



Council Policy Manual

WEST WIMMERA SHIRE COUNCIL

COUNCIL POLICY

PUBLIC INTEREST DISCLOSURE POLICY

Policy No:

Adopted by Council:

18 June 2020

Next review date:

~~June 2024~~2026

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Senior Manager: Chief Executive Officer

Responsible Officer: Director Corporate and Community Services

Functional Area: CEO & Governance

Introduction & Background

The Public Interest Disclosure Policy provides for a system for reporting disclosures of improper conduct or detrimental action by West Wimmera Shire Councillors or employees.

The system enables such disclosures to be made to the Public Interest Disclosures Coordinator (PDC) or to others as defined in section 5.1, Contacts. Disclosures ~~may~~ can be made by employees or by members of the public.

Protected Disclosures (PD) became Public Interest Disclosures (PID) on 1 January 2020. Under the PID Act, people who report improper conduct and detrimental action are offered legal protection. Once a report is investigated it becomes known as a Public Interest Complaint. These complaints were previously known as 'Whistleblower' complaints.

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Purpose & Objectives

~~The policy 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 or managers as applicable. As an alternative, employees may make a disclosure of improper conduct or detrimental action under the PD Act in accordance with this policy.~~

~~The Protected Disclosures Act 2012 (PD Act) replaced the Whistleblowers Protection Act 2001 on 10 February 2013.~~

• 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.



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	<p>• <u>Ensure that certain information about a disclosure is kept confidential including the identity of the person making the disclosure and the content of that disclosure.</u></p> <p><u>The purpose of the PD Act is to encourage and facilitate the making of disclosures of improper conduct by public officers and public bodies.</u></p> <p><u>The PD Act provides protection from detrimental action to any person affected by a Public Interest Disclosure and establishes a system for the matters disclosed to be investigated and rectifying action to be taken.</u></p> <p><u>Under the PD Act, any person can be one who makes a disclosure, is a witness, or a person who is the subject of an investigation.</u></p> <p><u>The policy complements the usual communication channels between managers and employees.</u></p> <p><u>Employees are encouraged to continue to raise appropriate matters at any time with their supervisors or managers as applicable. As an alternative, employees can make a disclosure of improper conduct or detrimental action under the PID Act in accordance with this policy.</u></p>
<u>Response to the Overarching Governance Principles of the Local Government Act 2020</u>	<p><u>Section 9 of the Local Government Act 2020 states that a Council must in the performance of its role give effect to the overarching governance principles.</u></p> <p><u>This policy is in response to the following overarching governance principle/s of the Local Government Act 2020:</u></p> <p><u>(a) the community engagement principles (section 56);</u> <u>(b) the public transparency principles (section 58);</u> <u>(c) the strategic planning principles (section 89);</u> <u>(d) the financial management principles (section 101);</u> <u>(e) the service performance principles (section 106);</u></p>
Definitions	<p>Improper Conduct means:</p> <p>(a) corrupt conduct; or (b) conduct of a public officer or public body engaged in by the public officer or public body in their capacity as a public officer or a public body that constitutes— (i) a criminal offence; or (ii) serious professional misconduct; or (iii) dishonest performance of public functions; or (iv) an intentional or reckless breach of public trust; or</p>

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- (v) 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; or
- (vi) a substantial mismanagement of public resources; or
- (vii) a substantial risk to the health or safety of one or more persons; or
- (viii) a substantial risk to the environment; or
- (c) conduct of any person that—
 - (i) adversely affects the honest performance by a public officer or public body of their functions as a public officer or public body; or
 - (ii) 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) a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument; or
 - (B) an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument; or
 - (C) a financial benefit or real or personal property; or
 - (D) any other direct or indirect monetary or proprietary gain— that the person or associate would not have otherwise obtained; or
- (d) conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referred to in paragraph (a), (b) or (c).

Detrimental Action

Detrimental action is action in reprisal for a Public Interest Disclosure and can include:

- Action causing injury, loss or damage;
- Intimidation or harassment; and
- Discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action.

Detrimental action includes:

- Engaging in physical actions and activities causing or intended to cause a detrimental outcome upon a person.
- Threatening to cause detrimental outcomes to a person.
- Inciting others to engage in actions or threaten actions which cause a detrimental outcome upon a person.
- Actions causing or threats to cause detrimental action against the discloser or any other person.

Discloser

Any person who makes a disclosure which may be a Public Interest Disclosure.



