

Public Interest Disclosures Procedures

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External References:	Public Interest Disclosures Act 2012 Public Interest Disclosures Regulations 2019 Independent Broad-based Anti-corruption Commission Act 2011 Charter of Human Rights and Responsibilities Act 2006	

1. INFORMATION ABOUT THIS DOCUMENT

These Procedures have been published by Moyne Shire Council in compliance with s 58 of the *Public Interest Disclosures Act 2012*, the *Public Interest Disclosures Regulations 2019* and the Guidelines published by the Independent Broad-based Anti-corruption Commission as at January 2020.

Requests for hard copies and further information about Moyne Shire Council's handling of public interest disclosures can be made by contacting Manager Organisational Development on (03) 5568 0555 or by email to moyne@moyne.vic.gov.au or on the Moyne Shire Council website www.moyne.vic.gov.au

CONTENTS

1.	INFORMATION ABOUT THIS DOCUMENT	1
2.	ABBREVIATIONS AND KEY TERMS USED IN THESE PROCEDURES	4
3.	ABOUT THESE PROCEDURES.....	6
4.	ABOUT THE ACT	7
5.	RESPONSIBILITIES OF COUNCIL AND INTERNAL COUNCIL STAFF.....	7
5.1.	Council staff and Councillors	8
5.2.	Direct and indirect supervisors and managers.....	9
5.3.	PID Officer	9
5.4.	PID Coordinator	10
6.	MAKING A DISCLOSURE	11
6.1	What is a disclosure and who can make a disclosure?.....	11
6.2	How can a disclosure be made?.....	12
6.2.1	A disclosure must be made in accordance with Div 2, Part 2 of the Act ..	12
6.2.2	The disclosure must be made to a body authorised to receive it	13
6.2.3	How to make a disclosure to Moyne Shire Council.....	13
6.2.4	How to make a disclosure to the IBAC.....	15
6.2.5	How to make a disclosure to the Victorian Ombudsman.....	15
6.3	What can a disclosure be made about?.....	15
6.4	Improper conduct	16
6.5	Detrimental action	17
7.	HANDLING DISCLOSURES	18
7.1	Receiving a disclosure	18
7.2	Assessing a disclosure	18
7.3	First step	19
7.4	Second step.....	19
7.4.1	Where urgent action is required while an assessment is still being made	20
7.4.2	Assessment decisions	21
7.5	Notifications	21
7.5.1	If the Council does not consider the disclosure to be a PID.....	21
7.5.2	If the Council considers the disclosure may be a PID.....	21
7.6	Protections for public officers.....	22
8.	ASSESSMENT BY THE IBAC	22
8.1	If the IBAC determines the disclosure is not a PIC	22
8.2	If the IBAC determines the disclosure is a PIC	23
8.2.1	Notification to the discloser	23

8.2.2	Further actions the IBAC may take	24
8.2.3	Other information about PIC investigations.....	24
9.	WELFARE MANAGEMENT	25
9.1	Support available to disclosers and cooperators	26
9.1.1	Appointment of a Welfare Manager	27
9.2	Welfare management of persons who are the subject of PIDs	28
9.2.1	Welfare services	29
9.2.2	Confidentiality	29
9.2.3	Natural justice.....	29
9.2.4	If the allegations are wrong or unsubstantiated	30
9.3	If detrimental action is reported.....	30
9.4	Protections for persons making a PID.....	31
9.4.1	Part 6 protections available to disclosers.....	31
9.4.2	Actions of the discloser constituting offences and leading to protections being lost.....	32
9.4.3	Other limitations on protections afforded to disclosers	33
10.	CONFIDENTIALITY.....	34
10.1	General obligation of confidentiality on Moyne Shire Council and all individuals.....	34
10.2	Steps taken by Moyne Shire Council to ensure confidentiality.....	34
10.2.1	Information management.....	34
10.2.2	Exemption from the Freedom of Information Act 1982 (“FOI Act”).....	35
10.2.3	Training for all staff	36
10.3	Limited exceptions permitted by the Act	37
10.4	Penalties apply for unauthorised disclosure of information	38
11.	COLLATING AND PUBLISHING STATISTICS	38
12.	REVIEW	39

2. ABBREVIATIONS AND KEY TERMS USED IN THESE PROCEDURES

The following abbreviations and key terms are used in these procedures:

Assessable disclosure	Any disclosure received by Moyne Shire Council which it is required under s 21 of the PID Act to notify to the IBAC for assessment
CMI	Chief Municipal Inspector
Council	Moyne Shire Council
Discloser	A person who makes a disclosure that may be a PID
Disclosure	Any complaint, concern, matter, allegation or disclosure (however described) that may be a PID
Guidelines	The Guidelines published by the IBAC under s 57 of the PID Act as at January 2020 ¹
IBAC	Independent Broad-based Anti-corruption Commission
IBAC Act	Independent Broad-based Anti-corruption Commission Act 2011
Information Commissioner	IC
Investigating entity	Any one of the 8 bodies authorised to investigate a PID complaint, being the IBAC, the VO, the Chief Commissioner of Police, the VI, the Judicial Commission, the Racing Integrity Commissioner, the IC and the CMI.
Permitted person	A person permitted to receive a PID on behalf of an entity authorised to receive PIDs under the PID Act
PID Act	Public Interest Disclosures Act 2012
Procedures	This version of the procedures of the Council, as established under s 58 of the PID Act

¹ <http://www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-making-and-handling-protected-disclosures> (last accessed on 19 February 2020); <https://www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-protected-disclosure-welfare-management> (last accessed 19 February 2020).

Public interest complaint (PIC) :	A PID which has been determined and assessed by the IBAC to be a public interest complaint under ss 26, 31 or 31B of the PID Act
Public interest disclosure (PID)	Any complaint, concern, matter, allegation or disclosure (however described) made in accordance with Part 2 of the PID Act
Regulations	PID Regulations 2019
VI:	Victorian Inspectorate
VO:	Victorian Ombudsman

3. ABOUT THESE PROCEDURES

Moyne Shire Council is required to establish and publish procedures under s 58 of the *Public Interest Disclosures Act 2012* (“**Act**”) and in accordance with the Guidelines of the IBAC published under s 57 of the Act. The Council is required to ensure these procedures are readily available to members of the public as well as internally to all Councillors and Council staff.

These procedures are a resource for disclosers and potential disclosers, whether they are Council staff or an external member of the public; essentially, any individual who wants to find out how to make a PID, receive the protections available under the Act, and how the discloser and their PID may be managed and handled by the Council.

These procedures cover:

- how disclosures may be made to the Council;
- how the Council manages the receipt of disclosures;
- how the Council assesses disclosures it is able to receive under the Act;
- notifications the Council is required to make about disclosures, to both disclosers and to the IBAC or other investigating entities;
- how the Council protects certain people, including from detrimental action being taken against them in reprisal for making a PID, namely:
 - disclosers of a PID,
 - persons who are the subject of PIDs and PICs, and
 - other persons connected to PIDs, such as persons cooperating with an investigation (**co-operators**).

These procedures form an essential part of the Council’s commitment to the aims and objectives of the Act. It does not tolerate improper conduct by the organisation, its staff or Councillors, nor does it tolerate the taking of reprisals against those who come forward to disclose such conduct.

