://www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-making-and-handling-protected-disclosures>

Maroondah City Council employees

Employees are encouraged to report known or suspected incidences of improper conduct or detrimental action and must maintain confidentiality of any person involved in a disclosure if their identity is known or suspected. All employees must refrain from any action that is or could be perceived as detrimental action.

These procedures complement normal communication channels between supervisors and employees and employees are encouraged to raise matters of concern at any time with their supervisors. Alternatively, if an employee reports a disclosure to their immediate supervisor, the complaint must be forwarded to the PID Coordinator immediately. Confidentiality by supervisors must be maintained.

Members of the public

These procedures complement Council's normal complaint handling process and members of the public are encouraged to contact Council under the complaints process in the first instance. If the matter involves improper conduct or detrimental action a member of the public may then wish to submit a public interest disclosure.

The reporting system

If you wish to make a public interest disclosure about Maroondah City Council or any of its employees, you can make your disclosure to the *Public Interest Disclosure Coordinator*:

- Coordinator Risk, Information and Integrity. 9294 5699

If the PID Coordinator is unavailable, the following PID Officers will be able to assist:

- Manager Finance and Governance: 9298 4323
- Manager Workplace People and Culture: 9298 225
- Risk and Integrity Officer: 9298 4211

All disclosures will be referred to the PID Coordinator and a meeting away from the workplace can be arranged if requested.

Ways to report improper conduct or detrimental action

- **Via confidential email at PID@maroondah.vic.gov.au**
- **Written correspondence** clearly marked:
Confidential
Risk, Information & Integrity
Maroondah City Council
PO Box 156
Ringwood 3134
- **Phone** the PID Coordinator directly
- **Request a meeting** with either the PID Coordinator or a PID Officer (offsite if requested)
- **Directly to the Independent Broad-Based Anti-Corruption Commission (IBAC)**
Level 1, North Tower
459 Collins Street, Melbourne
VIC 3000
1800 555 677
www.ibac.gov.au

Criteria of a disclosure

To be a Public Interest Disclosure, a disclosure must be made in accordance with the PID Act and satisfy the following criteria:

- it must come from a natural person (an individual rather than on behalf of an organisation)
- it relates to conduct of a public body or public officer acting in their official capacity
- the alleged conduct is either:
 - improper conduct
 - detrimental action.

In reaching a conclusion as to whether a disclosure is a PID, the Coordinator will consider whether:

- the information **shows, or tends to show**, that the Council or employee has engaged, is engaging or proposes to engage in improper conduct or detrimental action; or
- the discloser **reasonably believes the information shows, or tends to show**, that the Council or employee has engaged, is engaging or proposes to engage in improper conduct or detrimental action.

The outcome of a disclosure

Where the PID Coordinator concludes that the disclosure **amounts to a PID**, they will:

- refer the disclosure to IBAC for investigation within 28 days under Part 3 of the Act
- notify the person who has made the disclosure that IBAC has been notified.

Where the PID Coordinator or IBAC concludes that the disclosure **is not a PID**, they will notify the discloser that:

- Council deems that the disclosure is not a PID and does not need to be referred to IBAC
- the disclosure was referred to IBAC for assessment under the act and IBAC deemed it not to be a PID
- the protections under Part 6 of the Act continue to apply.

Where the disclosure is deemed *not to be* a PID, the matter will not be dealt with under the Act. IBAC may refer the matter back to Council to be dealt with under Maroondah's normal complaint/disciplinary procedures and the PID Coordinator will decide how the matter should be responded to internally.

Confidentiality

Council will take all reasonable steps to protect the identity of a person making a disclosure. The Act prohibits any person who receives information via a disclosure from disclosing content or information.

There are two main restrictions on disclosing information:

- **Content of a public interest disclosure:** the content, information about the content, or any disclosure that has been assessed as a PID, is to remain confidential. This applies to a person or entity receiving or investigating the disclosure but *does not* apply to a discloser.
- **Identity of a person making a public interest disclosure:** information that would likely lead to the identification of a person making a disclosure is to remain confidential.

Unauthorised access or releasing any information relating to a Public Interest Disclosure is in breach of Sections 52 and 53 of the Act.