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Independent broad-based anti-corruption commission (IBAC)

IBAC is Victoria's first anti-corruption body with responsibility for identifying and preventing serious corrupt conduct across the whole public sector, including members of Parliament, the judiciary and state and local government.

Penalty Unit

In Australian law, a penalty unit (abbreviated as PU) is an amount of money used to compute pecuniary penalties for many breaches of statute law. Fines are calculated by multiplying the value of one penalty unit by the number of penalty units prescribed for the offence. The different jurisdictions that make up Australia each have their own penalty units. The value of a penalty unit, and the manner and frequency of varying that value, differ from state to state, and there are also federal penalty units that apply only to federal offences.

Public Interest Disclosures Coordinator (PDC)

The Public Interest Disclosures Coordinator has a central role in distributing information or assistance in the internal reporting system.

Public Interest Disclosures Officer (PDO)

The Public Interest Disclosures Officer will be a contact point for general advice about the operation of the PID Act and is responsible for looking after the general welfare of any persons making Public Interest Disclosures, or for those who may be the subject of a Public Interest Disclosure.

Public Body and Public Officers

Public bodies and officers can include:

- government departments and agencies
- statutory authorities
- Councillors
- officers of municipal councils
- government-appointed boards and committees
- government-owned companies
- universities
- TAFE colleges
- public hospitals
- state-funded residential care services
- health services contractors
- correctional services contractors

Department Manager

~~The Department Manager is responsible for looking after the general welfare of any persons making Public Interest Disclosures, or for those who may be the subject of a Public Interest Disclosure.~~



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Policy Details

1. Scope

The West Wimmera Shire Council is committed to the aims and objectives of the Protected Public Interest Disclosures Act. It ~~does~~ will not tolerate improper conduct by its elected representatives or employees, including reprisals against those who come forward to disclose such conduct. ~~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, conduct involving a substantial risk to public health and safety, or the environment. ~~The West Wimmera Shire 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.~~

The West Wimmera Shire Council takes seriously its responsibilities to persons who may make a disclosure in respect to improper conduct. This procedure has been established to ensure the confidentiality of any persons making a disclosure and their welfare, are protected. Council will take all reasonable steps to protect people who make such disclosures from any detrimental action in reprisal for making the disclosure. Disclosures can be made by employees or by members of the public. These procedures will ensure that natural justice is afforded to the person who is the subject of the disclosure. ~~All reasonable steps will be made to protect such persons 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.~~

The Public Interest Disclosures Policy shall not in any way prevent the application of other laws, regulations, and/or Council Policies.

2. ~~Actions~~ - Contacts

Disclosures of improper or corrupt conduct or detrimental action by West Wimmera Shire Council employees (excluding Councillors) may be made to the following officers:

The Public Interest Disclosures Coordinator (PDC)

Chief Executive ~~Officer~~, West Wimmera Shire Council

Public Interest Disclosures Officer (PDO)

Director of Corporate & Community Services, West Wimmera Shire Council

Department Manager

~~Individual Department Managers as relevant, West Wimmera Shire Council,~~

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SupervisorsManagers

Public Interest Disclosures can also be made to the **supervisor-manager** of the discloser or the **supervisor-manager** of the person who is the subject of the disclosure.

The Ombudsman/IBAC

A disclosure about improper conduct or detrimental action by a West Wimmera Shire Councillor or employees may also be made directly to the Ombudsman or IBAC.

Disclosures relating to Councillors can only be made directly to the Ombudsman or IBAC.

Victorian Ombudsman

Level 2, 570 Bourke Street, Melbourne VIC 3000

Internet: www.ombudsman.vic.gov.au
Online: www.ombudsman.vic.gov.au/Complaints/Make-a-Complaint
Phone: (03) 9613 6222
Toll Free (regional only): 1800 806 314

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IBAC

Level 1, North Tower, 459 Collins Street, Melbourne, VIC 3000

Internet: www.ibac.vic.gov.au
Online: www.ibac.vic.gov.au/reporting-corruption/complaints-form
Phone: 1300 735 135

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3. Public Interest Disclosures

A Public Interest Disclosure (PID) is a disclosure of improper conduct or detrimental action by public bodies or the employees or public officers of public sector bodies that is made to one of the organisations specified in Part 2 of the PID Act which include:

- IBAC
- The Ombudsman
- The Victorian Inspectorate
- A public service body within the meaning of the *Public Administration Act 2004* if the disclosure relates to the conduct of that public service body, a member of that public service body or an officer or employee of that public service body
- Victoria Police if the disclosure relates to a member of the Victoria Police
- A Council if the disclosure relates to a member, officer or employee of that Council (note that a disclosure about a Councillor must be made directly to IBAC or the Ombudsman)



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	<p>A disclosure can be made in relation conduct or action that has occurred in the past, is occurring now or may happen in the future.</p> <p>Any natural person may make a disclosure.</p>
4.	<p>Actions: Roles & Responsibilities</p> <p>Employees</p> <p>Employees must not initiate or participate in improper or corrupt conduct or detrimental action.</p> <p>Employees are encouraged to report known or suspected incidences of improper conduct or detrimental action in accordance with this policy.</p> <p>All employees must refrain from any activity that is, or could be perceived to be, victimisation or harassment of a person who makes a disclosure. Furthermore, they should protect and maintain the confidentiality of a person they know or suspect to have made a disclosure.</p> <p>Public Interest Disclosures Coordinator</p> <p>The Public Interest Disclosures Coordinator has a central role in distributing information or assistance-assisting in the internal reporting system. He or she<u>They</u> will:</p> <ul style="list-style-type: none">• Receive all disclosures that have been made to any relevant person within the organisation;• Impartially assess each disclosure to determine whether it is a Public Interest Disclosure made in accordance with Part 2 of the <u>PID</u> Act (that is, a Public Interest Disclosure);• Coordinate the reporting system used by the organisation;• Be responsible for ensuring that the West Wimmera Shire Council carries out its responsibilities under the <u>PID</u> Act and the Guidelines;• Liaise with IBAC in regard to the <u>PID</u> Act;• Arrange for appropriate welfare support via the Department Manager<u>Public Interest Disclosure Officer</u> for any persons making a Public Interest Disclosure and to protect him or her from any reprisals;• Advise persons making a Public Interest Disclosure of the progress of an investigation into the disclosed matter;• Establish and manage a confidential filing system;• Collate and publish statistics on disclosures made;• Take all necessary steps to ensure the identity of any persons making Public Interest Disclosures and the identity of the person who is the subject of the disclosure are kept confidential; and• Liaise with the Chief Executive regarding a disclosure (when the CEO is not the PDC).

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- Receive any disclosure made orally or in writing (from internal and external sources);
- Commit to writing any disclosure made orally;

Public Interest Disclosures Officer

The Public Interest Disclosures Officer will:

- Be a contact point for general advice about the operation of the PID Act for any person wishing to make a disclosure about improper conduct or detrimental action;
- Receive directly any disclosure made orally or in writing (from internal and external sources);
- Commit to writing any disclosure made orally;
- Take all necessary steps to ensure the identity of any persons making Public Interest Disclosures and the identity of the person who is the subject of the disclosure are kept confidential; and
- Forward all disclosures and supporting evidence to the Public Interest Disclosures Coordinator.

Department Manager

The Department Manager is responsible for looking after the general welfare of any persons making a Public Interest Disclosure and for those who may be the subject of a Public Interest Disclosure.

The Department Manager will:

- Examine the immediate welfare and protection needs of any persons who have made a disclosure and seek to foster a supportive work environment;
- Advise the discloser of the legislative and administrative protections available to him or her;
- Listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making a disclosure; and
- Ensure the expectations of any persons making Public Interest Disclosures are realistic.
- Be mindful of the welfare implications for the person who may be the subject of a Public Interest Disclosure.
- ~~Receive directly any disclosure made orally or in writing (from internal and external sources);~~
- ~~Commit to writing any disclosure made orally;~~
- ~~Take all necessary steps to ensure the identity of any persons making Public Interest Disclosures and the identity of the person who is the subject of the disclosure are kept confidential; and~~
- ~~Forward all disclosures and supporting evidence to the Public Interest Disclosures Coordinator.~~

