



Public Interest Disclosure Policy

Purpose

Baw Baw Shire Council is committed to the aims and objectives of the *Public Interest Disclosures Act 2012* (the Act). It does not tolerate improper conduct by its employees, officers, or members of the public, nor the taking of reprisals against those who come forward to disclose such conduct.

Governance Principles

Section 9 of the *Local Government Act 2020* (the Act) specifies the overarching governance principles and supporting principles that Council must adhere to in the performance of its role and functions.

This policy gives effect to the following overarching governance principles outlined in Section 9(2) of the Act:

- Council decisions are to be made and actions taken in accordance with the relevant law;
- Priority is to be given to achieving the best outcomes for the municipal community, including future generations;
- Innovation and continuous improvement is to be pursued;
- Collaboration with other Councils and Governments and statutory bodies is to be sought; and
- The transparency of Council decisions, actions and information is to be ensured.

This report also takes into account the following supporting principles defined in Section 9(3) of the Act:

- The public transparency principles (Public Transparency Policy).

Objectives

The objective of this policy is to formalise the Council's position on public interest disclosures and other complaints.

This policy has been created in accordance with *the Act*, and assists Council in achieving the objectives of the *Public Interest Disclosures Act 2012*.

Definitions

For the purposes of this policy, Council adopts the following definitions:

Assessable Disclosure has the same meaning as at section 3 of *the Act*.

Detrimental Action any disadvantage, including but not limited to, dismissal of an employee, injury of an employee in his or her employment, alternation of an employee's position to his or her detriment, or discrimination in response to a disclosure.

Community means the people of Baw Baw Shire.

Improper Conduct means corrupt conduct, conduct that constitutes a criminal offence, dishonesty, intentional or reckless breach of public trust, misuse of information, mismanagement of public resources, risk to the health and safety of persons or the environment or that adversely affects or is intended to adversely affect the performance of a public officer.

Integrity and Oversight Committee the Integrity and Oversight Committee established by Section 5(a) of the *Parliamentary Committees Act 2003*.

Public Interest Disclosure means a disclosure of information within the government, to an authorised internal recipient or a supervisor, that shows or tends to show a person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct or that a public officer or public body has taken, is taking or proposes to take detrimental action against a person in contravention to *the Act*.

Related Disclosure means a disclosure made to an investigating entity in the course of its investigation of a public interest complaint that may concern the same subject matter as the public interest complaint being investigated by that entity.

Reprisal means any action taken by one person to another, which causes detriment.

Transparency means the availability of all information needed to collaborate, cooperate and make decisions effectively. Notably, “transparency” is also a human rights issue: the right to have the opportunity, without discrimination, to participate in public affairs (s.58 of *The Act*).

Welfare Manager is a person appointed to monitor the specific needs of a discloser and provide them with practical advice and support.

Scope

This policy applies to to all staff of Baw Baw Shire Council, both former and current.

This policy is designed to specifically support the staff of Baw Baw Shire Council in relation to Public Interest Disclosures. A public interest disclosure that relates to the conduct of a Council or of a member, officer or employee of a Council may be made to that Council.

Legislative context

This policy relates to the *Public Interest Disclosures Act 2012 (the Act)*.

Related Acts, policies, and documents

The following Acts also have relevance to this policy:

- *Charter of Human Rights and Responsibilities Act 2006*;
- *Freedom of Information Act 1982*;
- *Independent Broad-based Anti-corruption Commission Act 2011*;
- *Local Government Act 1989*;
- *Local Government Act 2020*;
- *Local Government (Governance and Integrity) Regulations 2020*; and
- *Equal Opportunity Act 2010*.

The following Baw Baw Shire Council Policies have relevance to this policy:

- Staff Code of Conduct;
- Councillor Code of Conduct;
- Information Privacy Policy;
- Complaints Handling Policy; and
- Public Transparency Policy.

The following documents also have relevance to this policy:

- IBAC Guidelines for Handling Public Interest Disclosures; and
- IBAC Guidelines for Public Interest Disclosure Welfare Management.