Moyne Shire Council recognises the value of transparency and accountability in its administrative and management practices. It is committed to leading from the top to demonstrate a workplace culture that proactively detects risks of improper conduct and supports the making of disclosures that reveal improper conduct or the taking of detrimental action in reprisal against persons who come forward to disclose improper conduct

Moyne Shire Council will take all reasonable steps to protect people who make such disclosures from suffering detrimental action in reprisal for making the disclosure. It will also afford natural justice to the person or body who is the subject of the disclosure.

4. ABOUT THE ACT

The purpose of the Act is to encourage and facilitate the making of PIDs about improper conduct and detrimental action by public officers and public bodies. It does so by providing certain protections for people who make a PID, or those who may suffer detrimental action in reprisal for making a PID. An essential component of this protection is to ensure that information connected to a PID, including the identity of a discloser and the contents of that PID, are kept strictly confidential.

Disclosures can be made by any individual or groups of individuals.² PIDs can be made about the Council and any of its staff.

Disclosures can be made about any of the public officers or bodies as defined in s 3 of the Act and s 6 of the IBAC Act. That includes all government departments, statutory authorities, Councils, government-appointed boards and committees, government companies, public hospitals, universities and TAFES, the police and protected service officers, and employees, staff or members of those bodies, public servants, Councillors, teachers, MPs, Judicial officers, and other statutory office holders.³

5. RESPONSIBILITIES OF COUNCIL AND INTERNAL COUNCIL STAFF

Moyne Shire Council supports a workplace culture where the making of PIDs is valued by the organisation and the right of any individual to make a PID is taken seriously.

Moyne Shire Council will:

- ensure these procedures are accessible on its website and in hardcopies (on request) to staff, Councillors and any member of the public;
- ensure that appropriate training is provided at all levels of the organisation to raise awareness of how a PID may be made, and to take all reasonable steps to ensure staff and Councillors are familiar with the Council's PID policies, procedures and any relevant codes of conduct;

² To receive the protections available under the PID Act, PIDs may not be made by companies or businesses. If a group of individuals are making a PID, only the individual who makes the PID on behalf of all the others will receive the full protection of the PID Act in relation to that PID. The protection the others in the group will receive is limited to confidentiality about their identities and any role they play in providing information, as well as against detrimental action if any is taken against them in reprisal for the PID that has been made.

³ Further information about who PIDs can be made about is available at www.ibac.vic.gov.au and at <https://vpssc.vic.gov.au/about-public-sector/the-victorian-public-sector>.

- ensure its reporting system is centralised and accessible only by appropriately authorised officers, allowing the flow of information to be tightly controlled to enhance confidentiality and minimising risks of reprisals being taken against disclosers;
- ensure its reporting system protects the confidentiality of information received or obtained in connection with a PID in accordance with the Act;
- ensure its reporting system protects the identity of persons connected with a PID in accordance with the Act;
- not tolerate the taking of detrimental action in reprisal against any person for making a PID, including to take any reasonable steps to protect such persons from such action being taken against them;
- afford natural justice and treat fairly those who are the subject of allegations contained in PIDs;
- take the appropriate disciplinary and other action against any staff engaged in the taking of detrimental action;
- ensure any staff involved with handling PIDs are trained to receive and manage PIDs appropriately;
- ensure that the Council as a whole handles PIDs consistently and appropriately in accordance with its obligations under the Act, the Regulations, the Guidelines and these procedures;
- remind staff that they can seek advice about PID related matters confidentially and anonymously from the Council's PID Coordinator; and
- be visible, approachable, openly communicative and lead by example in establishing a workplace that supports the making of PIDs.

5.1. Council staff and Councillors

Council staff and Councillors are encouraged to raise matters of concern internally in relation to Moyne Shire Council, including about any staff of Moyne Shire Council. In particular, staff and Councillors are encouraged to report known or suspected incidences of improper conduct or detrimental action in accordance with these procedures, whether such conduct or action has taken place, is suspected to take place, or is still occurring.

Everyone at Moyne Shire Council has an important role to play in promoting the purpose and functions of the PID regime. All persons must refrain from any activity that is, or could be perceived to be, victimisation or harassment of a person who makes a PID. Furthermore, they should protect and maintain the confidentiality of a person they know or suspect to have made a PID.

5.2. Direct and indirect supervisors and managers

Staff of the Council who wish to make a PID may make that disclosure to their direct or indirect supervisor or manager.

If a person wishes to make a PID about staff of the Moyne Shire Council, that person may make the disclosure to that staff member's direct or indirect supervisor or manager.

The supervisor or manager receiving the disclosure will:

- immediately bring the matter to the attention of the PID Coordinator for further action in accordance with the Act;
- commit to writing down any disclosures made orally;
- take all necessary steps to ensure the information disclosed, including the identity of the discloser and any persons involved, is secured, remains private and confidential; and
- offer to remain a support person for the discloser in dealing with the PID Coordinator.

5.3. PID Officer

Moyne Shire Council has appointed a PID Officer to receive PIDs and be a contact point for general advice about the operation of the Act for any person wishing to make a PID. The PID Officer is available to receive disclosures made internally within Council or from external sources. For internal staff, the PID Officer provides a confidential avenue of advice about the Act where staff wish to raise a concern about their line managers, colleagues or supervisors.

The PID Officer will:

- make arrangements for a disclosure to be made privately and discreetly and, if necessary, away from the workplace;
- receive any disclosure made orally or in writing from internal or external sources;
- commit to writing any disclosure made orally;
- forward all disclosures and supporting evidence to the PID Coordinator for further action in accordance with the Act;
- take all necessary steps to ensure the information disclosed, including the identity of the discloser and any persons involved, is secured, remains private and confidential;
- impartially consider each disclosure to determine whether it is an assessable disclosure; and

- offer to remain a support person for the discloser in dealing with the PID Coordinator.

The PID Officer appointed by Moyne Shire Council is Susie Kewley.

Her contact details are:

Susie Kewley

Manager Organisational Development

Princes St, Port Fairy

Postal:

PO Box 51

Port Fairy VIC 3284

Telephone: 5568 0540

Email: skewley@moyne.vic.gov.au

From time to time, it may be necessary to appoint other or additional PID Officers. Moyne Shire Council will take all reasonable steps to publicise the contact details of those persons as widely as possible.

5.4. PID Coordinator

Moyne Shire Council's PID Coordinator plays a central role in the internal reporting system, and maintains oversight over the system.

The PID Coordinator is:

- contactable by external and internal disclosers and has the authority to make enquiries of staff;
- to receive disclosures forwarded from Council's PID Officers;
- the contact point for general advice about the operation of the Act and for integrity agencies such as the IBAC;
- responsible for ensuring that Council carries out its responsibilities under the Act, the Regulations and the Guidelines;
- Moyne Shire Council's chief liaison with the IBAC in regard to the Act;
- responsible for coordinating Moyne Shire Council's reporting system;
- to take all necessary steps to ensure information received or obtained in connection with a PID, including the identities of the discloser and the person(s) to whom the disclosure relate, are kept secured, private and confidential at all times;
- required to consider each disclosure impartially to determine whether it is an assessable disclosure;

- responsible for arranging any necessary and appropriate welfare support for the discloser or any co-operators, including appointing a Welfare Manager to support the discloser or co-operator and to protect such persons from any reprisals;
- to advise the discloser, appropriately and in accordance with the Act, the stage at which the disclosure is at (whether it has been notified to the IBAC for assessment, etc);
- to establish and manage a confidential filing system; and
- to collate statistics on disclosures made in accordance with the requirements of the Act.