Exceptions to confidentiality obligations include:

- where it is necessary to do so in exercising the functions under the Act
- when obtaining legal advice in relation to the rights, liabilities, obligations and privileges under the Act
- when an interpreter is required to assist a person who does not have sufficient knowledge of the English language.
- when IBAC or the Victorian Inspectorate determines the disclosure is not a Public Interest Complaint

- to assist the discloser to seek support from a registered health practitioner, trade union or employee assistance program
- when the disclosure is to WorkCover for a worker's compensation claim, or to the Fair Work Commission for an application
- if the discloser provides consent.

While Council is required to include certain information about public interest disclosures in the Annual Report, details that are likely to lead to the identification of the people involved in the disclosure will be omitted.

Council will ensure all records (electronic or hard copy) are kept secure where only the PID Coordinator, PID officers, or Welfare Manager (where relevant) can access.

Records will be maintained in accordance with the Information Management Policy and the Public Records Act 1973.

Managing the welfare of a discloser

The PID Coordinator and Welfare Manager are responsible for ensuring the welfare of a person making a disclosure and protecting them from direct and indirect detrimental action.

Please see the Welfare Manager role description above and Appendix two for details on support to be provided.

IBAC have released guidelines for welfare management on their website for additional guidance.

<https://www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-protected-disclosure-welfare-management>

Keeping the discloser informed

The PID Coordinator will ensure a discloser is kept informed of all action taken and the time frames that apply. The person making the disclosure will be informed of the outcome of the initial assessment, decisions made in relation to the assessment and, if relevant, its referral to IBAC.

Occurrence of detrimental action

All employees will be advised that it is an offence for a person to take detrimental action in reprisal for a Public Interest Disclosure under the Act.

Detrimental action can include:

- any action causing injury to a person, loss or damage to property
- intimidation or harassment
- discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business (including taking disciplinary action).

If a person making a disclosure reports any action that would amount to detrimental action the PID Coordinator will:

- notify the Welfare Manager (if one is appointed)
- advise the Chief Executive Officer
- record details of the incident
- advise the discloser of their rights under the Act.

Detrimental action can be an offence against the Act as well as grounds for making a further disclosure. Where detrimental action is reported, the PID Coordinator will assess the report as a new disclosure under the Act. Where the PID Coordinator is satisfied that the disclosure constitutes detrimental action, they will refer the matter to IBAC. If the matter is deemed a Public Interest Complaint by IBAC, they may investigate the matter or refer it to another body for investigation as outlined in the Act.

Management of the person who makes a disclosure

Where a discloser is also implicated in misconduct, Maroondah City Council acknowledges that disclosing the matter should not prevent reasonable consequences to the discloser.

The Chief Executive Officer, on the advice of the PID Coordinator, will make the final decision whether disciplinary or any other action will be taken against the discloser. Disciplinary action will only take place after the disclosed matter has been appropriately dealt with.

In all cases where disciplinary or other action is being considered, the Chief Executive Officer must be satisfied that it clearly demonstrates:

- the decision to proceed with disciplinary action is not connected to the making of the disclosure but is based on the involvement of the discloser
- there are sufficient and reasonable grounds that would justify disciplinary action
- there are reasonable grounds that justify exercising any discretion to institute disciplinary or other action
- the PID Coordinator will thoroughly document the process, including decision-making and reasons why disciplinary or any other action is taken
- the PID Coordinator will clearly advise the person making the disclosure of the proposed action to be taken and any mitigating factors that have been considered.

Employees that are the subject of a disclosure must also be supported during the process. Council will take reasonable steps to maintain confidentiality of the person that is the subject of the disclosure.

Where the allegations contained in the disclosure are misguided or unsubstantiated:

- Council will give its full support to the subject of the disclosure
- if the matter has been publicly disclosed, the Chief Executive Officer will consider issuing a statement of support outlining that the allegations against a person were misguided and unsubstantiated.

Misdirected disclosures

The legislation provides a 'no wrong door' provision. This allows for a PID made to the wrong receiving entity to be redirected to IBAC without the discloser losing the protections of the PID scheme, where:

- the receiving entity must ordinarily be able to receive a PID
- the person making the disclosure must, in good faith, believe the receiving entity was the correct entity to receive the disclosure
- the discloser will be notified that their disclosure was initially directed to the incorrect entity and will be forwarded to IBAC.

For example, a disclosure relating to a Councillor is to be directed to IBAC in the first instance. However, if the Public Interest Disclosure Coordinator of Maroondah receives that disclosure they can assess the disclosure and refer it to IBAC (where the protections of the Act remain in force). Alternatively, the Coordinator may direct the discloser to the correct entity to submit the disclosure.