Policy Detail:

1. Who can Make a Public Interest Disclosure

- 1.1. Anyone can make a disclosure about improper conduct or detrimental action generally – both members of the public and employees of a public body.
- 1.2. To be considered a public interest disclosure, disclosures must be made to an organisation that is authorised to receive disclosures.
- 1.3. Disclosures can be made by individuals or a group of people.
- 1.4. A company or business cannot make a disclosure—but its officers or employees can.

2. Protections for Disclosers

- 2.1. Any disclosure assessed as a public interest disclosure will be afforded protections under *the Act*.
- The protections apply even if the public body receiving the disclosure does not notify the IBAC. Some protections are summarised below:
 - An individual is not subject to any civil, criminal, or administrative liability for making a public interest disclosure;
 - An individual cannot be fired, disciplined, or bullied for making a disclosure;

- It is an offence to take a reprisal, or to threaten to take a reprisal, against a person because of a public interest disclosure (including a proposed or a suspected public interest disclosure);
 - An individual employee of a public service body or a public entity who has made a public interest disclosure and who believes on reasonable grounds that detrimental action will be, is being or has been taken against him or her may request a transfer of employment in accordance with *the Act*;
 - A court may make orders for civil remedies (including compensation, injunctions, and reinstatement of employment) if a reprisal is taken against a person because of a public interest disclosure (including a proposed or a suspected public interest disclosure);
 - It is an offence to disclose the identity of an individual who makes a public interest disclosure;
 - An individual is not subject to any civil or criminal liability or any liability arising by way of administrative process (including disciplinary action for making the disclosure);
 - An individual does not breach an oath, rule of law or agreement regarding confidentiality when making the disclosure; and
 - An Individual cannot be held liable for defamation in relation to information included in a public interest disclosure.
- 2.2. An individual still must assume personal liability if they knowingly make a disclosure that is false or misleading or if the disclosure relates to the individuals own conduct.
- 2.3. The individual is also not protected from any legitimate management action relating to their role.
- 2.4. If an individual makes a disclosure to an agency that isn't authorised to receive public interest disclosures, the disclosure will not be protected under the PID Act.

3. Disclosable Conduct

- 3.1. The IBAC *Guidelines for Handling Public Interest Disclosures* issued under section 57 of *the Act* provide comprehensive guidance on where to make disclosures about specific public bodies or officers.
- Section 4 of *the Act* identifies the kinds of improper conduct that are disclosable summarised below:
 - Corrupt Conduct,

- A criminal offence,
- Serious professional misconduct,
- Dishonest performance of public functions,
- An intentional or reckless breach of public trust,
- An intentional or reckless misuse of information or material acquired in the course of the performance of the functions of the public officer or public body,
- Substantial mismanagement of public resources,
- A substantial risk to the health or safety of one or more persons,
- A substantial risk to the environment,
- Conduct that adversely or intends to adversely affect the honest performance by a public officer or public body of their functions as a public officer or public body, or
- Conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referred to in paragraph.

3.2. It is important to note that a disagreement with or opinion on proposed policy or action by government, or valid expenditure does not constitute disclosable conduct.

3.3. It is a requirement of the Council CEO to mandatorily report suspected corrupt conduct to IBAC pursuant to Section 57(1) of the *Independent Broad-based Anti-corruption Commission Act 2011*.

4. Authorised Disclosure Recipients

4.1. Council is not the only organisation that can receive Public Interest Disclosures, the list of organisation and officers can be found below:

Organisation	Officers who can receive disclosures
IBAC	<ul style="list-style-type: none"> • The Commissioner • A Deputy Commissioner • The Chief Executive Officer • An IBAC employee • An IBAC consultant
Victorian Ombudsman	A Victorian Ombudsman officer
Victorian Inspectorate	<ul style="list-style-type: none"> • The Victorian Inspector • A Victorian Inspectorate employee