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5.	<p>Actions: Confidentiality</p> <p>The West Wimmera Shire Council will take all reasonable steps to protect the identity of any persons making a Public Interest Disclosure. Maintaining confidentiality is crucial in ensuring there are no reprisals made against persons making a Public Interest Disclosure.</p> <p>The P!D Act requires any person who receives information due to the handling or investigation of a Public Interest Disclosure, not to disclose that information except in certain limited circumstances.</p> <p>Disclosure of information in breach of section 52 constitutes an offence that is punishable by a maximum fine of 120 penalty units or 12 months imprisonment or both.</p> <p>The circumstances in which a person may disclose information obtained about a Public Interest Disclosure include:</p> <ul style="list-style-type: none"> • Where exercising the functions of the West Wimmera Shire Council under the P!D Act; • When making a report or recommendation under the P!D Act; • When publishing statistics in the annual report of the West Wimmera Shire Council; • In criminal proceedings for certain offences in the P!D Act. <p>The P!D Act prohibits the:</p> <ul style="list-style-type: none"> • Inclusion of particulars in any report or recommendation that is likely to lead to the identification of any persons making Public Interest Disclosures. • Disclosure of particulars in an annual report that might lead to the identification of the person who is the subject of the disclosure. <p>Particular circumstances where information may be disclosed include:</p> <ul style="list-style-type: none"> • Where the disclosure is made in accordance with the consent of the disclosing person to the disclosure of their identity • Where IBAC or the Victorian Inspectorate has determined that the assessable disclosure is not a Public Interest Disclosure and the person or body subsequently discloses the information • An investigating entity publishes a report to parliament, made in accordance with its confidentiality requirements • For the purposes of a proceeding for an offence against a relevant act • For the purpose of obtaining legal advice • To an interpreter • To a parent or guardian of a person who is under 18 years of age • To an independent person, for the purposes of enabling a person who is suffering a disability to understand an obligation under this P!D Act
6.	<p>Actions: Records Management</p> <p>To prevent breaches of confidentiality and to minimise the possibility of detrimental action, the West Wimmera Shire Council will establish a secure electronic and paper filing system.</p>



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	<p>All printed material will be kept in files that are clearly marked as a Protected Disclosures Act matter, and warn of the criminal penalties that apply to any unauthorised divulgence of information concerning a Public Interest Disclosure.</p> <p>All electronic files will be password protected and have limitations on access rights. Backup files will be kept on external storage devices. All materials relevant to an investigation, such as interviews, will also be stored securely within the Public Interest Disclosures file.</p> <p>The West Wimmera Shire Council will not email documents relevant to a Public Interest Disclosure matter and will ensure all phone calls and meetings are conducted in private.</p>
7.	<p>Actions: Making a Disclosure</p> <p>To be assessed as a Public Interest Disclosure, a disclosure must meet all of the following criteria:</p> <ol style="list-style-type: none"> A natural person (that is, an individual person rather than a corporation) has to have made the disclosure The disclosure has been made verbally or in writing to either the Public Interest Disclosures Coordinator, Chief Executive or those identified in section 5.1, Contacts The disclosure relates to conduct of the West Wimmera Shire Councillors or Council officer acting in their official capacity The alleged conduct is either improper or corrupt conduct or detrimental action (as defined in section 4, Definitions, of this procedure) taken against a person in reprisal for making a Public Interest Disclosure The person making the disclosure has reasonable grounds for believing the alleged conduct has occurred <p>Where a person is contemplating making a disclosure and is concerned about approaching the Public Interest Disclosures Coordinator or an eligible Public Interest Disclosures Officer (as per section 5.1) in the workplace, he or she can call the relevant officer and request a meeting in a discreet location away from the workplace.</p> <p>If one or more of the above elements are not satisfied, the person has not made an assessable disclosure under Part 2 of the PID Act.</p> <p>Where a disclosure is assessed not to be a Public Interest Disclosure, the matter does not need to be dealt with under the PID Act. The Public Interest Disclosures Coordinator will decide how the matter should be responded to.</p> <p>Where the Public Interest Disclosures Coordinator has received a disclosure that has been assessed to be a Public Interest Disclosure, the Public Interest Disclosures Coordinator must notify IBAC within 28 days.</p> <p>A person may make a disclosure:</p> <ol style="list-style-type: none"> Orally In writing (Disclosures cannot be made by fax) Electronically (email only) Anonymously



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Disclosures can be made anonymously, including from unverified email addresses, phone calls, in a conversation or a meeting.

If the disclosure is made orally, the Public Interest Disclosures Coordinator will ensure that notes are made immediately at the time of the disclosure.

If the disclosure comes from an email address from which the identity of the person making the disclosure cannot be determined, the disclosure will be treated as an anonymous disclosure.

Any person can submit an allegation or complaint, which may or may not be a disclosure under the PID Act or under this policy.

The PID Act makes it an offence to make a false disclosure or to provide further false information.

