

## PUBLIC INTEREST DISCLOSURES POLICY

<b>Policy Number:</b>	2.4.3
<b>Approved by</b>	Council
<b>Date Approved/Effective:</b>	December 2023
<b>Date of Next Review:</b>	December 2024
<b>Applicable to Unit(s):</b>	Whole Organisation
<b>Responsible Officer:</b>	General Manager Corporate Services
<b>Related Policies:</b>	Fraud Control Policy Procurement Policy Risk Management Policy
<b>Related Documents:</b>	Councillor Code of Conduct Employee Code of Conduct Risk Management Framework Complaint Handling Policy IBAC Guidelines for handling public interest disclosures
<b>Statutory Reference:</b>	<i>Freedom of Information Act 1982</i> <i>Privacy and Data Protection Act 2014 (Vic)</i> <i>Public Interest Disclosures Act 2012</i>

### OVERVIEW

The *Public Interest Disclosures Act 2012* (the PID 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.

As the Wellington Shire Council can receive public interest disclosures, it is a requirement under section 58 of the PID Act to establish a procedure which is readily available to members of the public as well as internally to all Councillors and employees of the Council.

### THE POLICY

Wellington Shire Council is committed to the aims and objectives of the PID 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. Council does not tolerate improper conduct by the organisation, its employees, or Councillors, nor reprisals against those who come forward to disclose such conduct.

This policy is a resource for disclosers and potential disclosers; whether an internal Council member, staff, or an external member of the public. This policy provides the procedure for any individual to make a disclosure, receive the protections available under the PID Act, and sets out how the discloser and their disclosure may be managed and handled by the Council.

## **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
- may happen in the future.

## **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.

As Wellington Shire Council is a public body, disclosures can be made in relation to a Councillor or employee.

## **Who can make a disclosure?**

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.

## **What is improper conduct?**

Improper conduct includes corrupt conduct, criminal offences and other conduct specified in the PID Act. If the conduct is trivial, it will not meet the threshold of improper conduct.

Corrupt conduct includes conduct of a Councillor or Council employee that constitutes:

- 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
- 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.

### **What is 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
- discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action. A person doesn't need to have actually taken the detrimental action, but can have threatened to do so, or incited or permitted someone else to do so.

### **Misdirected Disclosures**

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

- the receiving entity must be an entity to which a PID 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.

A misdirected disclosure to Wellington Shire Council is one where the person making the disclosure believed that the Wellington Shire Council was the appropriate body to make it to, but it should have been made to another entity.

### **External Disclosures**

External disclosures are defined as a PID made to a person or body who is not an entity to whom a PID can be made under Division 2, Part 2 of the PID 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.

### How to make a Public Interest Disclosure?

You may make a disclosure about a Councilor or Council employee to a relevant entity in the table below, either orally or in writing. Disclosures may be anonymous.

Entity	Contact for disclosures relating to:	Contact Details
<b>Wellington Shire Council - Public Interest Disclosure Coordinator</b>	<b>Wellington Shire Council employees</b>  The General Manager Corporate Services is appointed as the Public Interest Disclosure Coordinator. They have oversight and responsibility for the operation of the Public Interest Disclosure policy and compliance with the provisions of the PID Act.  <b>Disclosures in relation to Councillors can only be made to IBAC or the Victorian Ombudsman</b>	<b>Telephone</b> the Public Interest Disclosure Coordinator on 5142 3181.  <b>Email:</b> <a href="mailto:pid@wellington.vic.gov.au">pid@wellington.vic.gov.au</a>  <b>Postal address:</b> “Confidential” Public Interest Disclosure Attention: General Manager Corporate Services PO Box 506 Sale VIC 3850
<b>Independent Broad-based Anti-Corruption Commission (IBAC)</b>	<b>Wellington Shire Councillors or Council employees</b>	<b>Telephone</b> IBAC on 1300 735 135 to request a form to be sent to you.  Complete the IBAC secure <b>online</b> form available at: <a href="https://www.ibac.vic.gov.au/reporting-corruption/report/complaints-form">https://www.ibac.vic.gov.au/reporting-corruption/report/complaints-form</a> or download a complaint form at <a href="http://www.ibac.vic.gov.au">www.ibac.vic.gov.au</a> and return by email, fax or post.  <b>Email:</b> <a href="mailto:info@ibac.vic.gov.au">info@ibac.vic.gov.au</a>  <b>Fax:</b> (03) 8635 6444  <b>Mail:</b> GPO Box 24234, Melbourne Vic 3001