Public Service Body	<ul style="list-style-type: none"> • Head of the relevant public service body • A person defined in the public service body's procedures as a person who can receive a disclosure about that body, such as the Public Interest Disclosure Coordinator • Manager or supervisor of the discloser • Manager or supervisor of the person who is the subject of the disclosure
Council	<ul style="list-style-type: none"> • Chief Executive Officer • A person identified in the council's procedures as a person who can receive a disclosure about that council, such as the Public Interest Disclosure Coordinator or Public Interest Disclosure Officers • Manager or supervisor of the discloser • Manager or supervisor of the person who is the subject of the disclosure

5. Treatment and Investigation of Public Interest Disclosures

- Under Section 58 of *the Act*, all public bodies that may receive disclosures, must have procedures to facilitate the making of those disclosures; for the handling of those disclosures and, where appropriate, the notification of those disclosures to an appropriate entity.
- 5.1. The procedures must also protect persons from detrimental action in contravention of section 45 taken by the public body or members, officers or employees of the public body.
 - 5.2. If a discloser is subject to detrimental action, they can make a public interest disclosure about the detrimental action taken against them in reprisal for making an earlier disclosure. If this occurs, it must be treated as a new disclosure under Part 2 of *the Act*.
 - 5.3. Council operates its Public Interest Disclosure processes through a centralised reporting system in order to:

- Ensure disclosures are handled by the least amount of people as possible to protect confidentiality and to reduce the likelihood of reprisals being taken against a person making public interest disclosures;
- Avoid conflicts of interest by excluding line managers from the assessment and investigation of any disclosure where possible; and
- Have clearly defined liaison points for the IBAC and other investigative agencies so information flows are able to be managed.

5.4. The Public Interest Disclosure Coordinator has a Central role in managing the integrity of this process, and is responsible for the following actions, aided when appropriate by the Public Interest Disclosure Officer/s:

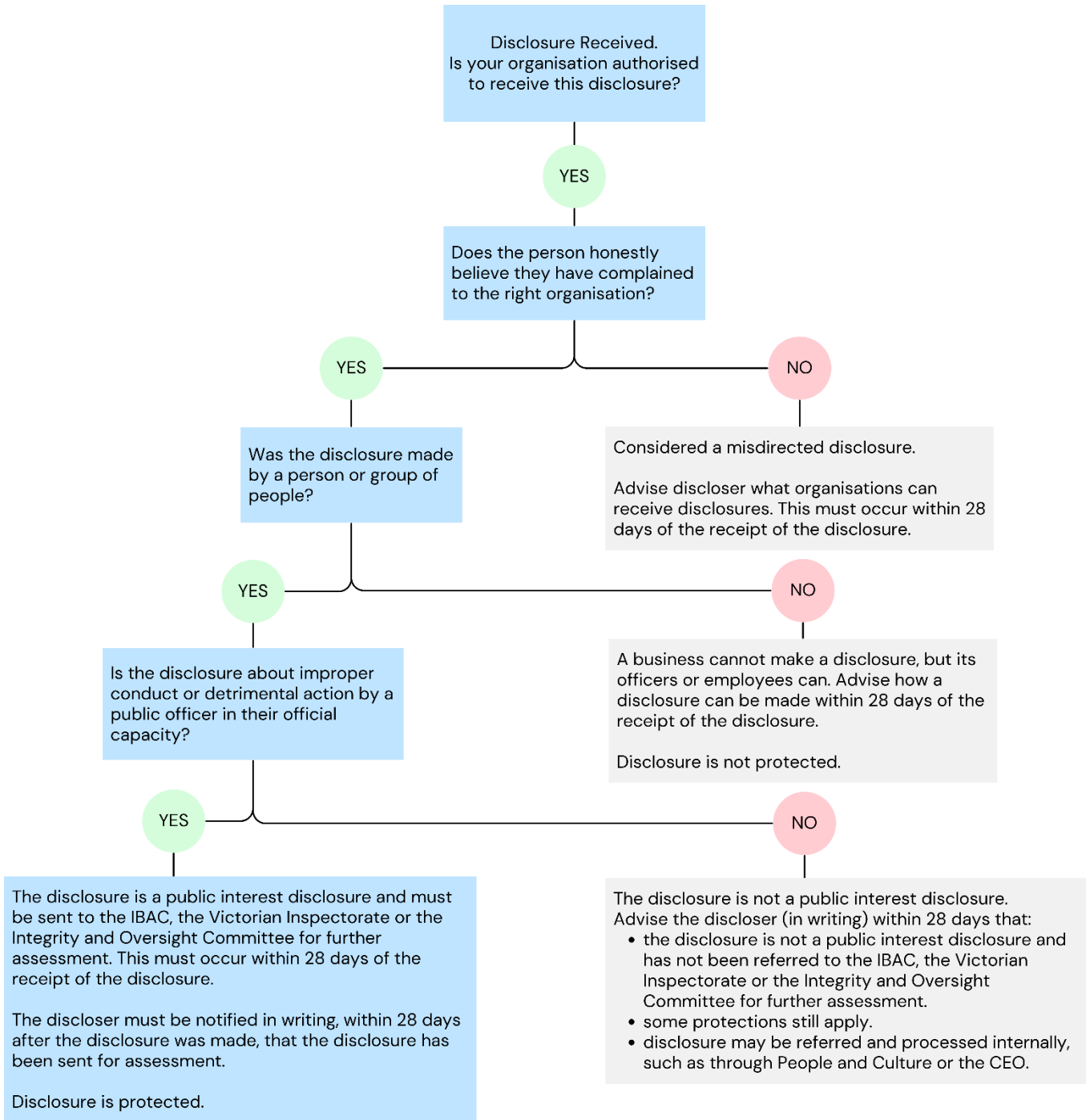
- Impartially assessing each disclosure to determine whether it appears to be a public interest disclosure;
- Coordinating the reporting system used by the organisation;
- Be a contact point for general advice about the operation of *the Act* and for integrity agencies such as the IBAC;
- Be responsible for ensuring that the public body carries out its responsibilities under the Act and the guidelines issued by the IBAC;
- Liaise with the IBAC in regard to *the Act*;
- Establish and maintain a confidential filing system;
- Collate statistics on disclosures made and appropriately provide these for annual reporting;
- Where possible, acknowledge receipt of all public interest disclosure;
- Advise the person making a public interest disclosure of the progress of an investigation into the disclosed matter;
- Where necessary, arrange for appropriate welfare support for the person making a public interest disclosure;
- Take all necessary steps to ensure the identity of the person making a public interest disclosure and the identity of the person who is the subject of the disclosure are kept confidential;
- When necessary, take immediate action to preserve the health and safety of individuals, to ensure the preservation of property, or notify the authorities of serious criminal conduct when assessing a public interest disclosure, this action can be taken

by a Public Interest Disclosure Coordinator while they decide whether the matter needs to be taken to the IBAC;

- Ensure that within 28 days of a disclosure being received, where it is determined to be a public interest disclosure, the appropriate agency is notified in writing that the a disclosure has been received that may be a public interest disclosure and that the disclosure is being sent for assessment, and that the discloser is notified in writing within 28 days that the disclosure has been sent to the IBAC for assessment;
- Ensure that within 28 days of a disclosure being received, where it is determined to not be a public interest disclosure, the discloser is notified of the next steps and relevant information in writing;
- Liaise with the Chief Executive Officer of the Council; and
- When necessary, make enquiries of employees within the organisation.
- The Public Interest Disclosure Coordinator may request that the Public Interest Disclosure Officer/s assist with disclosures as necessary and appropriate, or in the absence of the Public Interest Disclosure Coordinator the Public Interest Disclosure Officer/s will manage any Public Interest Disclosures. This ensures that whilst a central person, the Public Interest Disclosure Coordinator, remains responsible for the confidentiality and integrity of the process, they are able to be supported by the Public Interest Disclosure Officers, minimising the risk of a disclosure being unattended to or improperly dealt with due to resourcing constraints.

5.5. The following flowchart outlines the procedure for managing Public Interest Disclosures:

If the IBAC determines that a disclosure is a public interest complaint, the IBAC must deal with the disclosure in accordance with the *Independent Broad-based Anti-corruption Commission Act 2011*.



