

Procedures for Making and Handling Public Interest Disclosures

Public Interest Disclosures Act 2012



Contents

1. Purpose	4
2. Scope	4
3. Glossary of key terms	4
4. Public Interest Disclosure Framework	5
5. What is a Public Interest Disclosure?	5
6. Making a Disclosure	6
6.1 Who can make a disclosure?	6
6.2 Who can a disclosure be made to?	6
6.3 Contact details of persons within MPS who can receive disclosures	6
6.4 What can a disclosure be about?	6
6.5 How can a disclosure be made?	6
6.5.1 Private verbal disclosure:	6
6.5.2. Written disclosure:	7
6.5.3 Anonymous Disclosure	7
6.5.4 Information to be provided about the disclosure	7
7. Handling a Disclosure	8
7.1 Assessing disclosures	8
7.1.1 What is improper conduct?	8
7.1.2 What is detrimental action?	8
7.1.3 Assessment standards to be considered.	9
7.2 Undertaking a Risk Assessment to determine the risk of detrimental action	9
7.3 Notifying your assessment	10
7.3.1 If you consider the disclosure may be a public interest disclosure	10
7.3.2 If you consider the disclosure is NOT a public interest disclosure	10
7.4 Protection for public officers	10
7.5 Handling disclosures not related to MPS	11
8. MPS Internal Reporting Structure (Roles and Responsibilities)	11
8.1 Employees and Councillors	11
8.2 Supervisors and managers	11
8.3 Public Interest Disclosure Coordinator	11
8.4 Chief Executive Officer	11
8.5 Welfare Manager	11
9. Welfare Management	12
9.1 Provision of support and protection	12
9.2 Appointment of a welfare manager	13
10. Confidentiality	13
10.1 Obligation of confidentiality	13
10.2 Steps taken by MPS to ensure confidentiality	13
10.2.1 Data Management	13

10.2.2 Exemption from the Freedom of Information Act 1982 ("FOI Act")	14
11. Reporting Statistics.....	14
12. Training	14
13. Review and Evaluation	15
14. Related Documents	15
15. Owner.....	15

1. Purpose

Mornington Peninsula Shire (MPS) is committed to the highest standards of ethical and accountable conduct and supports employees and members of the public in reporting improper conduct.

The purpose of this document is to set out procedures for making disclosures of improper conduct and detrimental action taken by the MPS and its employees, and how those disclosures should be made and handled.

These procedures have been established under s 58 of the *Public Interest Disclosures Act 2012* (the Act) and in accordance with the Guidelines issued by the Independent Broad-based Anti-corruption Commission (IBAC) available on the IBAC website <https://www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-making-and-handling-protected-disclosures> and the *Public Interest Disclosure Regulations 2019* (collectively known as the PID Scheme).

2. Scope

These procedures cover the making, receiving, assessing and management of disclosures. These procedures apply to MPS employees, Councillors and members of the public.

3. Glossary of key terms

Assessable disclosure - a disclosure that is made directly, or which must be notified, to the IBAC or the Victorian Inspectorate. In the case of a disclosure notified to IBAC, it is a disclosure that the notifier considers may be a public interest disclosure.

Detrimental action – is defined in section 3 of the Act and includes

- action causing injury, loss or damage
- intimidation or harassment
- discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action

Public Interest Disclosure (PID) – disclosure by a natural person of information that shows/tends to show or information that the person reasonably believes shows / tends to show improper conduct or detrimental action. PIDs were previously known as protected disclosures.

Public Interest Disclosure Coordinator - the person appointed under these procedures to oversee and coordinate the receipt of PIDs and related activities

Improper conduct – is defined in section 4 of the Act and specifies the following categories:

- corrupt conduct
- criminal offence
- serious professional misconduct
- dishonest performance of public functions
- intentional or reckless breach of public trust
- intentional or reckless misuse of information
- substantial mismanagement of public resources
- substantial risk to health or safety of a person

- substantial risk to the environment
- conduct of any person that adversely affects the honest
- performance by a public officer of their functions
- conduct of any person that is intended to adversely affect the effective performance by a public officer of their functions for the benefit of the other person

Public officer – a public officer within the meaning of section 6 of the *Independent Broad-based Anti-corruption Commission Act 2011*, a person employed in any capacity by the MPS.