Another example is if Maroondah City Council was incorrectly sent a disclosure relating to another local council. Maroondah City Council will assess the disclosure and refer to IBAC if deemed a potential Public Interest Disclosure or direct the discloser to the correct entity to submit their disclosure.

Beyond the notification to IBAC, Maroondah will not disclose any information likely to reveal the identity of the person who made it and the content of the disclosure.

External disclosures

External disclosures are defined as PIDs made to a person/body that is not an entity that can normally receive a PID under the Act, such as a politician or a journalist.

External disclosures are designed to assist the discloser only when:

- the integrity system fails to respond and investigate a complaint
- the investigating entity does not meet the specified timeframes listed in s 38A of the Act.

It allows for people who have made a PID to make a further disclosure of substantially the same subject matter to external parties if:

- the original disclosure was not made anonymously
- the original disclosure was determined to be a Public Interest Complaint and the discloser was notified of that; and
- one of the following applies:
 - the discloser has not been notified of any action within six months of determination as a Public Interest Complaint and has not received a response within 30 days of requesting an update on progress
 - an investigation has not been completed within 12 months of it being determined a Public Interest Complaint and the discloser has not received a response within 30 days of requesting an update on progress
 - an investigation has not been completed within 12 months of it being determined a Public Interest Complaint and, even if the discloser received a response within 30 days after requesting an update on the progress, the discloser received no further update advising the investigation had been completed within six months of that response.

Confidentiality provisions do not apply to an external disclosure.

A discloser is to be made aware that an external disclosure must not contain information that may prejudice a criminal investigation, criminal proceeding or other legal proceeding, nor disclose investigative methods used by IBAC or Victoria Police.

Criminal offences

Maroondah will ensure the PID Coordinator, PID Officers and all other employees are aware of the following offences under the Act:

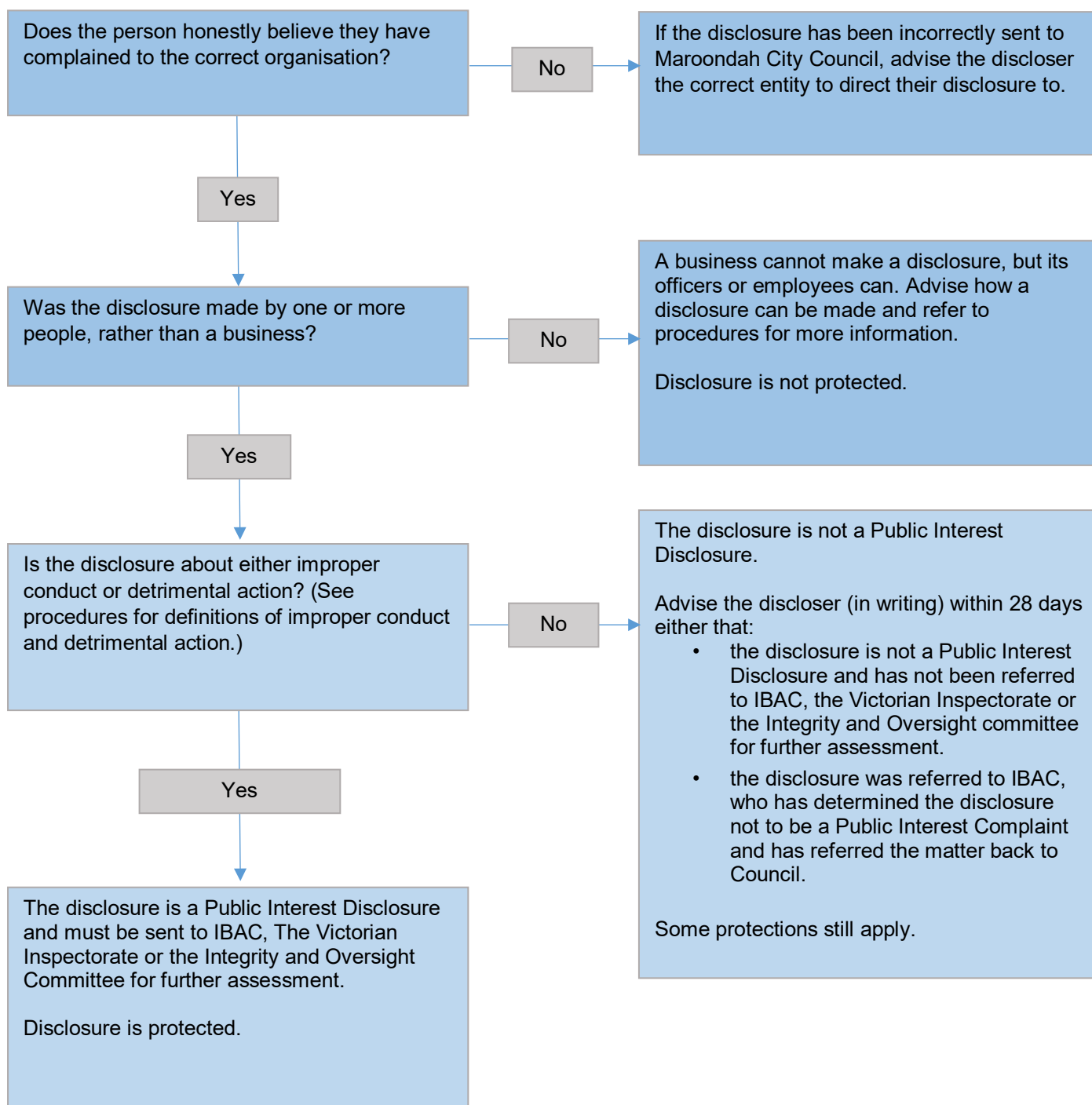
- It is an offence for a person to take detrimental action against a person in reprisal for a PID being made. The Act may issue a maximum penalty of a fine of 240 penalty units and/or two years imprisonment.
- It is an offence for a person to divulge information obtained as a result of the handling or investigation of a PID without legislative authority. The Act provides a maximum penalty of 120 penalty units and/or 12 months imprisonment.
- It is an offence for a person to knowingly provide false information under the Act with the intention that it be acted on as a disclosed matter. The Act provides a maximum penalty of 120 penalty units and/or 12 months imprisonment.

