

Strathbogie Shire Council Public Interest Disclosures Policy

[December](#) 2022



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Public Interest Disclosures Policy

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PART 1 POLICY

1. PURPOSE

Council is a Nominated Agency under the *Public Interest Disclosures Act 2012* (the Act) with the power to receive disclosures relating to its employees, contractors, Council registered volunteers, Council appointed committee members or Councillors.

The Act requires Council to appoint a Public Interest Disclosure Coordinator and to set out clear policies and procedures for the receipt and referral of public interest disclosures to the relevant authority for further investigation.

This document is designed to ensure clear guidance is given to the community, Council employees and Councillors around how a disclosure could be made, how confidentiality will be assured and how Council will process the disclosure and decide whether the matter is a public interest disclosure that must be referred to an Investigating Entity for further review.

2. POLICY STATEMENT

Our Values and Council Plan highlight the need for openness, the highest ethical standards and transparency. Accordingly, Council encourages any member of the community, Council staff, members of Council appointed committees or Councillors to report any suspected improper conduct, corruption or detrimental action to either Council or directly to the Independent Broad-based Anti-Corruption Commission (IBAC) or Victorian Ombudsman.

Council takes its obligations as a Nominated Agency very seriously. While we are unable to determine the outcome of a public interest disclosure, we play a vital role in the receipt of

complaints and provision of information for consideration by other bodies such as IBAC, the Victorian Inspectorate and the Integrity and Oversight Committee.

Council also wishes to assure anyone lodging, or thinking of lodging, a public interest disclosure that they will be dealt with in a confidential and supportive manner in accordance with the requirements of the Act.

We will also protect the confidentiality and welfare of others involved in any investigation as the welfare of all those involved in the matter is of paramount importance to us.

We will deal with any disclosure expeditiously and as a matter of operational priority.

We know the confidentiality of a person's identity is paramount to maintaining the integrity of Victoria's 'whistleblowing' system. The guidance and processes set out in this document are, therefore, aimed at protecting a complainant and anyone involved in providing information from bullying, harassment, legal action or any other form of detrimental action.

Council will afford natural justice to the person(s) whom is the subject of the disclosure and respect their right to confidentiality and support throughout the assessment of the disclosure and any subsequent investigation. It is important to remember that a matter remains an allegation only until the Public Interest Disclosure has been investigated and resolved.

3. APPLICATION OF THIS POLICY

This policy and its procedures apply to all Strathbogie Shire Council employees, Councillors and members of Council appointed committees are designed to ensure:

- Council meets its legislated obligations under the *Public Interest Disclosures Act 2012* in relation to the receipt, initial assessment and any subsequent referral of a public interest disclosure to IBAC or another investigative entity
- that Council employees and the community are provided with clear and consistent advice as to how a disclosure can be made, how it will be assessed and referred to an investigative entity if need be
- that a culture is created across the organisation that encourages and values the reporting of suspected improper conduct, detrimental action or corruption
- that operational priority is given to the receipt, assessment and referral of any public interest disclosure
- that a consistent and effective system is in place for the receipt and initial assessment of all disclosures made to Council
- that robust and consistent procedures are in place to protect the confidentiality and safety of the person making the public interest disclosure
- that the person making the public interest disclosure is kept informed of the progress of their complaint, is supported throughout the process and that no reprisals will result from them making the disclosure
- that processes are in place to protect the confidentiality and wellbeing of the person(s) whom are the subject of the disclosure and those cooperating with any investigation into the matter.

4. WHAT IS A PUBLIC INTEREST DISCLOSURE?

A public interest disclosure is a report made under the *Public Interest Disclosure Act 2012* that the person making the report believes shows or tends to show:

- **improper conduct** of a public body or a public officer; or

- **detrimental action** that a public officer or body has taken or has threatened to take against a person because they have made a public interest disclosure or cooperated with the investigation of a public interest disclosure.

A public interest disclosure can relate to something that has already taken place, may be occurring now or is suspected to happen in the future.

5. WHO CAN MAKE A PUBLIC INTEREST DISCLOSURE?

Anyone may make a report of suspected or actual improper conduct or detrimental action that they believe relates to Strathbogie Shire Council, whether they be a member of the public, Councillors, Council employees, volunteers or members of Council appointed committees.

Council members, officers or employees cannot, however, make a public interest disclosure to Council if the conduct forming the basis of the disclosure relates to another entity or a member of Parliament. Such disclosures must be referred to IBAC directly.

Reports can be made by an individual or by a group of people. An employee of a company may make a report but the company, as an entity, cannot.