Public body – a public body within the meaning of section 6 of the *Independent Broad-based Anti-corruption Commission Act 2011*. MPS is a public body.

Welfare Manager – a person appointed by the Public Interest Disclosure Coordinator to monitor specific needs of a discloser, provide them with practical advice and coordinate welfare support.

4. Public Interest Disclosure Framework

The MPS framework includes:

- Commitment to fostering a culture where the making of disclosures is valued and taken seriously
- Endorsement by senior management of the benefits and importance of PIDs and their appropriate management
- Communications strategy to raise employee awareness of PIDs and associated procedures
- Training and awareness strategy for employees on PID policy and procedures, how disclosers are supported and how PIDs are managed.
- Specialist training for employees who may receive PIDs and provide support to disclosers.
- Appointment of a Public Interest Disclosure Coordinator nominated to receive and notify IBAC of PIDs and responsible for management of PIDs, procedures and framework.
- Procedures for identifying issues and outcomes of PIDs in order to inform improvements in service delivery, business processes and internal controls.
- Review and evaluation of procedures and framework to ensure effectiveness

5. What is a Public Interest Disclosure?

PIDs are reports about:

- improper conduct of public bodies or public officers made by a person in accordance with the Act and to any of the organisations in Part 2 of the Act including councils established under the *Local Government Act 1989*.
- detrimental action that a public officer or public body takes against a person in reprisal for them (or another person) having made a disclosure or cooperated with the investigation of a disclosure.

Disclosures can relate to conduct or action that:

- may have already taken place (including conduct that occurred before the Act came into place
- may be occurring now, or
- may happen in the future

A complaint or allegation that is already in the public domain will not normally be a public interest disclosure – for example, if the matter has already been subject to media or other public commentary.

6. Making a Disclosure

6.1 Who can make a disclosure?

Any person can make a disclosure about improper conduct or detrimental action – both members of the public and employees of a public body.

A disclosure can be made by an individual or by a group of individuals.

A company or business cannot make a disclosure but its officers or employees can.

6.2 Who can a disclosure be made to?

Disclosures about MPS or its employees can be made to MPS, to IBAC and to the Ombudsman.

Disclosures about Councillors must be made to IBAC.

Disclosures made to MPS can be made to:

- The Public Interest Disclosure Coordinator
- The Chief Executive Officer
- Manager or supervisor of the discloser
- Manager or supervisor of the person who is the subject of the disclosure.

6.3 Contact details of persons within MPS who can receive disclosures

- Public Interest Disclosure Coordinator (Manager Governance and Risk): phone - 5950 3237, email pamela.vercoe@mornpen.vic.gov.au
- Chief Executive Officer: phone - 5950 1400, email – ceo@mornpen.vic.gov.au

6.4 What can a disclosure be about?

A disclosure must be about information that shows or tends to show, or that you believe on reasonable grounds shows or tends to show, that:

- a person, public officer or public body
- is engaging in, or proposing to engage in
- 'improper conduct' and/or 'detrimental action'. (refer to sections 7.1.1 and 7.1.2 for definitions of improper conduct and detrimental action)

6.5 How can a disclosure be made?

6.5.1 Private verbal disclosure:

A verbal disclosure can be made in person, by phone or by leaving a voicemail message.

A verbal disclosure must be made in private. This means the person making the disclosure must reasonably believe that only the following people (other than themselves) are present or able to listen to the conversation:

- a lawyer representing the person making the disclosure (if any)
- one or more people to whom a disclosure can be made under the Act.

This does not preclude a group of individuals from making a joint disclosure at one time.