5.6. If the Victorian Inspectorate determines that a disclosure is a public interest complaint, the Victorian Inspectorate must deal with the disclosure in accordance with the *Victorian Inspectorate Act 2011*.

5.7. If the Integrity and Oversight Committee determines that a disclosure is a public interest complaint, the Committee must engage an independent person to investigate the disclosure in accordance with Part 4A of *the Act*.

5.8. Under Section 34 – 37A of *the Act* related disclosures may be pursued by the investigating entity if such disclosures comply with *the Act*, either in relation to the initial disclosure or as a new disclosure.

6. Urgent Action following a Disclosure

6.1. In some circumstances, disclosure may be made about conduct that may pose an immediate threat to the health and safety of individuals, or the preservation of property, or may consist of serious criminal conduct. In this scenario, the Public Interest Disclosure Coordinator may take lawful, necessary steps to reduce the threat, preserve property or prevent further criminal conduct. This may involved a notification to Victoria Police.

7. Treatment of Information relating to Disclosures

7.1. Council will take all reasonable steps to protect the identity of the person making a public interest disclosure.

7.2. Under *the Act* a person or body must not disclose information likely to lead to the identification of a person who has made an assessable disclosure.

7.3. Maintaining confidentiality is crucial in ensuring reprisals are not made against a person making a disclosure.

7.4. *The Act* requires any person who receives information due to the handling or investigation of a disclosure, not to disclose that information except in certain limited circumstances. These include:

- When a body is exercising its functions under the *the Act*;
- When it is disclosed by an investigating entity for the purpose of the exercise of functions under *the Act* that authorises that investigating entity to investigate a public interest complaint;
- When the IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee determines the disclosure is not a public interest complaint;
- When a disclosure is to Victoria Police where an investigating entity has previously disclosed information to the Chief Commissioner of Police relating to actual or potential criminal conduct and the information is relevant to an investigation by Victoria Police of the criminal conduct;

- When it is for the purpose of a proceeding or for a disciplinary process under a relevant Act;
 - When it is for the purpose of, or in the course of, a restorative engagement process, with the written consent of the person participating in the process who alleges that they are the victim of sex discrimination or sexual harassment;
 - When it is necessary for the discloser to obtain legal advice or representation, interpretive services, the advice of a parent or guardian (for individuals under 18 years), the advice of an independent person (for individuals who are illiterate or have mental or physical impairments);
 - When the disclosure is for the purpose of assisting the discloser to seek advice or support from a registered health practitioner or trade union or employee assistance program; or
 - When the disclosure is to WorkCover for a worker's compensation claim or to the Fair Work Commission for an application.
- 7.5. *The Act* prohibits the inclusion of particulars in any report or recommendation that is likely to lead to the identification of the person making the disclosure.
- 7.6. *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 other reports to Parliament.
- 7.7. Section 78 of the *the Act* excludes the application of the *Freedom of Information Act 1982* to any document that relates to a disclosure made under the *the Act*. The Public Interest Disclosure Coordinator will ensure that any officers handling freedom of information requests are aware of this section.
- Under Section 70 of *the Act* Council must include in its Annual Report information about how to access the public interest disclosure procedures and the number of disclosures notified to the IBAC during the financial year, however the information in the annual report must not include information that is likely to lead to the identification of a person who made an assessable disclosure.
 - To prevent breaches of the confidentiality requirements and to minimise the possibility of detrimental action, Council will ensure that it has established a secure electronic and paper filing system. The following measures are in place:
 - Council ensures all files, whether paper or electronic, are kept in a secure room and can only be accessed by the Public Interest Disclosure Coordinator, and when appropriate

the Public Interest Disclosure Officers, the investigator or welfare support person (in relation to welfare matters);

- All printed material is kept in files that are clearly marked as a public interest disclosure material, and warn of the criminal penalties that apply to any unauthorised divulging of information concerning a public interest disclosure;
- All electronic files are password protected or have limitations on access rights to authorised officers only;
- All materials relevant to an investigation, such as tapes from interviews, are also be stored securely with access only to authorised officers;
- Sensitive information or documents are never emailed or faxed to a machine to which staff have general access;
- To ensure confidentiality, personal delivery of documents is used; and
- Any mail addressed to the Public Interest Disclosure Coordinator is handed directly to the Public Interest Disclosure Coordinator unopened or scanned in the normal system. The Public Interest Disclosure Coordinator registers the correspondence in accordance with this procedure.