The PID Act defines the following disclosure as *not* being Public Interest Disclosures:

- Where a person making a disclosure expressly states in writing that they are not wishing to make a Public Interest Disclosure
- Where a disclosure is made by an officer or employee of an investigating entity made during the course of an investigation

Disclosing to the appropriate person or body:

A person must make a disclosure, allegation or complaint to the appropriate person or body for the disclosure to be assessed as a Public Interest Disclosure under the PID Act. Refer section 4.1, Contacts for list or the table below.

The West Wimmera Shire Council can only receive disclosures that relate to the conduct of:

- a. Its own officers or employees
- b. A person/s whose actions relate to a West Wimmera Shire Council officer or employee
- c. Members of a Council Section 86 Committee

If the West Wimmera Shire Council receives a disclosure about an employee, officer or member of another public body, the West Wimmera Shire Council will advise the person making the disclosure as to whom the correct person or body the disclosure should be made.

Where a person seeks to make a disclosure about a Councillor, that disclosure must be made directly to the Independent broad-based anti-corruption commission (IBAC) or the Ombudsman.

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The following table sets out where disclosures about persons other than employees of West Wimmera Shire Council should be made.

Person/Body making disclosure	Person/body to whom the disclosure must be made
Employee, member of a public body	That public body, the Ombudsman or IBAC
Member of Parliament (Legislative Assembly)	Speaker of the Legislative Assembly
Member of Parliament (Legislative Council)	President of the Legislative Council
Councillor	The Ombudsman or IBAC
Chief Commissioner of Police	IBAC
Member of the police force	Prescribed member of Police personnel or IBAC
Section 86 Committee Member	West Wimmera Shire Council, the Ombudsman or IBAC

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8. ~~Actions:-~~ Receiving a Disclosure

As listed in section 5.1, Contacts, disclosures can be received by the following:

- Public Interest Disclosures Coordinator
- Chief Executive
- Public Interest Disclosures Officer
- ~~Department Manager~~
- ~~Supervisors~~

Any disclosures received by the PDO, ~~Department Manager or Supervisors~~ will be forwarded to the PDC with all relevant documentation.

The PDC will determine whether the disclosure has been made to the right body and then whether the matter falls under the P!D Act.



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	<p>There may be situations where the West Wimmera Shire Council receives an allegation of improper or corrupt conduct or detrimental action, but the person making the allegation has not referred to the PID Act. In this case, if the allegation raises issues that may fall within the provisions of the PID Act, the allegations will be assessed in terms of the PID Act.</p>
9.	<p>Actions: Assessing a Disclosure</p> <p>Where the PDC receives information relating to the conduct of an employee, member or officer of the West Wimmera Shire Council, the PDC will assess whether the disclosure meets the criteria of the PID Act to be a Public Interest Disclosure.</p> <p>Corrupt Conduct examples:</p> <p><i>A Council officer takes a bribe or receives a payment other than his or her wages or salary in exchange for the discharge of a public duty.</i></p> <p><i>A Council officer favours unmeritorious applications for jobs or permits by friends and relatives.</i></p> <p><i>A Council officer sells confidential information.</i></p> <p>Detrimental Action examples:</p> <p><i>Council refuses a deserved promotion of a person who makes a disclosure.</i></p> <p><i>Council demotes, transfers, isolates in the workplace or changes the duties of a discloser due to the making of a disclosure.</i></p> <p><i>Council threatens, abuses or carries out other forms of harassment directly or indirectly against the discloser, his or her family or friends.</i></p> <p><i>Council discriminates against the disclosure or his or her family and associates in subsequent applications for jobs, permits or tenders.</i></p> <p>Improper Conduct examples:</p> <p><i>To avoid closure of a town's only industry, an environmental health officer ignores or conceals evidence of illegal dumping of waste.</i></p> <p><i>An environmental health officer allows a catering business to continue functioning when health standards have been breached.</i></p> <p><i>A building inspector tolerates poor practices and structural defects in the work of a leading local builder.</i></p> <p><i>A Council employee is witnessed using a Council grader on private property on a weekend.</i></p>



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A finance officer approves a colleague's corporate expense account for payment even though it appears to have non-work related expenditure items listed.

Where West Wimmera Shire Council determines that the disclosure is not an assessable Public Interest Disclosure under the PID Act, the discloser must be provided with the following information in writing within 28 days after the disclosure was made:

1. West Wimmera Shire Council does not consider the disclosure to be a Public Interest Disclosure
2. The disclosure has not been notified to IBAC for assessment
3. The protections under part 6 of the PID Act (see section 5.8.1) apply, regardless of whether the disclosure is notified to IBAC for assessment

However, West Wimmera Shire Council does not have to provide the discloser with the information under (3) above unless the discloser has indicated to West Wimmera Shire Council, that the discloser wishes to receive the protections that apply to a Public Interest Disclosure under the PID Act.