Where a disclosure is made verbally, the person receiving the disclosure will make notes at the time. The conversation may also be recorded but only if the discloser gives permission or by prior warning that the conversation will be recorded.

6.5.2. Written disclosure:

A written disclosure to MPS must be:

- delivered personally to MPS customer service or
- sent by postal mail to MPS mailing address or
- sent by email to the official email address of:
 - the MPS Public Interest Disclosure Coordinator as specified in 6.3 or
 - the supervisor or manager of the discloser, if the discloser is an employee of MPS or
 - the supervisor or manager of the person to whom the disclosure relates, where that person is an employee of MPS

MPS recommends that the discloser ensures, where a written disclosure is being provided personally or by post to an official office location or address of MPS, that the disclosure be sealed in an envelope which is clearly marked with one or more of the following:

- Private & Confidential - Public Interest Disclosure Coordinator
- Private & Confidential - CEO

Written disclosures to IBAC and the Ombudsman can be made via an online form available on their websites:

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

<https://www.ombudsman.vic.gov.au/Disclosures/Making-a-disclosure>

6.5.3 Anonymous Disclosure

Disclosures can be made anonymously however MPS will not be able to provide information about progress in handling the disclosure nor seek additional information that may be required.

6.5.4 Information to be provided about the disclosure

To assist with the assessment of the disclosure, provision of the following information is requested;

- who was involved
- what happened
- when it happened
- where it happened
- whether there were any witnesses, and if so who they are
- any evidence that supports the disclosure, and where the evidence is located
- any further information that could help investigate the disclosure.

A disclosure can still be made even if you do not have all this information. For example, you may have information about an event, time and place but not know the names of the officer/s.

7. Handling a Disclosure

7.1 Assessing disclosures

For an allegation or a report to be considered a public interest disclosure, it must tend to show improper conduct or detrimental action.

7.1.1 What is improper conduct?

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

When assessing allegations of improper conduct, a link must be identified between the conduct and the official function of a public officer or public body.

What improper conduct includes
Corrupt Conduct
Conduct of a public officer or public body engaged in their capacity as a public officer or a public body that constitutes: • a criminal offence • serious professional misconduct • dishonest performance of public functions • an intentional or reckless breach of public trust • an intentional or reckless misuse of information or material acquired in the course of the performance of the functions of the public officer or public body • a substantial mismanagement of public resources • a substantial risk to health or safety of one or more persons • a substantial risk to the environment
Conduct of any person that:
• adversely affects the honest performance by a public officer or public body of their public functions • is intended to adversely affect the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body and results in the person, or an associate of the person, obtaining: – a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument – an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument – a financial benefit or real or personal property – any other direct or indirect monetary or proprietary gain that the person or associate would not have otherwise obtained.
Conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referred to above.

7.1.2 What is detrimental action?

It is an offence for a person to take, threaten to take or allow another person to take detrimental action against another person in reprisal for making a public interest disclosure.

Detrimental action includes:

- action causing injury, loss or damage
- intimidation or harassment
- discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action in reprisal for making a disclosure.

A person does not need to have actually taken the detrimental action, but can have threatened to do so, or incited or permitted someone else to do so.

What to consider as part of your assessment:

- Consider both the nature of the detrimental action and whether it is being taken in reprisal for making a disclosure.
- Did the person take or threaten the action (or incite or permit another person to take or threaten the action) because (or in the belief) that:
 - the other person (or anyone else) has made, or intends to make, the disclosure
 - the other person (or anyone else) has cooperated or intends to cooperate, with an investigation of the disclosure.

The Act does not prevent a manager taking management action against a person who has made a disclosure provided that the making of the disclosure is not the reason for the management action being taken.

7.1.3 Assessment standards to be considered.

The disclosure needs to be assessed to decide if it is about improper conduct or detrimental action. There are two standards that should be considered.