8. Managing the Welfare of Disclosers

- 8.1. Council is committed to creating and promoting a workplace culture where employees feel they can speak up in regard to public interest disclosures and reports of improper conduct.
- 8.2. All employees are encouraged to seek advice confidentially and anonymously from the Public Interest Disclosure Coordinator, Public Interest Disclosure Officers, or Chief Executive Officer if they are considering making a disclosure or reporting improper conduct.
- 8.3. Council as a public body has an obligation to protect disclosers and anyone assisting a discloser.
- 8.4. Once a disclosure has been received, the Public Interest Disclosure Coordinator will contact the discloser during numerous parts of the process to offer support and to ensure they have clarity on what the discloser hopes to achieve.
- 8.5. The Public Interest Disclosure Coordinator will also actively monitor the workplace, with a view to anticipating problems and dealing with them before they develop into serious

matters. This can include monitoring any concerns the person may have about harassment, intimidation, or victimisation in reprisal for their actions, and monitoring any office gossip or rumours about the disclosure or the matter in which the disclosure relates to.

- 8.6. Records will be kept throughout the period of the disclosure and assessment. The Public Interest Disclosure Coordinator may request that the Public Interest Disclosure Officer/s assist with this process, or in the absence of the Public Interest Disclosure Coordinator the Public Interest Disclosure Officer/s may take carriage of this process.
- 8.7. The Public Interest Disclosure Coordinator the Public Interest Disclosure Officer/s may also consider appointing a Welfare Manager for a discloser, generally in the event an investigation is being carried out and the matter is likely to be prolonged.
- 8.8. A welfare manager's role is to monitor the specific needs of the discloser and provide them with practical advice and support. If the Public Interest Disclosure Coordinator or Officer/s form a view that detrimental action is likely to be taken against a discloser, then a Welfare Manager will be appointed.
- 8.9. Disclosers are encouraged to access the organisations Employee Assistance Program, or to appoint their own support person to assist throughout the process. Council's Contact Officers also receive regular training in relation to the support of disclosers.

The IBAC Guidelines for *Public Interest Disclosure Welfare Management*, issued under section 57 of the Act provide comprehensive guidance for individuals or entities who can receive disclosures.

9. Managing the Welfare of Individuals who are the Subject of a Disclosure

- 9.1. Council acknowledges that individuals who may be the subject of a public interest disclosure may also require support throughout and at the conclusion of any investigative process.
- 9.2. Furthermore, until a public interest complaint is resolved by the Public Interest Disclosure Coordinator (either by dismissing or investigating it) the information about the person who is the subject of the disclosure is only an allegation.
- 9.3. An individual who is the subject of a disclosure can seek support confidentially from an appropriate person, or the organisations Employee Assistance Program.

- 9.4. If an individual has been the subject of allegations which have been investigated and no evidence of wrongdoing found, Council will endeavour to ensure there are no adverse consequences for the person arising out of the disclosure or its investigation particularly in the event that information has been disclosed that has made that person identifiable.
- 9.5. The subject of an allegation will be afforded natural justice before a decision is made about their conduct.

10. Making a Disclosure to Baw Baw Shire Council's Authorised Disclosure Recipients

- 10.1. Public interest disclosures may be made verbally or in writing, and can be made anonymously.
- 10.2. Under Section 19 of *the Act*, a disclosure is not a public interest disclosure if the person making the disclosure expressly states in writing that the disclosure is not a public interest disclosure.
- 10.3. Under Section 20 of *the Act* a disclosure is not a public interest disclosure if the disclosure is made by an officer or employee of an investigating entity in the performance of the officer's or the employee's functions or duties unless they expressly state in writing that the disclosure is a public interest disclosure.
- Disclosures of improper conduct or detrimental action by Council, its employees or a person acting on behalf of Council may be made to:

Public Interest Disclosure Coordinator

[E publicinterestdisclosure@bawbawshire.vic.gov.au](mailto:publicinterestdisclosure@bawbawshire.vic.gov.au)

Disclosures can also be made by phone, by calling 1300 BAW BAW and asking for the Public Interest Disclosure Coordinator.