Supporting legislation and documents

- Public Interest Disclosures Act 2012
- Local Government Act 1989
- Employee Code of Conduct - HR06-06
- Councillor Code of Conduct
- Discipline Policy - HR06-02
- Employee Assistance Program - HR11-01

Appendix one - Public Interest Disclosure flowchart

Maroondah City Council is a public body authorised to receive disclosures and must comply with the provisions of the Act.



Appendix two - Welfare support table

(located on IBAC's website: "Guidelines for Public Interest disclosure welfare management")

<https://www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-protected-disclosure-welfare-management>)

Inform	<p>At a minimum:</p> <ul style="list-style-type: none"> • Confirm the disclosure has been received. • Outline the legislative or administrative protections available. • Describe the action you propose be taken. • If action has been taken, provide details about the results.
Provide active support	<p>Acknowledge the person for having come forward.</p> <ul style="list-style-type: none"> • Provide the person with assurance they have done the right thing and the organisation appreciates it. • Make a clear offer of support. • Assure them that all reasonable steps will be taken to protect them. • Give them an undertaking to keep them informed.
Manage expectations	<p>Have an early discussion with them:</p> <ul style="list-style-type: none"> • What outcome do they want? • Are their expectations realistic? • What will the organisation be able to deliver?
Maintain confidentiality	<p>The identity of the discloser and the subject matter of their disclosure need to be kept confidential:</p> <ul style="list-style-type: none"> • Make sure other staff cannot infer the identity of the discloser or a person cooperating with the investigation from any information they receive. • Remind the discloser not to reveal themselves or give out information that would enable others to identify them as a discloser. • Make sure that hard-copy and electronic files relating to the disclosure are accessible only to those who are involved in managing disclosures in your organisation.
Assess the risks of detrimental action being taken in reprisal	<p>Be proactive and do not wait for a complaint of victimisation.</p> <ul style="list-style-type: none"> • Actively monitor the workplace, anticipate problems and deal with them before they develop.
Protect the discloser/cooperator	<p>Examine the immediate welfare and protection needs of the person and foster a supportive work environment.</p> <ul style="list-style-type: none"> • Listen and respond to any concerns the person may have about harassment, intimidation or victimisation in reprisal for their actions. • Assess whether the concerns the person may have about harassment, intimidation or victimisation might be due to causes other than those related to a public interest disclosure.
Manage the impact of any investigation	<p>Prevent the spread of gossip and rumours about an investigation into the disclosure.</p>
Keep records	<p>Keep contemporaneous records of all aspects of the case management of the person, including all contact and follow-up action.</p>