

# PUBLIC INTEREST DISCLOSURES POLICY

<b>Policy Number:</b>	2.4.3
<b>Approved by:</b>	Chief Executive Officer
<b>Date Approved:</b>	17 December 2019
<b>Date of Next Review:</b>	1 October 2020
<b>Applicable to Unit(s):</b>	Whole Organisation and Councillors
<b>Responsible Officer:</b>	General Manager Corporate Services
<b>Related Policies:</b>	Fraud Control Procurement Risk Management
<b>Related Documents:</b>	Councillor Code of Conduct Staff Code of Conduct Public Interest Disclosure Act Guidelines
<b>Statutory Reference:</b>	<i>Privacy and Data Protection Act 2014 (Vic)</i> <i>Freedom of Information Act 1982</i> <i>Charter of Human Rights and Responsibilities Act 2006</i>

## OVERVIEW

This policy has been developed by Wellington Shire Council pursuant to section 58 of the *Public Interest Disclosure Act 2012* (previously the *Protected Disclosures Act 2012*). The purpose of the amendments made to the Act is to make it easier to make disclosures of improper conduct by public officers, and public bodies, including Wellington Shire Council, its staff, employees and Councillors. The changes allow a broader range of disclosures to be made, provide for more independent expert bodies to investigate disclosures and introduce a flexible 'no wrong door' approach to ensure disclosures aren't excluded because of non-compliance with complex procedures.

## THE POLICY

Wellington Shire Council is committed to the aims and objectives of the Act which recognises the value of transparency and accountability in its administrative and management practices and supports the making of disclosures that reveal improper conduct. It does not tolerate improper conduct by the organisation, its employees, Officers, or Councillors, nor the taking of reprisals against those who come forward to disclose such conduct.

### ***Public Interest Disclosure Act 2012 (the Act)***

Under the Act, the Independent Broad-based Anti-Corruption Commission (IBAC) has a key role in receiving, assessing and investigating disclosures about improper conduct and detrimental action taken in reprisal for a disclosure by public bodies or public officers.

The Act provides certain protections for people who make disclosures and creates certain obligations of confidentiality preventing the disclosure of the identity of the person who had made a disclosure and the content of the disclosure, unless it is done under certain specified circumstances. Disclosure of either the identity of a discloser, or the content of their disclosure that is not covered by any of those specified exceptions is a criminal offence.

## **From Public Interest Disclosure (PID) to Public Interest Complaint (PIC)**

A PID is a 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 (previously a protected disclosure). A PIC is the result of an investigation into reported PIDs where the determination by IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee (IOC) has established that the criteria for a PIC has been met (previously a protected disclosure complaint). Where a matter is determined to be a PIC, additional rules apply as to how it must be handled. These include a restricted list of bodies which can be referred the matter for investigation, what notifications must be given to the discloser and a restriction on withdrawing the complaint.

People making a disclosure must believe, on reasonable grounds, that the Councillor or Council employee has engaged in, or proposes to engage in, improper conduct or detrimental action. The conduct must be serious enough to constitute a criminal offence or reasonable grounds for dismissal. All disclosures can also be made anonymously.

Examples of such a disclosure may include but are not limited to:

- an officer taking a bribe to grant a permit;
- an officer ignoring, or concealing evidence of an illegal activity being conducted in the municipality;
- a Council officer selling or revealing confidential information to enable someone to gain advantage such as information about a tender;
- a substantial mismanagement of public resources;
- a substantial risk to public health or safety; or
- a substantial risk to the environment.

The definition of improper conduct has been revised to specify the following categories:

### **Public Interest Disclosure (Councillor)**

Disclosures about a Wellington Shire Councillor should be made directly to IBAC or the Victorian Ombudsman.

### **Public Interest Disclosure (Council Staff)**

Disclosures regarding Wellington Shire Council staff should be made to Council's Protected Disclosure Coordinator (General Manager Corporate Services) who has oversight and responsibility for the operation of the Public Interest Disclosure policy and compliance with the provisions of the Act.