Disclosures can also be made by Mail (marked Confidential) to the Public Interest Disclosure Coordinator PO Box 304 Warragul VIC 3820 or by Email (marked Confidential) to publicinterestdisclosure@bawbawshire.vic.gov.au

- 10.4. Where a person is contemplating making a disclosure and is concerned about approaching the Public Interest Disclosure Coordinator or Public Interest Disclosure

Officers in the workplace, they can call the relevant individual and request a meeting in a discreet location.

10.5. A disclosure about improper conduct or detrimental action by Council or its employees may also be made directly to the IBAC. You can make a disclosure to the IBAC in person, in writing, by telephone or via email.

10.6. Disclosures about Councillors should be referred to the IBAC or the Victorian Ombudsman. Further details are available online at www.ibac.vic.gov.au or by contacting the IBAC on 1300 735 135; or online at <https://www.ombudsman.vic.gov.au/contact-us/> or by contacting the Ombudsman on 03 9613 6222.

11. Non-Compliance with *the Act* and this Policy

11.1. There are a number of civil and criminal penalties under the Act; relating to detrimental action and the liability of an individual and the vicarious liability of their employer, the disclosure of content of a public interest disclosure or police complaint disclosure, the disclosure of identity of person making a public interest disclosure or police complaint disclosure, making a false disclosure or providing false further information and falsely claiming a disclosure is a public interest disclosure.

- Council may take appropriate management action where an employee breaches *the Act* or this policy.
- **Monitoring, Evaluation and Review**
- Council's Public Interest Disclosure Coordinator and Public Interest Disclosure Officers will complete public interest disclosure refresher training with a certified legal practitioner, and subsequently review this policy, every two years.
- Periodic information sessions will also be held every two years (at a minimum), in line with the policy review, to educate staff on the disclosure process.

Review

Approval date	18 February 2025
Approval authority	Risk Management Committee
Effective from	19 February 2025
Review term	2 years

The printed document is an uncontrolled document. To ensure you have the latest policy visit Council's website at www.bawbawshire.vic.gov.au or contact the Governance team on 03 5624 2411.

Next review date	March 2027
Responsible position	Governance Coordinator
Responsible Director	Governance and Information Services
Version	3

Revision History

Approval date	Version	Revision description
19 August 2020	1	Policy as adopted by Risk Management Committee.
21 February 2023	2	Policy as adopted by Risk Management Committee.
18 February 2025	3	<p>Inclusion of the policies adherence to the Governance Principles as defined in Section 9 of the Local Government Act 2020.</p> <p>Inclusion of the role of Welfare Managers in the PID process.</p> <p>Inclusion of guidance on managing the welfare of individuals who are the subject of a disclosure.</p> <p>Highlighted that a person can make a public interest disclosure about detrimental action taken against them in reprisal for making an earlier disclosure. If this occurs, it must be treated as a new disclosure under Part 2 of the PID Act.</p> <p>Highlighted that a PID Coordinator may and can take urgent action where disclosure may be made about conduct that may pose an immediate threat to the health and safety of individuals, or the preservation of property, or may consist of serious criminal conduct.</p> <p>Inclusion of specific reference to natural justice for individuals who are the subject of a disclosure and/or investigation.</p>

		<p>Removal of the names of Public Interest Disclosure Coordinator and Public Interest Disclosure Officers to account for staff changes.</p> <p>Adjusted the provisions for refresher training, to allow for training with a certified legal practitioner or appropriate provider, such as the IBAC, due to legal services being cost prohibitive and at time difficult to obtain.</p> <p>Inclusion of this 'Revision History' table to comply with Governance best practice and offer greater transparency of policy changes.</p>
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