The PID Coordinator appointed by Moyne Shire Council is:

Kevin Leddin

Director Community and Corporate Services, Princes St, Port Fairy.

Postal:

PO Box 51

Port Fairy VIC 3284

Telephone: 5568 0519

Email: kevin.leddin@moyne.vic.gov.au

6. MAKING A DISCLOSURE

6.1 What is a disclosure and who can make a disclosure?

A disclosure may be made about two things under the Act:

- (i) improper conduct of public bodies or public officers; and
- (ii) detrimental action taken by public bodies or public officers in reprisal against a person for making a PID.

Disclosures can be made about conduct or action which has taken place, is still occurring, or is believed is intended will be taken or engaged in.

A disclosure may only be made by a natural person or a group of individuals making a joint disclosure.⁴ Disclosures cannot be made by a company or an organisation.

⁴ If a group of individuals are making a PID, only the individual who makes the PID on behalf of all the others will receive the full protection of the PID Act in relation to that PID. The protection the others in the group will receive is limited to confidentiality about their identities and any role they play in providing information, as well as against detrimental action if any is taken against them in reprisal for the PID that has been made.

6.2 How can a disclosure be made?

6.2.1 A disclosure must be made in accordance with Div 2, Part 2 of the Act

A disclosure must be made in accordance with Division 2, Part 2 of the Act.

If a discloser does not wish their allegation or complaint to be treated as a disclosure made under Division 2, Part 2 of the Act, the person must, within 28 days after the disclosure is made, expressly state in writing that the disclosure is not a disclosure for the purposes of the Act.

Unless such an express statement has been made, upon receiving a disclosure (whether directly or indirectly), Moyne Shire Council's PID Coordinator will determine whether the disclosure has been made in accordance with the Act and if it has, whether it is an assessable disclosure.

The Act permits disclosures to be made anonymously, orally or in writing, and need not necessarily identify the person or organisation complained about.⁵

A verbal disclosure must be made in private⁶ and may be made:

- in person;
- by telephone; or
- by leaving a voicemail message on a particular telephone answering machine.

A written disclosure to the IBAC and the VO can be made by writing to them, or via an online form available at each of their respective websites as follows:

IBAC

GPO Box 24234 or

Level 1, North Tower 459 Collins Street

Melbourne Vic 3000

Online form: <https://www.ibac.vic.gov.au/reporting-corruption/report>.

⁵ Anonymous disclosures can be made by using an unverifiable email address or through anonymous phone calls. However, it should be noted that anonymous disclosures can create difficulties in the Council being able to communicate with the discloser, and some of the notification requirements imposed on the Council in relation to disclosures will not apply in relation to an anonymously made disclosure.

⁶ That means the discloser reasonably believes that the only people present or able to listen to the conversation are themselves, any lawyer representing them, and one or more people who are permitted by the PID Act to receive PIDs.

Victorian Ombudsman

Level 2, 570 Bourke Street

Melbourne VIC 3000

Online form: <https://www.ombudsman.vic.gov.au/Complaints/Make-a-Complaint#>.

6.2.2 The disclosure must be made to a body authorised to receive it

One of the requirements in Part 2 of the Act is that the disclosure has been made to a body authorised under the Act to receive the disclosure.

Moyne Shire Council is only authorised to receive PIDs under the Act which relate to the Council and Council staff. PIDs about Councillors cannot be received by the Council and must be made to the IBAC or the VO.

If the Council receives a PID relating to a Moyne Shire Council Councillor from a discloser who honestly believed that the Council was the appropriate entity which they could make the PID,⁷ the Council may deal with it as a “misdirected disclosure” as set out in s 18 of the Act, including to forward it to the IBAC or to notify it to the IBAC as an assessable disclosure in appropriate circumstances.

The PID Act sets out different procedures for making a PID, depending on which body is receiving the PID. The procedures for making a disclosure to Moyne Shire Council, IBAC or the VO are set out further below.

6.2.3 How to make a disclosure to Moyne Shire Council

Oral disclosures

An oral disclosure to Moyne Shire Council **must** be made in private and **may** be made:

- in person;
- by telephone to one of the persons authorised to receive disclosures set out below, including by leaving a voicemail message on that telephone number.

The oral disclosure **must** be made to one of the following persons:

- the PID Officer identified in section 4.3 of these procedures;

⁷ Or if the disclosure is in relation to another public body or employees, members, officers or staff of that other public body.

- the PID Coordinator identified in section 4.4 of these procedures;
- to the direct or indirect manager of the discloser, if the discloser is an employee of Moyne Shire Council; or
- to the direct or indirect manager of the person to whom the disclosure relates, if that person is an employee of Moyne Shire Council.

For the telephone numbers of the Protected Disclosure Officer and the Protected Disclosure Coordinator, please see sections 4.3 and 4.4 of these procedures.

If the disclosure is made orally, the person receiving the disclosure will make notes at the time recording the disclosure. Recording of the conversation will only be done with the disclosure's permission or by giving prior warning that the conversation will be recorded.

Written disclosures

A written disclosure to the Council **must** be:

- delivered personally to the office of Moyne Shire Council at Princes Street, Port Fairy, Victoria; or
- sent by post addressed to the PID Coordinator or PID Officer at the Council at PO Box 51, Port Fairy VIC 3284; or
- sent by email to the office of the Council at moyne@moyne.vic.gov.au; or
- sent by email to the official email address of:
 - the direct or indirect manager of the discloser, if the discloser is an employee of the Moyne Shire Council;
 - the direct or indirect manager of the person to whom the disclosure relates, where that person is an employee of Moyne Shire Council;
 - the PID Officer identified in section 4.3 of these procedures;
 - the PID Coordinator specified in section 4.4 of these procedures.

For the official email address of the Protected Disclosure Coordinator and the Protected Disclosure Officer, please see sections 4.3 and 4.4 of these procedures.

The Council recommends that a discloser ensures, where a written disclosure is being provided personally or by post to the official office

location or address of the Council, that the disclosure be sealed in an envelope which is clearly marked with one or more of the following:

- “Re: Protected disclosure”;
- “To the personal attention of the CEO”;
- “To the personal attention of the Public Interest Disclosures Coordinator”; or
- “To the attention of the Public Interest Disclosures Officer”.

In relation to a disclosure being emailed to the official email address of the Council, rather than to the official email address of one of the individuals specified above, the Council recommends that the discloser insert in the email subject line one of the labels set out above applicable to personally delivered or posted items.

6.2.4 How to make a disclosure to the IBAC

To make a disclosure to the IBAC, see

<https://www.ibac.vic.gov.au/reporting-corruption/how-to-make-a-complaint>

6.2.5 How to make a disclosure to the Victorian Ombudsman

To make a disclosure to the VO, see

<https://www.ombudsman.vic.gov.au/Complaints/Make-a-Complaint#>

6.3 What can a disclosure be made about?

A PID can be made about:

- the **improper conduct** of public bodies or public officers; and/or
- **detrimental action** taken in reprisal against a discloser or co-operator for having made a PID or having cooperated with the investigation of a PID.

In assessing whether there is improper conduct or detrimental action, the Council will look critically at all available information about the alleged conduct and about the discloser.