## **ADDITIONAL PROVISIONS TO AMENDED *PUBLIC INTEREST DISCLOSURE ACT 2012***

### **Misdirected Disclosures**

This allows for a PIO made to the wrong receiving entity to be redirected to another receiving entity, without the discloser losing the protections of the PIO scheme, where:

- the receiving entity must be an entity to which a PIO ordinarily may be made; and
- the person making the disclosure must honestly believe that the receiving entity was the appropriate entity to receive the disclosure.

For example, if the Victorian Ombudsman receives a misdirected PIO about Victoria Police it can redirect the PIO to IBAC for assessment.

## **External Disclosures**

A new class of disclosure is created for 'external disclosures'. External disclosures are defined as a PIO made to a person or body who is not an entity to whom a PIO can be made under Division 2, Part 2 of the PIO Act (the part which prescribes how and to whom PIDs must be made).

A discloser may disclose the details of a PIC to an external person or body (who is not able to receive disclosures) if the assessing entity does not notify the discloser about any action taken in response to the original disclosure within six months and has not responded to a request for advice within 30 days. An external disclosure may also be made if the investigation of the original disclosure is not completed within 12 months, and the investigating entity has not responded to a request for advice within 30 days.

Finally, an external disclosure may be made where the investigation of the original disclosure was not completed within 12 months, the discloser has received an update within 30 days of requesting it, but the discloser has then not received any further update advising that the investigation has been completed within a further six months of that response.

## **Appointing a Welfare Manager (Coordinator Human Resources)**

A Welfare Manager's role is to monitor the specific needs of the discloser or cooperator and provide them with practical advice and support.

In most circumstances, a Welfare Manager will only be required when a public interest disclosure has been evaluated as a genuine public interest complaint and proceeds to investigation. However, each case needs to be assessed on its own merits.

A Welfare Manager must not divulge any details relating to the disclosed matter to any person other than the Protected Disclosure Coordinator, or the principal officer of the public body. All meetings between the Welfare Manager and person must be conducted discreetly to protect the person from being identified as being involved in the disclosure.

Council's Welfare Manager (Coordinator Human Resources) can be reached on 03 5142 3040.

## **Reporting a Protected Disclosure**

### **By telephone:**

Public Interest Disclosure Coordinator (General Manager Corporate Services) can be reached on 5142 3181.

By email: [pid@wellington.vic.gov.au](mailto:pid@wellington.vic.gov.au)

### **By post:**

"Confidential" Public Interest Disclosure  
Attention General Manager Corporate Services  
PO Box 506  
Sale VIC 3850

**Report directly to IBAC or the Victorian Ombudsman:**

**Independent Broad-based Anti-Corruption Commission (IBAC)**

Telephone IBAC on 1300 735 135 to request a form to be sent to you.

Postal address:

Level 1, North Tower  
459 Collins Street  
Melbourne VIC 3000

Complete the IBAC secure online form available at: <https://www.ibac.vic.gov.au/reporting-corruption/report/complaints-form> or download a complaint form at [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au) and return by email, fax or post.

**Victorian Ombudsman**

Telephone Victorian Ombudsman on (03) 9613 6222 Email: [ombudvic@ombudsman.vic.gov.au](mailto:ombudvic@ombudsman.vic.gov.au)

Postal address:

Level 2, 570 Bourke Street  
Melbourne VIC 3000

Complete the Victorian Ombudsman secure online form available at:

<https://www.ombudsman.vic.gov.au/Complaints/Make-a-Complaint> or download a complaint form at [www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au) return by email, fax or post.

**HUMAN RIGHTS**

Wellington Shire Council is committed to upholding the Human Rights principles as outlined in the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* and referred to in Council's Human Rights Policy. The Human Rights Checklist has been completed and this policy accords with Council's policy commitment to uphold human rights principles.