Anonymous reports can be made, however you must be aware that this may impact on the investigating entity's ability to assess whether your complaint fits the definition of a public interest disclosure. The consultation and notification requirements under the Act also do not apply if a disclosure is made anonymously.

You can also make a report even if you cannot identify the exact person or public body to which the disclosure relates.

6. HOW DO YOU MAKE A PUBLIC INTEREST DISCLOSURE?

6.1 Contact IBAC (the Independent Broad-based Anti-Corruption Commission)

IBAC is the primary agency and investigative entity public interest disclosures relating to Council.

All protected disclosures relating to a Councillor(s) should be made directly to IBAC (or the Victorian Ombudsman).

More information about IBAC and how to lodge a disclosure with them can be found by using the following link:

<https://www.ibac.vic.gov.au/reporting-corruption/public-interest-disclosures>

Please use this link to access the [IBAC secure online form](#) .

You can also lodge a disclosure with IBAC:

By telephone: 1300 735 135 (between 10:00am - 4:00pm, Monday – Friday)

By fax: (03) 8635 6444

In person: Level 1, North Tower, 459 Collins Street, Melbourne VIC 3000
Reception hours: 9:00am - 4:30pm Monday - Friday

By email: info@ibac.vic.gov.au

By post: GPO Box 24234, Melbourne VIC 3001

You do not need to refer to the Public Interest Disclosures Act itself when making a disclosure.

6.2 Contact Council's Public Interest Disclosure Coordinator

Disclosures can also be made to the Public Interest Disclosure Coordinator appointed by the Shire's Chief Executive Officer if the complaint relates to a Council employee, contractor, Council appointed committee member or Council registered volunteer.

We have created a form to assist you to make your disclosure, which can be found on our website.

You can lodge your public interest disclosure form or make your disclosure in person by contacting:

Dawn Bray
(Public Interest Disclosure ~~Officer~~ Coordinator)
Strathbogrie Shire Council

By telephone: 0407 611 240 or 1800 065 993

By email: Dawn.Bray@strathbogrie.vic.gov.au

Michelle Bromley
(Public Interest Disclosure Officer)

By telephone: 1800 065 993

OR

In person: 19A Binney Street, Euroa

OR

By post: PO Box 177, Euroa VIC 3666

Please ensure you mark the correspondence as PRIVATE and CONFIDENTIAL.

You may make a disclosure to the Chief Executive Officer or the manager/supervisor of the person who is the subject of your disclosure, however we strongly encourage you to contact nominated our Public Interest Disclosure Coordinator or the Public Interest Disclosure Officer (unless, of course the complaint relates to that person) as they are specifically trained to handle these matters with maximum security and confidentiality.

If you are a Council employee, contractor or volunteer you can also make a disclosure to your manager or supervisor but again, we encourage you to contact our Public Interest Disclosure Coordinator (unless, of course the complaint relates to that person) or one of the appointed Public Interest Disclosure Officers.

You do not need to refer to the Public Interest Disclosures Act itself when making a disclosure.

You can also choose to specify that your complaint is not to be treated as a protected disclosure.

6.3 Contact the Victorian Ombudsman

Complaints relating to Council under the Act can also be made to the Victorian Ombudsman. Any disclosure relating to a Councillor must either be made to the Ombudsman or IBAC.

You can lodge a disclosure by:

Using the [Complaints | Victorian Ombudsman online complaint form online complaint form](#)

By telephone: [1800 806 314 9643 6222](tel:180080631496436222)

In person: Level 2, 570 Bourke Street Melbourne VIC 3000

~~By Email: Ombudvic@Ombudsman.Vic.Gov.Au~~

6.4 Forms Of Disclosure

You can make a **verbal disclosure** in person, by phone or by leaving a voice mail message, however you must ensure you do so in private by making sure the only people that can hear the conversation are a lawyer who may be assisting you and the person to whom a disclosure can be made under the Act.

A group of individuals can lodge a verbal disclosure as a collective at the one time, again, provided it is done so in private.

You can make a **written disclosure** by delivering a letter in person, by posting your disclosure or by email. Please ensure you mark the correspondence as PRIVATE and CONFIDENTIAL.

Please remember that if you use email and the investigating entity is not able to identify the person lodging the disclosure from the email address or information provided in the email, it must be treated as an anonymous disclosure.

You do not need to refer to the Act itself when making a disclosure for the matter to be treated under the legislation.

You can also choose to specify that your complaint is not to be treated as a protected disclosure. If this is the case, our Public Interest Disclosures Coordinator will discuss the ways in which the matters you raise can be dealt with by Council.