Entity	Contact for disclosures relating to:	Contact Details
<b>Victorian Ombudsman</b>	<b>Wellington Shire Councillors or Council employees</b>	<p><b>Telephone</b> Victorian Ombudsman on 9613 6222</p> <p><b>Email:</b> <a href="mailto:ombudvic@ombudsman.vic.gov.au">ombudvic@ombudsman.vic.gov.au</a></p> <p><b>Postal address:</b> Level 2, 570 Bourke Street Melbourne VIC 3000</p> <p>Complete the Victorian Ombudsman secure <b>online</b> form available at: <a href="https://www.ombudsman.vic.gov.au/complaints/">https://www.ombudsman.vic.gov.au/complaints/</a>; or</p> <p>Download a complaint form at <a href="http://www.ombudsman.vic.gov.au">www.ombudsman.vic.gov.au</a> and return by email, fax or post.</p>

#### **Responsibilities of Council's Public Interest Disclosure Coordinator (General Manager, Corporate Services)**

- receiving all disclosures, including phone calls, emails and letters from members of the public or staff
- assessing disclosures in accordance with the PID Act and IBAC Guidelines for handling public interest disclosures
- notifying all assessable disclosures to Independent Broad-based Anti-Corruption Commission (IBAC) within 28 days
- establishing and managing a secure filing system and processes to ensure confidentiality
- managing the welfare of a discloser and advising them of protections available under the PID Act
- tracking the actions taken in relation to disclosures
- collating and reporting statistics on disclosures.

If not referred to IBAC, or IBAC determines that it is not a public interest disclosure, the Public Interest Disclosure Coordinator will consider the matter in accordance with relevant Council policies, including the Complaints Handling Policy and Employee Code of Conduct.

#### **Role of the Independent Broad-based Anti-Corruption Commission (IBAC)**

Under the PID Act, the 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.

#### **Determining if a disclosure is a public interest complaint**

Once IBAC receives a notification, it must determine whether the disclosure is a public interest complaint. In making its assessment, IBAC may seek additional information from the notifying entity or from the discloser. 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.

## **Notifying entities and the discloser of the determination**

Once IBAC has determined whether a disclosure is a public interest disclosure, it:

- advises the relevant notifying entity of its determination
- advises the discloser of the determination and the action it intends to take (this applies to disclosers who have made their disclosures directly to IBAC and those who have had their disclosures notified to IBAC).

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

Wellington Shire Council is committed to the protection of genuine disclosers against detrimental action taken in reprisal for the making of Public Interest disclosures. A Welfare Manager's role is to monitor the specific needs of the discloser, or someone who has cooperated with the investigation of a public interest disclosure, and provide them with practical advice and support.

In most circumstances, a Welfare Manager will only be required when a PID 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 Public Interest 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.

## **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.

## REVISION HISTORY

VERSION	DATE	MAJOR / MINOR UPDATE	SUMMARY OF CHANGES
1.0	December 2022	Minor update	Amended incorrect reference from PIO to PID; amended old references to Protected Disclosure  Postal address for IBAC  Hyperlink to online form for Victorian Ombudsman
1.1	December 2023	Minor update	Date of Next Review updated to: December 2024  Formatting and terminology updates  Reference to the IBAC Guidelines for handling Public Interest Disclosures added  Expansion of the responsibilities of Council's Public Interest Disclosure Coordinator  Expanded definition of what a public disclosure can be about including adding the definition of corrupt conduct and detrimental conduct.  Added reference to the Complaint Handling Policy  Approved by: updated from CEO to Council