Preliminary questions the Council may seek answers to, or consider, include:

- what is the discloser’s connection to the alleged conduct – is the discloser a victim, a witness, or a participant in the alleged conduct?
- How did the discloser come to know about the conduct – was or is the discloser directly involved in it, did the discloser observe it happening to another person or did someone else tell the discloser about it?

- How detailed is the information provided – is there sufficient information to enable the Council to consider whether there is improper conduct or detrimental action?
- How reliable is the information given to the Council – is it supported by other information?

6.4 Improper conduct

Improper conduct is defined in the Act to mean conduct:

- of any person that:
 - adversely affects the honest performance by a public officer or public body of his or her or its functions as a public officer or public body;
 - is intended to adversely affect the effective performance or exercise of functions or powers by a public officer or public body and results in that person (or their associate⁸) obtaining a gain, benefit or entitlement they would not have otherwise obtained, irrespective of whether the public officer or public body engages in any corrupt conduct or other misconduct; or
- of a public officer or public body that:
 - constitutes or involves the dishonest performance of his or her or its functions as a public officer or public body;
 - constitutes or involves knowingly or recklessly breaching public trust;
 - involves the misuse of information or material acquired in the course of the performance of his or her or its functions as a public officer or public body, whether or not for the benefit of the public officer or public body or any other person;
 - is engaged in by the public officer or public body in their capacity as a public officer or a public body that constitutes any of the following:
 - a criminal offence;
 - serious professional misconduct;⁹

⁸ Defined in s 4(2B) of the Act.

⁹ This may be where there has been a serious failure to exhibit the skills and experience required to perform the responsibilities of the office, as well as a serious breach of professional conduct expected in the workplace. For further guidance see the Guidelines, p 11 available at <https://www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-making-and-handling-protected-disclosures> (last accessed 19 February 2020).

- 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 the health or safety of one or more persons;
- a substantial risk to the environment; or
- that could constitute a conspiracy or an attempt to engage in any of the conduct referred to above.

Conduct that is trivial will not constitute improper conduct for the purpose of the Act.

6.5 Detrimental action

Detrimental action as defined by the Act includes:

- 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.

A person can have taken detrimental action without having taken the action itself, but just by threatening to take such action or inciting or permitting someone else to do so. Further, the detrimental action need not necessarily have been taken (or threatened to be taken) against a person making a PID, but against any person connected with a PID, such as a person who has cooperated or intends to cooperate with the investigation of the disclosure.

Examples of detrimental action prohibited by the Act include:

- threats to a person's personal safety or property, including intimidating, harassing a discloser or the discloser's family or friends, otherwise causing personal injury or prejudice to the safety or damaging property of a discloser or the discloser's family or friends;
- the demotion, transfer, isolation or change in duties of a discloser due to having made a PID;
- discriminating or disadvantaging a person in their career, profession, employment, trade or business; or

- discriminating against the discloser or the discloser’s family and associates in subsequent applications for promotions, jobs, permits or tenders resulting in financial loss or reputational damage.

Taken in reprisal for a protected disclosure

The person (or the person incited to take detrimental action) must take or threaten the detrimental action, because, or in the belief that the other person or anyone else has:

- made, or intends to make the PID; or
- cooperated, or intends to cooperate with an investigation of the PID.

7. HANDLING DISCLOSURES

7.1 Receiving a disclosure

When the Council receives a disclosure, the first step will be to ascertain whether it has been made in accordance with Part 2 of the Act.

If the disclosure satisfies Part 2 of the Act, the discloser is entitled to receive protections under Part 6 of the Act.

If Moyne Shire Council receives any disclosures which do not meet all of the requirements of the Act, it will not be required to consider whether it is a PID under the Act, but will consider how it may assist the discloser to make a PID in order to receive any protections the discloser may be entitled to under the Act.

In addition, Moyne Shire Council is required to consider whether a disclosure that does not meet the requirements of the Act should be treated as a complaint, notification or referral to the Council in accordance with any other laws or internal policies and procedures.

7.2 Assessing a disclosure

If the disclosure satisfies the requirements of Division 2, Part 2 of the Act, the Council is required to determine whether the disclosure may be a PID by going through the following 2 step assessment process as recommended by the IBAC.

This will be the case even if the discloser does not refer to the Act or require the protections of the Act. The initial assessment is made on the nature of the information disclosed or on the belief that the discloser has about the nature of the information, and not the discloser’s intention.

7.3 First step

The first question the Council must answer is whether the information disclosed shows, or tends to show, that there is improper conduct or detrimental action taken in reprisal for the making of a PID.

This requires the Council to ascertain whether the information satisfies the 'elements' of improper conduct or detrimental action, as defined in the Act and whether any of the relevant exceptions apply.

This may require the Council to:

- seek further information;
- conduct a discreet initial enquiry;
- seek (further) evidence from the discloser;
- ascertain whether there is sufficient supporting material to demonstrate that the conduct or actions covered by the Act have occurred, are occurring or are likely to occur.

If it is not clear that the information disclosed does show or tend to show that there is improper conduct or detrimental action, then the Council will go on to the second step below.

7.4 Second step

This requires the Council to ask whether the discloser believes on reasonable grounds that the information shows or tends to show there is improper conduct or detrimental action. That is, does the person actually believe that the information shows, or tends to show, there is improper conduct or detrimental action? A reasonable belief requires the belief to be based on facts that would be sufficient to make a reasonable person believe there was improper conduct or detrimental action.

This reasonable belief does not have to be based on actual proof that the improper conduct or detrimental action in fact occurred, is occurring, or will occur, but it does require more than a suspicion. The belief must have supporting facts and circumstances.¹⁰

¹⁰ For example, the IBAC has noted that a statement such as "I know XYZ is corrupt" is not sufficient. That is, a belief cannot be based on a mere allegation or conclusion unsupported by any further facts or circumstances.

Other matters the Council might consider during its deliberations at this step are:

- the reliability of the information provided by the discloser, even if it is second or third-hand. For example, how would the discloser have obtained the information?
- the amount of detail that has been provided in the information disclosed; and
- the credibility of the discloser, or of those people who have provided the discloser with information.

7.4.1 Where urgent action is required while an assessment is still being made

In some circumstances, the disclosure may be about improper conduct that may pose an immediate threat to health and safety of individuals, preservation of property, or may consist of serious criminal conduct.

For example, the disclosure may be about:

- a child protection worker allegedly sexually assaulting children in care;
- a council worker allegedly lighting bush fires; or
- a person threatening to poison the water supply.

In these cases, the Council can take immediate action while considering whether or not it is an assessable disclosure that must be notified to IBAC or awaiting IBAC's decision on a notified matter.

It may also be necessary to report criminal conduct to Victoria Police for immediate investigation, or take management action against an employee to prevent future conduct.

The Act allows the Council to disclose the content of the disclosure by a person or body "to the extent necessary for the purpose of taking lawful action in relation to the conduct that is the subject of an assessable disclosure including disciplinary process or action". However, this does not allow the identity of the discloser to be revealed. Reporting the alleged conduct to the Victoria Police as criminal conduct, or taking legitimate management action against the subject of the disclosure in order to prevent future conduct, may be appropriate courses of action in these circumstances.