6.5 No Wrong Door

If Council is not the correct agency to receive the public interest disclosure, and the person who made the disclosure believed that Council was the correct authority to report the issue to, Council will immediately notify the person lodging the disclosure that Council is not the appropriate authority and provide them with advice as to how to report the matter to IBAC or another appropriate agency.

7. WHO CAN A PUBLIC INTEREST DISCLOSURE BE ABOUT?

A public interest disclosure can relate to a public body, which in this case is Council, a Councillor, Council employees, members of Council appointed committees, contractors or Council appointed volunteers.

8. MATTERS THAT ARE NOT PUBLIC INTEREST DISCLOSURES

Public interest disclosures must be made in a way that meets the Act (specifically Division 2 of Part 2), this policy and its procedures.

The following will not be considered by Council to be a public interest disclosure where:

- the disclosure has NOT been made in a way which meets the requirements of the Act, its Regulations, this policy and its procedures
- it has been clearly stated by the complainant that the matter is NOT to be considered as a public interest disclosure

- a complaint or allegation that is already in the public domain (e.g. if the matter had been reported to a journalist or discussed on social media)
- sections 19 and 20 of the Act identify that the complaint is not a public interest disclosure.

Having said that, if the disclosure is not made in accordance with the Act or Regulations, we will endeavour to assist the complainant to make the disclosure comply so that they are able to have their matter dealt with under the Act if possible.

Matters that are not public interest disclosures will be reviewed by the Public Interest Disclosures Officer to identify whether the issues raised should be treated as a complaint or whether some other Council policy or procedure, or indeed if any other legislation, applies to assist the complainant with having their concerns heard.

9. ROLE OF THE PUBLIC INTEREST DISCLOSURE COORDINATOR AND PUBLIC INTEREST DISCLOSURE OFFICERS

Detailed information around to the receipt, assessment and referral of public interest disclosures are outlined in the Procedures section of this document.

In summary, the Public Interest Disclosure Coordinator is responsible for:

- being the primary contact person with IBAC
- putting into writing any oral disclosures
- being the primary contact person for the complainant and anyone involved in the matter
- constantly monitoring the welfare of those involved in the matter, including monitoring the workplace for any sign of potential detrimental action, gossip or the spreading of misinformation
- ensuring all provisions of the Act are followed
- keeping comprehensive records relating to the matter, including welfare risk assessments and notes around the ongoing monitoring of the workplace for potential detrimental action
- promoting a culture of disclosure within the organisation
- making arrangements for a disclosure to be made privately and discretely, away from the workplace
- receiving and undertaking the initial assessment of all disclosures, including ascertaining whether urgent action is required to be taken prior to an investigation or referral to IBAC given the nature of the allegations and information provided (e.g. where there is threat to the health and safety of individuals/the public or serious criminal conduct is alleged)
- ensuring all records and correspondence relating to the disclosure are kept in a strictly confidential file on Council's electronic document management system
- ensuring that the confidentiality provisions of the Act are strictly followed
- completing an impartial assessment of the disclosure to ascertain whether the allegations made need to be investigated and referred to IBAC under section 21 of the Act
- referring a disclosure assessed as possibly being a public interest disclosure to IBAC within 28 days of receipt of the report
- advising the person who has lodged the disclosure if the complaint does not meet the requirements of the Act and is not considered to be a public interest disclosure within 28 days of the receipt of the report

- collating statistics about public interest disclosures which are required to be published in Council's Annual Report.

Public Interest Disclosure Officers are appointed by the Chief Executive Officer to assist with the receipt of disclosures in the absence of the Public Interest Disclosure Coordinator. The Coordinator can also request these appointed officers to assist with any matter as they see fit.

10. MAINTAINING CONFIDENTIALITY

The Act is clear in setting out requirements for the maintenance of the confidentiality of the person making the disclosure. Council will abide by these requirements.

The procedures attached to this policy provide detail around how the identity of the complainant and the contents of their disclosure will be kept confidential.

Our aim is to ensure as few people as possible are aware of the lodgement of a disclosure by channelling all complaints through our Public Interest Disclosure Coordinator or if they are unavailable, an appointed Public Interest Disclosure Officer.

There are provisions under the Act protecting the identity of the person making the disclosure, however it must be noted that the person lodging the disclosure is the only one provided with such protection.

If someone is lodging a disclosure on behalf of someone else, it is the person who lodges the disclosure that is afforded protection under the Act in terms of their identity. The person on whose behalf the disclosure is made will, however, be protected under the Act against detrimental action given they are involved in the matter.

The fact that a disclosure has been made and the people involved will remain confidential even if, after an initial assessment of the disclosure or an investigation, it has been found that the issues raised are unsubstantiated.