Shows or tends to show improper conduct or detrimental action	Reasonable belief that improper conduct or detrimental action has occurred
Does the information provided show or tend to show there is improper conduct or detrimental action?	Does the discloser believe on reasonable grounds that improper conduct or detrimental action has occurred?
Reliability of the information	Reasonable belief
In assessing if there is improper conduct or detrimental action, look at all the information provided about the alleged conduct and about the discloser:	A person making a disclosure must reasonably believe that improper conduct or detrimental action has occurred or is going to occur.
What is the discloser's connection to the alleged conduct? Are they a victim, a witness, or a participant?	This requires more than a suspicion; the belief must have supporting facts and circumstances. For example, it would not be sufficient for a person's disclosure to consist simply of a one-sentence statement like 'I know XYZ is corrupt'.
How did they come to know about the conduct? Were they directly involved in it? Did they observe it happening to another person? Did someone else tell them about it?	The test is whether a reasonable person, possessed of the same information, could believe that the improper conduct had occurred.
How detailed is the information provided? Is there sufficient information to enable you to consider whether there is improper conduct or detrimental action?	Other matters that can be considered to determine if there are reasonable grounds for the discloser's belief is the reliability of the information they have provided, even if it is second or third hand. You can consider how the person would have obtained the information and the amount of detail that has been provided.
How reliable is the information? Is it supported by other information?	You can also consider the credibility of the discloser or the people who provided the discloser with information.

If there is uncertainty as to whether the disclosure is an assessable disclosure then the disclosure should be considered as an assessable disclosure and managed accordingly.

7.2 Undertaking a Risk Assessment to determine the risk of detrimental action.

On receiving a disclosure, MPS will undertake a risk assessment to assess the likelihood of a discloser being subject to detrimental action as a result of making the disclosure.

The assessment will be made in consultation with the discloser and consider any real risks of detrimental action against the people involved, taking into account their particular

circumstances.

Factors to consider in determining the risk of detrimental action include:

- a specific threat against the discloser has been received
- there is more than one subject involved in the disclosure
- the wrongdoing was directed at the discloser
- the discloser has made a report about a more senior officer
- the wrongdoing that is the subject of the disclosure is occurring frequently
- the discloser has already disclosed his or her identity
- there is a history of detrimental action in the department.

MPS will provide for support and protection for the discloser consistent with the risk assessment.

7.3 Notifying your assessment

7.3.1 If you consider the disclosure may be a public interest disclosure

Notify IBAC in writing, within 28 days after the disclosure was made, that:

- the disclosure may be a public interest disclosure
- you are sending the disclosure for assessment

You may also provide IBAC with any information you have obtained regarding the disclosure in the course of your enquires. This information can be provided at the time of notification or at any later time.

Notify the discloser - you must notify the discloser in writing, within 28 days after the disclosure was made, that the disclosure has been sent to IBAC for assessment.

7.3.2 If you consider the disclosure is NOT a public interest disclosure

You must advise the discloser in writing, within 28 days after the disclosure was made, that:

- you do not consider the disclosure shows or tends to show improper conduct or detrimental action
- the disclosure has not been sent to IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee for assessment
- the discloser's identity does not have to be kept confidential, but protections under Part 6 of the Act apply, for example:
 - they can't be fired, disciplined or bullied for making the disclosure
 - they are protected from legal actions such as defamation and civil liability.

You do not have to provide the discloser with this information unless the discloser has indicated, or it otherwise appears to you, that they wish to receive the protections that apply to a public interest disclosure under the Act.

Consideration should be made as to whether the disclosure could be dealt with according to MPS complaint handling procedures.

7.4 Protection for public officers

When a public officer acts in good faith and in accordance with the PID scheme, they do not commit an offence under section 95 of *the Constitution Act 1975* or any other Act that imposes a duty to maintain confidentiality, and do not breach confidentiality obligations or information disclosure restrictions.

7.5 Handling disclosures not related to MPS

If MPS receives a disclosure that is not about MPS, handling of the disclosure is determined by whether or not the discloser honestly believes they have complained to the right organisation:

Honestly believes it is the right organisation	Knows it is not the right organisation
Continue to assess the disclosure to decide if it is a potential public interest disclosure.	Advise the discloser what organisations can receive the disclosure. The disclosure is not protected under the Act.