7.4.2 Assessment decisions

At the conclusion of the assessment, the Council must decide whether it considers the disclosure to be a PID. If the Council decides it may be a PID, it **must** notify IBAC of the disclosure. If the Council does not consider it to be a PID, then it may be a matter that the Council otherwise deals with through any other relevant internal complaint or grievance management processes.

7.5 Notifications

7.5.1 If the Council does not consider the disclosure to be a PID

If the Council determines the disclosure is not a PID, and the discloser has indicated to Moyne Shire Council (or it otherwise appears to the Council) that the discloser wishes to receive the protections that apply to a PID under the Act, the discloser will be notified in writing, within 28 days of the Council receiving the disclosure, that:

- Moyne Shire Council considers the disclosure is not a PID;
- the disclosure has not been notified to the IBAC for assessment under the Act; and
- Moyne Shire Council does not have to keep the discloser's identity confidential, but the protections under Part 6 of the Act do apply to the discloser.¹¹

Notifications to a discloser do not need to be provided by Moyne Shire Council in response to an anonymously made disclosure.

7.5.2 If the Council considers the disclosure may be a PID

If the Council considers the disclosure may be a PID under the Act, the Council will, within 28 days of receiving the disclosure:

- notify the IBAC that:
 - the Council considers the disclosure may be a PID; and
 - the Council is notifying the disclosure to the IBAC for assessment under s 21 of the Act; and
- notify the discloser that:

¹¹ For example, the discloser cannot be fired, disciplined or bullied for making the disclosure and the discloser is protected from legal actions such as defamation and civil liability.

- the disclosure has been notified to the IBAC for assessment under the Act; and
- it is an offence under s 74 of the Act to disclose that the disclosure has been notified to the IBAC for assessment under the Act.

In addition, at the time of notifying the IBAC under s 21 of the Act or at any later time, the Council may also provide the IBAC with any information obtained by the Council regarding the disclosure in the course of its enquiries leading up to its notification of the disclosure to the IBAC.

7.6 Protections for public officers

A public officer is given specific protections under the Act to provide information to other public officers or to the IBAC in dealing with a disclosure they have received. When a public officer acts in good faith and in accordance with the Act, Regulations and the IBAC's Guidelines, the public officer does not commit an offence under laws imposing a duty to maintain confidentiality or restricting the disclosure of information.

8. ASSESSMENT BY THE IBAC

Once a disclosure has been notified to the IBAC, the IBAC must assess, within a reasonable time after the Council notifies the PID to the IBAC, whether it is a PIC.

The IBAC must inform Moyne Shire Council of its determination as to whether or not the disclosure is a PIC:

- in writing; and
- within a reasonable time after making the determination.

In making its assessment, the IBAC may seek additional information from the Council or from the discloser if the IBAC considers there is insufficient information to make a decision.

8.1 If the IBAC determines the disclosure is not a PIC

If the IBAC determines the disclosure is not a PIC, the IBAC must advise the discloser in writing and within a reasonable time after the determination is made, that:

- the IBAC has determined that the disclosure is not a PIC; and
- as a consequence of that determination:
 - the disclosure will not be investigated as a PIC; and

- the confidentiality provisions under Part 7 of the Act no longer apply in relation to the PID; and
- regardless of whether the IBAC has determined that the PID is a PIC, the discloser is still entitled to the protections under Part 6 of the Act.

In addition, if the IBAC is of the view that the disclosure, although not a PIC, may be able to be dealt with by another entity, the IBAC may advise the discloser that:

- the matter which is the subject of the disclosure may be able to be dealt with by that entity other than as a PIC; and
- if the discloser wishes to pursue the matter, to make a complaint directly to that entity.

If this is the case, the IBAC will also advise the relevant notifying entity that the discloser has been given this advice.

8.2 If the IBAC determines the disclosure is a PIC

8.2.1 Notification to the discloser

If the IBAC determines the PID is a PIC, the IBAC must advise the discloser in writing and within a reasonable time after the determination is made, that:

- the IBAC has determined that the disclosure is a PIC and the action it will take;¹²
- regardless of the determination, the protections available to a discloser of a PID under Part 6 of the Act apply;
- the discloser has rights, protections and obligations under the Act as contained in Parts 6 and 7 of the Act. The IBAC will also provide the discloser with a copy of Parts 6 and 7 of the Act; and
- it is an offence to provide false or misleading information, or further information that relates to a PID that the person knows to be false or misleading, intending that the information be acted on as a PID. The IBAC will also provide the discloser with a copy of the offence provision contained in s 72 of the PID Act.

¹² This includes advising the discloser whether IBAC has decided to investigate or refer the complaint or take no further action.

IBAC may decide not to notify the discloser if it considers that notifying would have certain adverse consequences¹³ such as putting a person's safety at risk, or prejudicing an investigation under the IBAC Act.

Once the IBAC has determined that a disclosure is a PIC, the discloser cannot withdraw that disclosure. However, under the IBAC Act, the IBAC can decide not to investigate a PIC if the discloser requests that it not be investigated.

8.2.2 Further actions the IBAC may take

Under the IBAC Act, the IBAC may dismiss, investigate, or refer a PIC. The IBAC may also conduct preliminary inquiries in accordance with Division 3A, Part 3 of the IBAC Act before determining whether to dismiss, investigate or refer a PIC.

For more information about how PIDs can be dealt with by the IBAC, see <https://www.ibac.vic.gov.au/reporting-corruption/what-happens-to-your-complaint> and [pages 16-17 of the IBAC's Guidelines for handling PIDs.](#)¹⁴

8.2.3 Other information about PIC investigations

If the IBAC or another investigative entity is conducting an investigation of a PIC, it may be in contact with the Council or the subject of the PIC for the purpose of conducting investigative enquiries.

The Council or the subject of a PIC will be able to disclose information about the PIC to the investigative entity in these circumstances without breaching the confidentiality requirements of the Act.

The relevant investigative entity may also disclose the identity of the discloser and the content of the disclosure if necessary to do so for the purposes of their investigative action. If this is the case, then the Council or person to whom the information has been disclosed, is nevertheless bound by the confidentiality requirements of Part 7 of the Act.

In addition, if the Council or staff is advised of the identity of the discloser, then they will be required to look after the welfare of the discloser and provide protection against possible detrimental action.

At the conclusion of its investigation, the relevant investigating entity must provide the discloser with information about the results of its investigation,

¹³ As set out in s 59(4) of the IBAC Act.

¹⁴ https://www.ibac.vic.gov.au/docs/default-source/guidelines/guidelines-for-making-and-handling-protected-disclosures-2016.pdf?sfvrsn=eb8b6875_12, (last accessed 19 February 2020)

including any action taken by the investigative entity and any recommendation by the investigative agency that action or further action be taken.

The investigative entity may provide written information about the commencement, conduct or result of an investigation, including any actions taken and any recommendation made that any action or further action be taken to the Council's Chief Executive Officer (CEO). However, the investigating entity must not provide any information that is likely to lead to the identification of a discloser.

The investigating entity does not have to provide this information to either the discloser or the CEO in specified circumstances set out in the IBAC Act or the *Ombudsman Act 1973*.

9. WELFARE MANAGEMENT

Moyne Shire Council is committed to the protection of genuine disclosers against detrimental action taken in reprisal for the making of PIDs.

The protection of persons making genuine PIDs about improper conduct or detrimental action is essential for the effective implementation of the Act. The Act also extends the need for welfare management to people who have cooperated or intend to cooperate with an investigation of a PIC ("**co-operators**") and people who are the subject of PID allegations.