Council may also advise the discloser that the matter will be addressed by the West Wimmera Shire Council through its complaint processes.

Valid Disclosures

Where it is determined that the disclosure falls under the PID Act, the following action will be taken by the PDC:

1. Establish contact with the person making the disclosure (if that person has provided their identity and personal details).
2. Advise the Chief Executive of the disclosure, if they are not the PDC.
3. Establish a confidential file relating to the disclosure.
4. Advise IBAC of the disclosure within 28 days of receiving the disclosure.
5. Advise the person making the disclosure within 28 days of notifying IBAC.
- ~~6. Notify the Public Interest Disclosure Officer~~ ~~Department Manager~~

Once notification is made to IBAC, they must separately assess whether, in their view, the assessable disclosure is a Public Interest Disclosure.

If IBAC determines the disclosure will not be investigated as a Public Interest Disclosure complaint and the discloser wishes to pursue the matter, IBAC may advise the discloser to make a complaint directly to West Wimmera Shire Council, to be addressed through its complaint processes.

10. Protections

Protections provided under Part 6 of the PID Act



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Part 6 of the PID Act sets out the protections provided to persons who may make a Public Interest Disclosure.

The person making the disclosure will not be:

- subject to any civil or criminal liability or administrative action (including disciplinary action) for making the disclosure
- not committing an offence against the Constitution Act 1975 or any other Act that imposes obligations of confidentiality or any other restriction on the disclosure of information
- not breaching any other obligation (made by oath, rule of law or practice) requiring him or her to maintain confidentiality or otherwise restrict confidentiality
- cannot be held liable for defamation in relation to information included in a Public Interest Disclosure

Limitation on protection

If the person has made a false disclosure or provided false information, the person is not protected

Preventing Detrimental Actions

Nature of alleged detrimental action

The PID Act creates an offence for a person to take detrimental action against another person in reprisal for someone making a Public Interest Disclosure.

Further:

- The person need not actually have taken the action, but can just have threatened to do so.
- The person need not have taken or threatened to take the action against the person themselves, but can have incited someone else to do so.
- The detrimental action need not to be taken against a discloser, but against any person.

Detrimental action taken in reprisal for a Public Interest Disclosure

The person (or the person they have incited) must take or threaten the action, because, or in the belief that the:

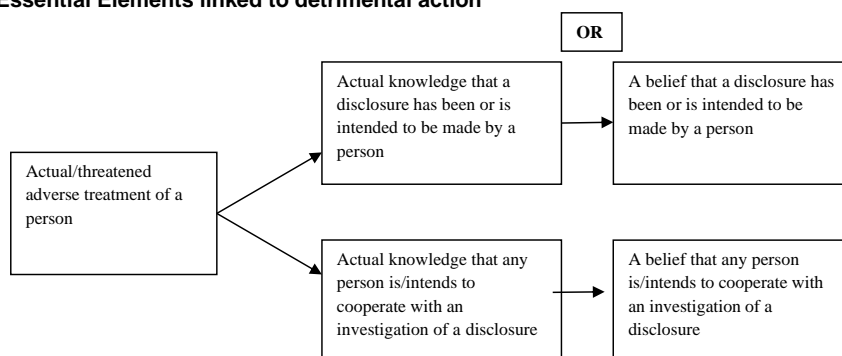
- Other person or anyone else has made, or intends to make the disclosure
- Other person or anyone else has cooperated, or intends to cooperate with an investigation of the disclosure.



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Essential Elements linked to detrimental action



Protection from reprisals

Section 58 of the PID Act requires public bodies to establish procedures for the protection of a person making a disclosure from reprisal by personnel for making a Public Interest Disclosure. Preserving the confidentiality of their identity will assist in minimising the risk of reprisals.

Persons making such disclosures will be advised that it is in their own interests to keep disclosures confidential by only discussing related matters with authorised persons within the West Wimmera Shire Council, ie the PDC or the Chief Executive, or officers of IBAC's office or other persons, as authorised by law.

Contact persons under the PID Act and within West Wimmera Shire Council are responsible for ensuring persons making a Public Interest Disclosure are protected from direct and indirect detrimental action. Management is responsible for encouraging an organisational culture which is supportive of disclosures being made.