8. MPS Internal Reporting Structure (Roles and Responsibilities)

8.1 Employees and Councillors

Employees and Councillors are encouraged to report known or suspected occurrences of corrupt conduct and detrimental action.

8.2 Supervisors and managers

The supervisor or manager receiving the disclosure will:

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

8.3 Public Interest Disclosure Coordinator

The Public Interest Disclosure Coordinator will:

- receive all disclosures including those forwarded from supervisors or managers
- receive all phone calls, emails and letters from members of the public or employees seeking to make a disclosure
- impartially assess each disclosure to determine if it is an assessable disclosure
- notify IBAC of all assessable disclosures
- appoint a welfare manager where required to support the discloser and to protect them from detrimental action
- establish and manage a confidential filing system
- collate and publish statistics on disclosures received
- take all necessary steps to ensure the information disclosed and the identity of the person making the disclosure and the identity of the person who is the subject of the disclosure is kept confidential
- liaise with the Chief Executive Officer

8.4 Chief Executive Officer

- Receive and manage disclosures about the Public Interest Disclosure Coordinator
- Act as the relief Public Interest Disclosure Coordinator in the absence of the Public Interest Disclosure Coordinator.

8.5 Welfare Manager

The welfare manager is responsible for looking after the general welfare of the discloser and will:

- Examine the immediate welfare protection needs of a person who has made a

- disclosure, and seek to provide a supportive work environment
- Advise the discloser of the legislative and administrative protections available to them
- Listen and respond to any concerns of harassment, intimidation, victimisation or other detrimental action which may be occurring in reprisal for making a disclosure.
- protect the identity of the discloser in the course of carrying out these responsibilities

9. Welfare Management

MPS is committed to protecting disclosers from detrimental action taken in reprisal for the making of a disclosure.

9.1 Provision of support and protection

MPS will support disclosers by:

- keeping them informed by providing:
 - confirmation that the disclosure has been received;
 - the legislative or administrative protections available to the person;
 - details of any action proposed; and
 - details of results of actions taken by MPS
- providing active support by:
 - acknowledging the person for having come forward
 - making a clear offer of support;
 - assuring them that all reasonable steps will be taken to protect them; and
 - giving them an undertaking to keep them informed as far as the MPS is reasonably able to;
- managing their expectations by undertaking an early discussion with them about:
 - what outcome they seek;
 - whether their expectations are realistic;
 - what MPS will be able to deliver;
- maintaining confidentiality by:
 - ensuring as far as possible that the identity of the discloser cannot be inferred
 - reminding the discloser not to reveal themselves or to reveal any information that would enable others to identify them as a discloser;
 - ensuring that hardcopy and electronic files relating to the disclosure are accessible only by those who are involved in managing disclosures;
- proactively assessing the risk of detrimental action being taken in reprisal through assessment and active monitoring of the workplace
- protecting the discloser by:
 - examining the immediate welfare and protection needs of the discloser and fostering a supportive work environment;
 - listening and responding to any concerns the discloser may have about harassment, intimidation or victimisation in reprisal for their actions;
 - assessing whether the concerns the discloser may have about harassment, intimidation or victimisation might be due to other causes other than those related to the disclosure
- preventing the spread of gossip and rumours about any investigation into the disclosure; and

- keeping records of all aspects of the welfare management of the discloser, including all contact and follow-up action.

9.2 Appointment of a welfare manager

MPS will consider the appointment of a welfare manager to coordinate welfare support for a discloser.

A welfare manager may be the discloser's manager, a senior member of the Human Resources team or an externally appointed person. The Public Interest Disclosure Coordinator will, in consultation with the discloser, determine the most appropriate person to appoint as the welfare manager.