The Council must ensure disclosers and co-operators are protected from direct and indirect detrimental action being taken against them in reprisal for the making of the PID. The Council will ensure its workplace culture supports disclosers and co-operators. Such support will extend to the relevant persons regardless of whether they are staff or external members of the public. However, different legislative responsibilities (including those external to the Act) apply, deriving from various legislative and administrative obligations to:

- ensure the health and wellbeing of employees of a public sector body under laws including those relating to Occupational Health and Safety, the *Charter of Human Rights and Responsibilities Act 2006*, the *Local Government Act 2020*, the *Public Administration Act 2004*, and various Codes of Conduct relevant to Victorian Councils, Councillors and Council staff; and

- comply with various relevant laws, policies and practices when making administrative and other decisions or taking particular actions affecting a customer, client or user of the Council's services.¹⁵

Generally, for internal persons, the Council will ensure a supportive work environment and respond appropriately to any reports of intimidation or harassment against these persons. For external persons, the Council will take reasonable steps to provide appropriate support. The Council will discuss reasonable expectations with all persons receiving welfare management in connection with a PID.

9.1 Support available to disclosers and co-operators¹⁶

The Council will support disclosers and co-operators by:

- keeping them informed, by providing:
 - confirmation that the disclosure has been received;
 - the legislative or administrative protections available to the person;
 - a description of any action proposed to be taken;
 - if action has been taken by the Council, details about results of the action known to the Council;
- providing active support by:
 - acknowledging the person for having come forward
 - assuring the discloser or co-operator that they have done the right thing, and the Council appreciates it;
 - making a clear offer of support;
 - assuring them that all reasonable steps will be taken to protect them;
 - giving them an undertaking to keep them informed as far as the Council is reasonably able to;
- managing their expectations by undertaking an early discussion with them about:
 - what outcome they seek;
 - whether their expectations are realistic;

¹⁵ Page 6, Guidelines for public interest disclosure welfare management, https://www.ibac.vic.gov.au/docs/default-source/guidelines/guidelines-for-public-interest-disclosure-welfare-management.pdf?sfvrsn=288e6875_16 (last accessed 19 February 2020)

¹⁶ This section is adapted from resources of the Queensland Government as cited and drawn from the IBAC's Guidelines for public interest disclosure welfare management, p 7, *ibid*.

- what the Council will be able to deliver;
- maintaining confidentiality by:
 - ensuring as far as is possible that other people cannot infer the identity of the discloser or co-operator;
 - reminding the discloser or co-operator not to reveal themselves or to reveal any information that would enable others to identify them as a discloser or co-operator;
 - ensuring that hardcopy and electronic files relating to the disclosure are accessible only to those who are involved in managing disclosures in the Council;
- proactively assessing the risk of detrimental action being taken in reprisal (rather than reactively waiting for a problem to arise and a complaint made by the discloser or co-operator), that is, actively monitor the workplace, anticipating problems and dealing with them before they develop as far as is possible;
- protecting the discloser or co-operator by:
 - examining the immediate welfare and protection needs of the person and seeking to foster a supportive work environment;
 - listening and responding to any concerns the person may have about harassment, intimidation or victimisation in reprisal for their actions;
 - assessing whether the concerns the person may have about harassment, intimidation or victimisation might be due to other causes other than those related to the PID.
- preventing the spread of gossip and rumours about any investigation into the PID; and
- keeping contemporaneous records of all aspects of the case management of the person, including all contact and follow-up action.

9.1.1 Appointment of a Welfare Manager

In appropriate circumstances, the Council will appoint a suitable welfare manager to protect a discloser or a co-operator. In most circumstances, a welfare manager will be more likely to be appointed:

- where the Council considers there to be a real risk of detrimental action being taken against the discloser or co-operator, taking into account their particular circumstances; or

- if the discloser or co-operator believes on reasonable grounds that there are risks the Council cannot otherwise appropriately protect them, and that a welfare manager is required to ensure their wellbeing; or
- a PID proceeds to being investigated as a PIC.

Each PID received by the Council, or made known to it by an investigating entity, will be assessed on its own merits.

If appointed, the Welfare Manager will, in addition to providing the general support:

- provide practical advice about the protections available to them;
- listen and respond quickly and appropriately to any concerns of harassment, intimidation or victimisation in reprisal for making a PID;
- not divulge any details relating to the PID to any person other than the PID Coordinator or the PID Officer as the case may be;
- ensure all meetings are conducted discreetly to protect the person from being identified as being involved in the PID;
- refer or offer to refer internal disclosers and co-operators to the Council’s Employee Assistance Program (EAP) for further support and welfare assistance; and
- ensure the expectations of the discloser are realistic and reasonable, and that the discloser or co-operator understands the limits of the support the Council is able to reasonably provide in the particular circumstances. This is particularly the case where a Welfare Manager has been appointed in relation to an *external* discloser or co-operator.

9.2 Welfare management of persons who are the subject of PIDs

The Council will also meet the welfare needs of a person who is the subject of a PID. It is important to remember that until a PIC is resolved, the information about the person is only an allegation.

The Council will make a decision about whether or when the subject of a disclosure will be informed about a PID involving an allegation made against them. It is possible that the subject of the disclosure may never be told about the disclosure if it is not determined to be a PIC, or if a decision is made to dismiss the disclosure.

The Act limits the disclosure of information about the content of an assessable disclosure and the identity of the discloser to certain specified circumstances set out in Part 7 of the Act. The Council may give information about the

disclosure to the subject of the disclosure if it is directed or authorised to do so by the investigating entity investigating the PIC, or for the purpose of taking action with respect to the conduct alleged, including disciplinary action.

Investigative entities may also inform the subject of the PIC in the course of their investigation for the purposes of conducting that investigation, or any actions that they propose to take as a result of the investigation.

9.2.1 Welfare services

A person the subject of a PID who is made aware of their status as such may have a welfare manager appointed by the Council, or be referred to the Council's EAP program for welfare assistance. Alternatively, the PID Coordinator will provide support and advice to a person the subject of a disclosure, particularly in relation to their rights and obligations under the Act, Moyne Shire Council's internal reporting system, these procedures, and any other relevant law or code of conduct. The Council will consider each matter on a case by case basis, taking into account the particular circumstances of the person and the PIC.

9.2.2 Confidentiality

Consistently with Moyne Shire Council's confidentiality obligations under the Act as outlined in these procedures, the fact that a disclosure has been made, whether it has been notified to the IBAC for assessment, any information received from the IBAC or another investigative entity and the identities of persons involved with the PID, will not be divulged.

The Council will take all reasonable steps to ensure the confidentiality of the subject of a disclosure during any assessment and any ensuing investigation. Where the disclosure is dismissed or investigations do not substantiate the allegations made against the person, the fact that the investigation was undertaken, its results, and the identity of the person who is the subject of the disclosure will still be kept confidential.

9.2.3 Natural justice

Moyne Shire Council will afford natural justice to the subject of a disclosure prior to any decision being made about the allegations. If the matter has been investigated by an investigating entity, then the investigative entity will be responsible for ensuring consultations with the subject include the provision of natural justice to him or her. The IBAC has noted that affording a subject of a disclosure natural justice in this

context means that if a decision is to be made about their conduct this person has the right to:

- 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; and
- have his or her defence set out fairly in any report.

