

POLICY

Public Interest Disclosure



Objective

To establish a policy and procedure for reporting and handling disclosures of improper or corrupt conduct, or detrimental action, by Hindmarsh Shire Councillors, special committee members or employees.

Scope

This policy applies to all Hindmarsh Shire Councillors, special committee members and employees, as well as any person who makes a public interest disclosure in accordance with the *Public Interest Disclosures Act 2012*.

Policy

1. Introduction

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

Hindmarsh Shire Council recognises the value of transparency and accountability in its administrative and management practices, and supports the making of disclosures that reveal corrupt conduct, conduct involving a substantial mismanagement of public resources, or conduct involving a substantial risk to public health and safety or the environment.

Hindmarsh Shire Council takes seriously its responsibilities to persons who may make a disclosure in respect to improper conduct or corruption. This policy has been established to ensure the confidentiality of any persons making a disclosure, and their welfare are protected. All reasonable steps will be made to protect such persons from any detrimental action in reprisal for making the disclosure. It will also afford natural justice to the person who is the subject of the disclosure.

This Policy establishes a system for reporting disclosures of improper or corrupt conduct or detrimental action by Hindmarsh Shire Councillors or employees.

The PID Act provides protection from detrimental action to any person affected by a protected disclosure and establishes a system for the matters disclosed to be investigated and rectifying action to be taken. Under the PID Act, any person can be one who makes a disclosure, is a witness, or a person who is the subject of an investigation.

2. Definitions

Public Interest Disclosure means 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 (previously a protected disclosure)¹.

Public Interest Complaint means a public interest disclosure that has been determined by IBAC, the Victorian Inspectorate or IOC to be a Public Interest Complaint.²

Improper conduct means conduct that amounts to any of the following:

- Corrupt conduct;
- A 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.

Natural person means a human being, not a legal entity like a body corporate.

Serious professional misconduct means conduct that constitutes a serious breach of an established professional code of conduct and/or other serious departures from the person's professional responsibilities.

Detrimental action

Under the PID Act it is an offence for an employer to take, or threaten to take, detrimental action against person in because the employer believes that the person has given information to the office of the Ombudsman.

Section 3 of the PID Act defines detrimental action as including:

- 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.

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

¹ Public Interest Disclosure Act 2012 Section 9.

² Public Interest Disclosure Act 2012 Section 6.

The PID Act makes it an offence for a person to take detrimental action against a person in reprisal for a protected disclosure. Detrimental action can be taken by any person. However, a disclosure made under the PID Act can only be made about detrimental action by a public officer or public body.

Discloser A person who makes a disclosure that may be a protected disclosure

Independent Broad-based Anti-corruption Commission (IBAC)

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

Public Interest Disclosure Coordinator

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

Public Interest Disclosure Officer

Public Interest Disclosure Officers will be a contact point for general advice about the operation of the PID Act.

Welfare Manager

The Welfare Manager is responsible for looking after the general welfare of any persons making public interest disclosures.

3. What is a public interest disclosure?

A public interest disclosure is a report about the **improper conduct** of public bodies or public officers that a person makes to any organisation specified in Part 2 of the PID Act, which includes a Council.

A public interest disclosure can also be made about **detrimental action** that a public officer or public body takes against a person in reprisal for them (or another person) having made a protected disclosure or cooperated with the investigation of a protected disclosure.

The disclosure can relate to conduct or action that:

- May have already taken place (including conduct that occurred before the PID Act came into effect on 10 February 2013)
- 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 protected disclosure – for example, if the matter has already been subject media or other public commentary.

Improper Conduct examples:	<i>To avoid closure of a town’s only industry, an environmental health officer ignores or conceals evidence of illegal dumping of waste.</i>
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	<p><i>A finance officer approves a colleague’s corporate expense account for payment even though it appears to have non-work related expenditure items listed.</i></p> <p><i>A building inspector tolerates poor practices and structural defects in the work of a leading local builder.</i></p> <p><i>A Council employee is witnessed using a Council grader on private property on a weekend.</i></p>
Detrimental Action examples:	<p><i>Council refuses a deserved promotion of a person who makes a disclosure.</i></p> <p><i>Council demotes, transfers, or isolates in the workplace or changes the duties of a discloser due to the making of a disclosure.</i></p> <p><i>A person threatens, abuses, or carries out other forms of harassment directly or indirectly against the discloser, his or her family or friends.</i></p> <p><i>Council discriminates against the disclosure or his or her family and associates in subsequent applications for jobs, permits or tenders.</i></p>

4. Who can make a disclosure?

Any natural person can make a disclosure about **improper conduct** or **detrimental action**—including members of the public and employees of Council.

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

5. Who can a disclosure be made to?

A person must make a disclosure, allegation or complaint to the appropriate person or body for the disclosure to be assessed as a protected disclosure under the PID Act.

Hindmarsh Shire Council can only receive disclosures that relate to the conduct of:

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

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

Disclosures relating to Hindmarsh Shire Council, its employees, or members of special committees can be made to:

- **Public Interest Disclosure Coordinator**– Director Corporate and Community Services
- **Chief Executive Officer**

- **Public Interest Disclosure Officer**– Manager Governance & Human Services
- **Welfare Manager** – HR & Governance Officer
- **Supervisor** - of the discloser
- **Supervisor** - of the person who is the subject of the disclosure

A disclosure about improper conduct or detrimental action by Hindmarsh Shire Council, or its employees may also be made directly to the Victorian Ombudsman, IBAC, the Victorian Inspectorate (in relation to IBAC and the Public Interest Monitor), Victoria Police, the judicial Commission of Victoria, or IOC (in relation to the Victorian Inspectorate).