A person making a Public Interest Disclosure may be employed by the West Wimmera Shire Council or may be a member of the public.



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West Wimmera Shire Council is obligated to protect both internal and external persons making Public Interest Disclosures from detrimental action taken in reprisal for the making of the disclosure.

The management of both types of persons making Public Interest Disclosures will, however, be different.

Disclosure made by a West Wimmera Shire Council employee/officer

Internal persons making Public Interest Disclosures are at risk of suffering reprisals in the workplace.

The Public Interest Disclosure Officer ~~Department Manager~~ will foster a supportive work environment and respond to any reports of intimidation or harassment against the person making the disclosure.

Disclosure made by a member of the public

It is acknowledged that ~~Re~~prisals may also be taken against external persons making Public Interest Disclosures.

The West Wimmera Shire Council will, as required, appoint a Public Interest Disclosure Officer ~~Department Manager~~ for an external person making a Public Interest Disclosure.

Support

The Public Interest Disclosure Officer ~~Department Manager~~ will provide reasonable support to a person making a disclosure. The Department Manager will discuss the issue of reasonable expectations with the person making a Public Interest Disclosure.

The level of support provided to the person will require the written approval of the Chief Executive and will be documented. A copy of the agreement reached will be provided to the person.

Welfare of a Person Making a Public Interest Disclosure

The Public Interest Disclosure Officer ~~Department Manager~~ will be engaged by the Public Interest Disclosures Coordinator where a disclosure is deemed as a Public Interest Disclosure (see section 5.2.4 for level of support).

The Public Interest Disclosure Officer ~~Department Manager~~ will also:

- Keep contemporaneous records of all aspects of the case management of the person making the Public Interest Disclosure, including all contact and follow up action.
- Not divulge any details relating to the disclosed matter to any person other than the Public Interest Disclosures Coordinator or the Chief Executive.



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	<p>All meetings between the Public Interest Disclosure Officer Department Manager and the person making a Public Interest Disclosure will be conducted discreetly to protect the confidentiality of the person making a Public Interest Disclosure.</p> <p>Occurrence of detrimental action</p> <p>If a person making a Public Interest Disclosure reports an incident of harassment, discrimination or adverse treatment that would amount to detrimental action apparently taken in reprisal for the making of the disclosure, the Public Interest Disclosures Public Interest Disclosure Officer Department Manager or the Public Interest Disclosures Coordinator will:</p> <ul style="list-style-type: none"> Record details of the incident Advise the person making a Public Interest Disclosure of his or her rights under the PID Act <p>The Public Interest Disclosures Coordinator will:</p> <ul style="list-style-type: none"> Inform the Chief Executive of the West Wimmera Shire Council (where they are not the same person) Inform IBAC, where the detrimental action is of a serious nature likely to amount to a criminal offence. <p>Where detrimental action is reported, the allegation will be assessed as a new disclosure under the PID Act.</p> <p>West Wimmera Shire Council will be extremely cautious about conducting enquiries or gathering information concerning an allegation of detrimental action, as a criminal offence may have been committed and any informal investigation may compromise the integrity of evidence.</p>
11.	<p>Management of the person against whom the disclosure is made</p> <p>Natural justice</p> <p>The West Wimmera Shire Council will ensure that natural justice is adhered to in the receipt and management of a disclosure.</p> <p>Natural justice means that if a decision is to be made about the conduct of an employee, officer or member of the West Wimmera Shire Council, they have the right to:</p> <ul style="list-style-type: none"> Be informed about the substance of the allegations against them Be given the opportunity to answer the allegations before a final decision is made Be informed about the substance of any adverse comment that may be included in any report arising from an investigation Have his/her defence set out fairly in any report <p>Confidentiality</p>



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The West Wimmera Shire Council will take all reasonable steps to ensure confidentiality regarding the identity of any persons against whom a disclosure has been made. Where the disclosure is dismissed or investigations do not substantiate the allegation, the fact of the investigation, its results, and the identity of the person subject of the disclosure should still be kept confidential.

Protection against reprisal

The PDC will take responsibility for ensuring a person against whom a Public Interest Disclosure has been made, is protected from direct or indirect detrimental action.

West Wimmera Shire Council recognises that employees against whom disclosures are made must also be supported during the handling and investigation of disclosures. ~~A Public Interest Disclosures Department Manager~~ The Public Interest Disclosure Officer will be assigned to monitor the welfare of the person against whom a disclosure has been made.