9.2.4 If the allegations are wrong or unsubstantiated

Moyne 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 wrong or unsubstantiated. In those circumstances, the Council and any investigative entity involved will ensure that there are no adverse consequences for this person arising out of the disclosure or its investigation. This is particularly crucial in a situation where there has been publicly disclosed information identifying the subject, but also where such information has become well-known across the Council and the subject is staff of the Council.

Further, if the matter has been publicly disclosed by Moyne Shire Council, the CEO will consider any request by that person to issue a statement of support setting out that the allegations were clearly wrong or unsubstantiated.

9.3 If detrimental action is reported

If any person reports an incident of harassment, discrimination or adverse treatment that may amount to detrimental action apparently taken in reprisal for a disclosure, the Welfare Manager or PID Coordinator must record details of the incident and advise the person of their rights under the Act.

All persons are reminded it is a criminal offence to take detrimental action against another person in reprisal for a PID under the Act. The penalty for committing such an offence in contravention of the Act is a maximum fine of \$39,652.80 from 1 July 2019,¹⁷ two years imprisonment or both.

¹⁷ Usually increasing 1 July every year in accordance with arrangements made under the *Monetary Units Act 2004*.

In such circumstances, the Council will be careful about making preliminary enquiries or gathering information concerning such an allegation of detrimental action so that, to the extent it is reasonably able to, it protects the integrity of any evidence that might be later relied upon in a criminal prosecution.

In addition, the taking of detrimental action in reprisal for making a disclosure can be grounds for a person to make a further PID with respect to that conduct. The disclosure of this allegation will then be assessed by the Council as a new disclosure under Part 2 of the Act. If the detrimental action was alleged to have been taken by a Councillor, the new PID should be made directly to the IBAC or the VO. Where the detrimental action is of a serious nature likely to amount to a criminal offence, the Council will also consider reporting the matter to the police or the IBAC (if the matter was not already the subject of a disclosure notified to the IBAC).

A discloser of a PID who suffered detrimental action as prohibited by the Act may also:

- take civil action against the person who took detrimental action against them and seek damages;
- take civil action against Moyne Shire Council jointly and severally to seek damages if the person who took detrimental action against the discloser took that action as staff or while acting as an agent of Moyne Shire Council; and
- apply for an order or an injunction from the Supreme Court.

Disclosers who launch legal proceedings to claim compensation for injury, loss or damage suffered in reprisal for having made a PID will *not* have costs awarded against them, unless their claim for compensation was vexatious, or they did not conduct the litigation reasonably.

9.4 Protections for persons making a PID

9.4.1 Part 6 protections available to disclosers

Part 6 of the Act protects disclosers of PIDs by stating that in making the PID, the discloser:

- is not subject to any civil or criminal liability for making the PID;
- is not subject to any administrative action (including disciplinary action) for making the PID;
- is not committing an offence against the Constitution Act 1975 or any other law that imposes obligations of confidentiality or otherwise restricts the disclosure of information;

- is not breaching any other obligation (made by oath, rule of law or practice) requiring them to maintain confidentiality; and
- cannot be held liable for defamation in relation to information included in a PID made by them.

The protections in Part 6 apply from the time at which the disclosure is made by the discloser. They apply even if the Council receiving the disclosure does not notify the disclosure to the IBAC, and even if the IBAC has determined that the PID is not a PIC.

The protections also apply to further information relating to a PID made by the original discloser, if the further information has been provided, verbally or in writing, to the Council or any investigating entity involved in investigating the PID.

Sections 52 and 53 of the Act refer specifically to confidentiality obligations of persons receiving information connected with an assessable disclosure, or leading to the identification of a discloser.

9.4.2 Actions of the discloser constituting offences and leading to protections being lost

A discloser is **not protected** by the Act if they commit any of the following offences under the Act or the IBAC Act:

Offence	Maximum Penalty Applicable
Provide false or misleading information, or further information that relates to a PID that the person knows to be false or misleading, intending that the information be acted on as a PID.	A fine of 120 penalty units (\$19,826.40 from 1 July 2019), ¹⁸ and/or 12 months' imprisonment.
Claim that a matter is the subject of a PID knowing the claim to be false.	A fine of 120 penalty units and/or 12 months' imprisonment.
Falsely claim that a matter is the subject of a disclosure that the IBAC has determined to be a PIC.	A fine of 120 penalty units and/or 12 months' imprisonment.
Disclosing information received from the IBAC such as set out in s 184, IBAC Act,	A fine of 60 penalty units and/or 6 months' imprisonment

¹⁸ Usually increasing 1 July every year in accordance with arrangements made under the *Monetary Units Act 2004*.

9.4.3 Other limitations on protections afforded to disclosers

A discloser is not protected against legitimate management action being taken by the Council in accordance with the Act.

In addition, although the discloser of a PID is not subject to criminal or civil liability for making the disclosure, the Act specifically provides that a person remains liable for their own conduct even though the person has made a disclosure of that conduct under the Act. Therefore, the discloser will still be held liable for their own conduct that they disclose as part of making a PID.

If the person making the disclosure is implicated in the improper conduct or detrimental action that is the subject of the disclosure

Where a discloser is implicated in improper conduct, Moyne Shire Council will handle the disclosure and protect the discloser from reprisals in accordance with the Act, the IBAC's Guidelines and these procedures. Moyne Shire Council acknowledges that the act of disclosing should not shield disclosers from the reasonable consequences flowing from any involvement in improper conduct. However, in some circumstances, an admission may be a mitigating factor when considering disciplinary or other action.

The management of the welfare of a discloser may become complicated when that person is implicated in misconduct, whether or not that misconduct is related to the disclosure.

Taking disciplinary or other action against a person who has made a PID invariably creates the perception that it is being taken in reprisal for the disclosure. The CEO will make the final decision on the advice of the PID Coordinator as to whether disciplinary or other action will be taken against a discloser. Where disciplinary or other action relates to conduct that is the subject of the disclosure, the disciplinary or other action will only be taken after the disclosed matter has been appropriately dealt with. In all cases where disciplinary or other action is being contemplated, any such action will not be taken without the Council's CEO ensuring that:

- the fact that a person has made a PID is not a reason for the Council taking the management action against the employee;
- there are good and sufficient grounds that would fully justify action against any other person in the same circumstances;
- there are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other management action.

The Council will take all reasonable steps to thoroughly document its decision-making process, including recording the reasons why the disciplinary or other action is being taken, and the reasons why the action

is not being taken in retribution against the discloser for making the disclosure, so that it will be able to clearly demonstrate that the disciplinary or other action was taken for the appropriate and permitted reasons under the Act.

The discloser will be clearly informed of any action proposed to be taken, be afforded natural justice, and inform and be informed of any mitigating factors that have been taken into account. Such communications with the discloser will be made in plain English and reasonable steps to provide appropriate support will be offered where appropriate.

10. CONFIDENTIALITY

10.1 General obligation of confidentiality on Moyne Shire Council and all individuals

Moyne Shire Council will take all reasonable steps to protect the identity of the discloser and the matters disclosed by a discloser. Maintaining confidentiality in relation to PID matters is crucial, among other things, in ensuring reprisals are not made against a discloser.

Disclosers should consider whether it is in their best interests not to discuss any related matters other than with authorised persons within Moyne Shire Council, officers of the IBAC, or other persons authorised by law.