The following questions will be considered in deciding if a welfare manager needs to be appointed:

- Are there any real risks of detrimental action against the discloser, taking into account their particular circumstances?
- Can MPS ensure that it will take the discloser seriously and treat them with respect?
- Can MPS ensure that it will give the discloser effective support? (This includes keeping them informed of the status of their disclosure.)
- Can MPS protect the discloser from suffering repercussions by dealing with the matter discreetly and confidentially?
- Can MPS respond swiftly and fairly to any allegations the discloser has, in fact, suffered retribution?

If the answer to the first question is 'yes' then the appointment of a dedicated welfare manager is appropriate.

If the answer to the first question is 'no' and the needs set out in the remainder of the questions can be met, a welfare manager is not required.

10. Confidentiality

10.1 Obligation of confidentiality

MPS will take all reasonable steps to ensure the discloser's confidentiality during the assessment and any ensuing investigation of a disclosure. Where the disclosure is dismissed or investigations do not substantiate the allegations, confidentiality will be maintained in relation to the subject's identity, as well as the fact of the investigation and any results.

The obligation of confidentiality extends to any person receiving a disclosure or making a disclosure. It is in the interest of the discloser to ensure he or she does not discuss any related matters other than with authorised persons within MPS, officers of IBAC, or other persons authorised by law.

10.2 Steps taken by MPS to ensure confidentiality

10.2.1 Data Management

MPS will ensure all data related to a disclosure is kept securely in files that are clearly marked as Public Interest Disclosure matters and with appropriate restrictions and privileges applied. Where necessary, a Welfare Manager may be able to gain access as appropriate to related welfare matters.

Information relevant to the disclosure will not be divulged to any person other than the Public Interest Disclosure Coordinator, a welfare manager if appointed, or investigators appropriately authorised under the Act or the *Independent Broad-based Anti-corruption Act 2011*.

All meetings and conversations between any relevant persons will be conducted discreetly to protect the confidentiality of the person making the disclosure.

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 MPS.

However, the Act provides that certain information related to PIDs as contained in documents in the possession of MPS 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 IBAC by MPS under s 21 of the Act for assessment; and
- any information that is likely to lead to the identification of a discloser.

MPS is required to contact IBAC prior to providing any document originating from IBAC or relating to a public interest disclosure if that document is sought under the *FOI Act*.

11. Reporting Statistics

MPS 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 Public Interest Disclosure Coordinator will establish a secure register to record such information, and to keep account of the status of disclosures made.

12. Training

MPS will implement a training strategy that:

- Ensures all employees and Councillors have access to a copy of these procedures.
- Incorporate into its induction process training about MPS' general obligations under the Act and the rights and obligations of all employees and Councillors
- Undertake periodic refresher courses for existing staff and Councillors about their rights and obligations under the Act.
- Provide additional training and assistance to:
 - Employees of MPS with specific responsibilities and functions to handle and manage PIDs under the Act, including the Public Interest Disclosure Coordinator and those involved in welfare management
 - Employees who handle complaints to ensure that any complaints received will be dealt with consistently and in accordance with the Act
 - Employees with functions under the Freedom of Information Act 1982 (FOI Act) to ensure no prohibited information is disclosed under the Act and to ensure there is appropriate liaising with IBAC where required in response to a request for access under the FOI Act; and
 - Employees dealing with customers to ensure potential disclosures received from external sources can be identified and handled in accordance with the Act and these procedures.

13. Review and Evaluation

These procedures will be:

- reviewed annually or upon significant change to the Act, the Regulations or IBAC's guidelines to ensure they comply with the requirements of the Act, the Regulations and IBAC's guidelines; and
- evaluated for effectiveness through feedback from and consultation with employees, disclosers and IBAC.

14. Related Documents

- Employee Code of Conduct
- Councillor Code of Conduct
- Fraud Risk Management Policy / Fraud Control Plan
- Employee Conflict of Interest Policy
- Employee Gifts, Benefits and Hospitality Policy
- Complaint Handling Policy

15. Owner

Manager Governance