West Wimmera Shire Council will give its full support to a person who is the subject of a disclosure where the allegations contained in a disclosure are clearly wrong or unsubstantiated. If the matter has been publicly disclosed, the Chief Executive of West Wimmera Shire Council will consider any request by that person to issue a statement of support setting out that the allegations were clearly wrong or unsubstantiated.

12. Criminal Offences

The P~~I~~D Act provides for offences for certain actions. These are detailed below:

Criminal offences	Detrimental action It is an offence for a person to take or threaten action in reprisal when: <ul style="list-style-type: none"> - A Public Interest Disclosure has been made - A person believes a Public Interest Disclosure has been made - A person believes that another person intends to make a Public Interest Disclosure
	Breach of confidentiality It is an offence for a person to divulge information obtained as a result of handling or investigation of a Public Interest Disclosure without legislative authority
	Provision of false information It is an offence for a person to knowingly provide false information under the P I D Act with the intention that it be acted on as a Public Interest Disclosure
Civil action	A person who takes detrimental action against a person in reprisal for a Public Interest Disclosure may be found liable in damages to that person. The public body may also be found to be vicariously liable.



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	<p>The West Wimmera Shire Council will ensure officers appointed to handle Public Interest Disclosures and all other employees are aware of the following offences by the P!D Act:</p> <p>It is an offence for a person to take or threaten detrimental action against a person in reprisal when:</p> <ul style="list-style-type: none"> • a Public Interest Disclosure being made • a person believes a Public Interest Disclosure has been made • a person believes that another person intends to make a Public Interest Disclosure <p>An employer may also be held to be jointly and civilly liable for the detrimental action of their employee.</p> <p>Criminal penalty: 240 penalty units or two years imprisonment or both and if convicted or found guilty of an offence;</p> <p>Civil penalty: Order of court for offender to pay appropriate level of damages to compensate for injury, loss or damage.</p> <p>A person/body must not disclose content of assessable disclosure or information about content.</p> <p>Criminal penalty: In the case of a natural person: 120 penalty units or 12 months imprisonment or both. In the case of a body corporate: 600 penalty units</p> <p>A person/body must not disclose information likely to lead to the identification of a person who has made an assessable disclosure.</p> <p>Criminal penalty: In the case of a natural person: 120 penalty units or 12 months imprisonment or both. In the case of a body corporate: 600 penalty units</p> <p>A person who takes detrimental action may be subject to proceedings in tort in any court of competent jurisdiction.</p> <p>Civil penalty: Court order for damages for any injury, loss or damage, including exemplary damages.</p>
13.	Collating & Publishing Statistics
	<p>The West Wimmera Shire Council, through the Public Interest Disclosures Coordinator, will respond to any requests for statistical information through IBAC relating to the number and type of disclosures received.</p>



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	<p>The West Wimmera Shire Council will include in its Annual Report:</p> <ol style="list-style-type: none"> Information about how to access the procedures established by the West Wimmera Shire Council under Part 9 of the <u>PID Act</u>; and The number of disclosures notified to the IBAC under section 21 (2) during the financial year.
14.	Communication
	<ul style="list-style-type: none"> Intranet Staff newsletter Staff meetings Ongoing education
15.	Supporting Documents
	<p> Victorian Local Government Act 2020 Independent Broad-based Anti-Corruption Commission Act 2011 Public Interest Disclosures Act 2012 Freedom of Information Act 1982 Privacy Data Protection Act 2014 Ombudsman Act 1973 IBAC – Guidelines for making and handling Public Interest Disclosures IBAC – Guidelines for Public Interest Disclosure welfare management IBAC – Guidelines for making and handling Public Interest Disclosures IBAC – Guidelines for Public Interest Disclosure welfare management Location: www.ibac.vic.gov.au </p>
16.	Review
	<p>The Public Interest Disclosures Policy shall be reviewed annually<u>every four years</u>, or as required in the light of significant legislative change.</p>

Policy Adopted:	Ordinary Meeting 15/08/13		RecFind 13/003525 RecFind 13/003558
Policy Reviewed:	Ordinary Meeting 21/06/18	Minute Book Page 38102	RecFind 18/002248



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	Ordinary Meeting 17/07/19	Minute Book Page 40875	RecFind E19/000378
	Council Meeting 18/06/20	Minute Book Page	RecFind E20/000148