10.2 Steps taken by Moyne Shire Council to ensure confidentiality

10.2.1 Information management

Moyne Shire Council will ensure all files, whether paper or electronic, are kept securely in accordance with recordkeeping standards issued by the Public Records Office of Victoria¹⁹ and the Victorian Protective Data Security Framework²⁰ and incorporated Standards.²¹ To ensure protection and security, files will be accessible only by the PID Coordinator or a PID Officer involved in a particular matter. Where necessary, a Welfare Manager may be able to gain access (where appropriate) to related

¹⁹ For further information on how the recordkeeping standards apply to PID's see <https://prov.vic.gov.au/recordkeeping-government/public-interest-disclosures> (last accessed 19 February 2020).

²⁰ <https://ovic.vic.gov.au/resource/victorian-protective-data-security-framework/> (last accessed 19 February 2020).

²¹ <https://ovic.vic.gov.au/data-protection/standards/> (last accessed 19 February 2020).

welfare matters if one has been appointed in relation to a particular PID or an individual.

The Welfare Manager will not divulge any details relating to the disclosed matter to any person other than the PID Coordinator or an investigator appropriately authorised under the Act or the IBAC Act. All meetings between any relevant persons, including the PID Coordinator, PID Officers, any Welfare Manager appointed and disclosers will be conducted discreetly to protect the confidentiality of the person making a PID.

All printed material will be kept in files that are clearly marked as PID Act matters, and warn of the criminal penalties that apply to any unauthorised access, use or divulging of information concerning a PID.

All electronic files will be produced and stored securely. All other materials in connection with a PID will also be stored securely with the PID file.

Moyne Shire Council will not use unsecured email to transmit documents in connection with a disclosure and will ensure all telephone calls and meetings in connection to disclosures are conducted privately and in the strictest of confidence. Hard copy documents will not be delivered by internal mail to a generally accessible area and, where possible, will only be delivered in person by authorised officers.

Moyne Shire Council will ensure that appropriate authenticity and reliability controls are designed into processes and systems to ensure that files can be trusted and relied upon as credible and verifiable evidence that is genuine and of undisputed origin.

10.2.2 Exemption from the Freedom of Information Act 1982 (“FOI Act”)

The FOI Act provides a general right of access for any person to seek documents in the possession of Moyne Shire Council.

However, the Act provides that certain information related to PIDs as contained in documents in the possession of Moyne Shire Council will be exempt from the application of the FOI Act.

Such information excluded from the operation of the FOI Act includes:

- any information relating to a disclosure made in accordance with the Act;
- any information relating to a disclosure notified to the IBAC by Moyne Shire Council under s 21 of the Act for assessment; and
- any information that is likely to lead to the identification of a discloser.

The Council is required to contact the IBAC prior to providing any document originating from the IBAC or relating to a PID, if that document is sought under the FOI Act.

10.2.3 Training for all staff

Moyne Shire Council will:

- ensure that staff, employees, officers and Councillors have access to a copy of these procedures in hard or soft copy;
- incorporate into its induction procedures training about Moyne Shire Council's general obligations under the Act and the rights and obligations of all starting and new staff;
- introduce periodic refresher courses for existing staff about their rights and obligations under the Act;
- provide additional training and assistance to:
 - any members of the Council with specific responsibilities and functions to handle and manage PIDs under the Act, including the PID Coordinator and people involved in welfare management;
 - its complaint handling staff to ensure that any complaints received will be dealt with consistently and in accordance with the Act as required;
 - any staff with functions and duties under the FOI Act or with responsibilities for information management, to ensure that no prohibited information is disclosed under the Act and to ensure there is appropriate liaising with the staff of the IBAC or other investigative agencies where required in response to a request for access under the FOI Act; and
 - all staff and employees dealing with customers to ensure any potential disclosures received from external sources can be handled appropriately in accordance with the Act and these procedures.

10.3 Limited exceptions permitted by the Act

The Act makes it a crime to disclose information connected with a PID. However, the Act provides limited exceptions to the general prohibition on disclosing information connected to PIDs, include circumstances such as:

- where disclosure is required by Moyne Shire Council (or one of its officers) in the exercise of functions of Moyne Shire Council under the Act;
- where necessary for the purpose of the exercise of functions under the Act;
- by an investigating entity for the purpose of exercising that entity's functions under the IBAC Act;
- in accordance with a direction or authorisation given by the investigating entity that is investigating the disclosure;
- to the extent necessary for the purpose of taking lawful action in relation to the conduct that is the subject of an assessable disclosure including a disciplinary process or action;
- where the IBAC or the VI has determined that the assessable disclosure is not a PID and the discloser or Moyne Shire Council subsequently discloses the information;
- when an investigating entity had published a report to Parliament, in accordance with its confidentiality obligations;
- for the purpose of obtaining legal advice in relation to matters specified in the Act;
- to any of the following for the purpose of the discloser being able to seek advice or support in relation to his or her assessable disclosure:
 - a registered health practitioner;
 - a registered trade union of which the discloser is a member;
 - an EAP;
 - WorkCover for the purpose of making a workers' compensation claim;
 - applying to the Fair Work Commission;
- in order to enable compliance with the Act:
 - where a person does not have a sufficient knowledge of the English language, to obtain a translation from an interpreter;
 - where a person is under 18 years of age, to a parent or guardian;
 - where a person is suffering a disability and is not able to understand, to an independent person;

- in disciplinary actions or legal proceedings for certain offences in the Act or other specified Acts.

It is important to note that the Act prohibits the inclusion of any details, in any report or recommendation, that is likely to lead to the identification of a discloser. The Act also prohibits the identification of the person who is the subject of the disclosure in any particulars included in an annual report or any reports to Parliament.

10.4 Penalties apply for unauthorised disclosure of information

The Act contains a number of offence provisions relating to unauthorised disclosure of information by either disclosers or persons who have received disclosures. The relevant penalties include imprisonment, financial payments or both.

The criminal offences set out in the Act relating to confidentiality include:

Offence	Maximum Penalty Applicable
Divulging information obtained in connection or as a result of the handling or investigation of a PID without legislative authority	A fine of 60 penalty units and/or 12 months' imprisonment.
Disclosing that a PID has been notified for assessment under the Act.	A fine of 60 penalty units and/or 12 months' imprisonment.
Disclosing that a PID has been assessed by the IBAC or the VI to be a PIC under the Act.	A fine of 60 penalty units and/or 12 months' imprisonment.

11. COLLATING AND PUBLISHING STATISTICS

Moyne Shire Council is required to publish certain statistics about the Act in its annual reports. That information relates mainly to how these procedures may be accessed and the number of disclosures notified to the IBAC for assessment under s 21 of the Act during the financial year.

The PID Coordinator will establish a secure register to record such information, and to generally keep account of the status of disclosures made under the Act. The register will be confidential and will not record any information that may identify the discloser.

12. REVIEW

These procedures will be reviewed upon significant change to the Act, the Regulations or the IBAC's Guidelines to ensure they comply with the requirements of the Act.

Moyne Shire Council welcomes feedback from its staff and the general public about the accessibility and effectiveness of these procedures and its integrity framework generally. To provide your comments or complaints, please contact us.

Phone: 1300 656 564

Email: moyne@moyne.vic.gov.au

Mail: PO Box 51, Princes Street, Port Fairy, VIC 3284