Disclosures relating to **Councillors** must be made directly to the Ombudsman or IBAC.

Victorian Ombudsman

Level 9, North Tower, 459 Collins Street, Melbourne VIC 3000

Internet: www.ombudsman.vic.gov.au

Email: ombudvic@ombudsman.vic.gov.au

Phone: (03) 9613 6222

Toll Free (regional only): 1800 806 314

IBAC

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

Internet: www.ibac.vic.gov.au

Phone: 1300 735 135

The following table sets out to whom a disclosure can be made depending on the subject of the disclosure:

Person who is the subject of the disclosure	Person/body to whom the disclosure must be made
Employee	Hindmarsh Shire Council, the Ombudsman or IBAC
Councillor	The Ombudsman or IBAC
Section 86 Committee Member	Hindmarsh Shire Council, the Ombudsman or IBAC

6. Receiving a disclosure

If an employee receives something that they believe may be a protected disclosure they must direct the information to the Public Interest Disclosure Coordinator.

All correspondence, phone calls and emails from internal or external disclosers must be referred to the Public Interest Disclosure Coordinator, and need to be treated as confidential.

7. Making a disclosure

To be assessed as a protected disclosure, a disclosure must meet all of the following criteria:

- a. A natural person (rather than a corporation) has to have made the disclosure
- b. The disclosure has been made verbally or in writing to either the Protected Disclosures Coordinator, Chief Executive or those identified in this policy (including the Ombudsman or IBAC)
- c. The disclosure relates to conduct of a Hindmarsh Shire Councillor, Council officer or member of a Section 86 Special Committee, acting in their official capacity
- d. The alleged conduct is either improper or corrupt conduct or detrimental action taken against a person in reprisal for making a protected disclosure
- e. The person making the disclosure has reasonable grounds for believing the alleged conduct has occurred

A person can make a **verbal disclosure** in person, by phone or by leaving a voice mail message. A verbal disclosure must be made in private. This does not preclude a group of individuals from making a joint disclosure at one time.

A person may make a **written disclosure** provided to Council by delivering in person, mailing, or emailing or via an online form (in the case of disclosures to IBAC and the Ombudsman).

A person does not need to identify themselves to make a disclosure under the PID Act. An anonymous disclosure can be made by using an unverifiable email address, through anonymous phone calls, or in a face-to-face conversation or meeting where the person refuses to identify themselves.

Where a person is contemplating making a disclosure and is concerned about approaching the Public Interest Disclosure Coordinator or a Public Interest Disclosure Officer in the workplace, he or she can call the relevant officer and request a meeting in a discreet location away from the workplace.

8. Assessing a disclosure

Where the Public Interest Disclosure Coordinator receives information relating to the conduct of an employee, special committee member or officer of Hindmarsh Shire Council, the Public Interest Disclosure Coordinator must assess whether the disclosure meets the criteria of the PID Act to be a protected disclosure.

A discloser does not need to refer to the PID Act in making a disclosure. An assessment is to be made on the nature of the information disclosed (and not on the discloser's intention and/or knowledge of the PID Act).

If one or more of the criteria (a. to e.) (see part 7 of this policy) are not satisfied, the person has not made a public interest disclosure under Part 2 of the PID Act. If a disclosure does not meet the requirements of Part 2 of the PID Act, the assessor should inform the discloser about the correct way to make a disclosure so they have an opportunity to meet the legislative requirements.

Where a disclosure is assessed not to be a public interest disclosure, the Public Interest Disclosure Coordinator will decide how the matter should be responded to, including whether it could be dealt with in accordance with Council's.

9. Protections

Protections under Part 6 of the PID Act apply to a protected disclosure from the time the disclosure is made.

Part 6 of the PID Act includes a number of protections for a discloser:

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

If a person has made a false or misleading disclosure, the person is not covered by the protections of the PID Act.

10. Reporting a disclosure to IBAC

Where the Public Interest Disclosure Coordinator has received a disclosure that has been assessed to be a public interest disclosure, the Public Interest Disclosure Coordinator must —

- Notify IBAC in writing within 28 days after the disclosure was made that a disclosure may be a protected disclosure and that IBAC is notified of the disclosure for its assessment.
- Notify the discloser in writing within 28 days after disclosure was made that the disclosure has been notified to IBAC for assessment and that it is an offence to disclose that the disclosure has been notified to IBAC for assessment.

Once a notification is made to IBAC, IBAC will assess whether the disclosure is a protected disclosure and determine whether to dismiss, investigate or refer the disclosure complaint.

Administrative Updates

It is recognised that, from time to time, circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter this document, such a change may be made administratively. Examples include a change to the name of a Council department, a change to the name of a Federal or State Government department, and a minor update to legislation which does not have a material impact. However, any change or update which materially alters this document must be by resolution of Council.

Resources

Hindmarsh Shire Council: Management of Public Interest Disclosures— Internal Procedures

Public Interest Disclosures Act 2012 (Vic)

DOCUMENT CONTROL

Public Interest Disclosure Policy		Policy Category	Council
Version Number	3.0	Policy Status	CURRENT
Approved/Adopted By	Council	Approved/Adopted on:	18 December 2019
Responsible Officer	CEO		
Version History	Date	Version	Description
	July 2013	1.1	Creation of Policy
	November 2015	1.2	Administrative Update
	November 2017	2.0	Updated Policy to provide more information
	December 2019	3.0	Legislative changes update