The person who is the subject of a disclosure (i.e. they have had allegations made against them) may not be made aware that the disclosure has been made. Each case will be different, however it is possible that the subject of the complaint will never know about the complaint should the matter be assessed as not being a public interest disclosure. Even if IBAC direct to that information be provided to the subject of the complaint, the information will be limited given the need to protect the identity of the discloser or anyone cooperating with an investigation.

11. MANAGING THE WELFARE OF THE COMPLAINANT AND THOSE AFFECTED BY THE DISCLOSURE

Council is committed to taking all possible reasonable steps to protect and support the welfare of the person making the disclosure, those involved in the investigation and the person(s) that are the subject of the disclosure.

The Public Interest Disclosure Coordinator will be the person responsible for continuously assessing the welfare of those involved in the process and also making an initial assessment as to whether the [Coordinator, Culture & Performance Manager People & Culture](#) should be immediately appointed as the welfare coordinator.

As a minimum, access to the support of our Employee Assistance Program, which is a confidential and externally provided service, will be offered to all involved in the matter, including those who are external to the organisation.

Should the Coordinator or IBAC believe a dedicated welfare officer should be appointed, the Coordinator or one of the appointed Public Interest Disclosure Officers will be responsible for organising this support.

Further, we will support those involved by keeping them informed of the process, the actions we are going to take and how the initial assessment of the of the disclosure is progressing in a timely manner, and as an operational priority.

We will be honest and open about responding to the outcome(s) sought by the person making the disclosure and ensure that their expectations meet the parameters of the legislation.

Furthermore, any suspected or reported detrimental action being undertaken against anyone involved with the disclosure or any investigation will be dealt with firmly and swiftly, in accordance with legislation, the relevant Code of Conduct and any other Strathbogie Shire Council policies and procedures.

We will also monitor the welfare of those against whom the allegations are made. This is particularly important if the allegations were wrong or unsubstantiated, or the complaint has not been classified as a public interest disclosure and is to be dealt with through other Council policy mechanisms (e.g. the matter is to be dealt with as a complaint).

12. EDUCATION AND TRAINING FOR STAFF AND COUNCILLORS

All Councillors and Council employees will be required to read this policy and make themselves familiar with its provisions. All will be required to refresh their knowledge and understanding of this policy and its procedures on an annual basis through Council's online learning platform. New employees will also receive a copy of this policy through the induction process.

Training will be provided by a suitably qualified legal expert for the Executive Management Team and all people leaders every two years, or as required should legislation change significantly within this time.

Protected disclosures will also be a topic covered in the induction of new Councillors.

The Public Interest Disclosure Coordinator will receive specialised training to ensure that they are always up to date with best practice any changes to legislation.

13. REPORTING

Council, as a public body that can receive disclosures, must include statistics about how many disclosures have been notified/referred to IBAC during each financial year in its Annual Report. This information must be crafted in a way that does not make the identification of the person who has disclosed a matter traceable.

14. OFFENCES FOR FALSE DISCLOSURES OR PROVIDING FALSE INFORMATION

Section 72 of the Act outlines that it is an offence, punishable either by a fine, imprisonment or both, to:

- make a false disclosure
- provide misleading or false information
- provide false or misleading further information
- falsely claim the disclosure is a public interest disclosure of public interest complaint.

A person or people wishing to make a disclosure must, therefore, make every effort to ensure the information they have been provided with, or are providing to, Council or an investigating entity, is not false or misleading.

15. DEFINITIONS

Term	Meaning
Complainant/Discloser	means a person who has made a public interest disclosure to Council in accordance with the Act, which must then be assessed by the Public Interest Disclosure Coordinator to ascertain if the matter must be referred to IBAC or another investigating entity for review and a determination.
Confidentiality Obligations	means the obligations on those receiving information relating to a public interest disclosure to not disclose that information unless authorised by law. Confidentiality notices may also be issued in the investigation of a public interest complaint. Confidentiality provisions also apply to the person lodging the public interest disclosure, restricting their ability to share information with others unless the external disclosures provisions of the means the definition under section 6 of the <i>Public Interest Disclosures Act 2012</i> are applicable.
Coordinator	means the Public Interest Disclosure Coordinator provided with delegated authority by the Chief Executive Officer of Strathbogie Shire Council under the <i>Public Interest Disclosures Act 2012</i> .
Corrupt Conduct	means the definition under the <i>Independent Broad-Based Anti-corruption Commission Act 2011</i> , such as dishonest performance of public functions or intentional or reckless misuse of public resources.
Council Employees	means anyone employed by Strathbogie Shire Council, any contractor engaged by Council and any volunteers registered with Council.
Detrimental Action	means any form of harassment, intimidation, discrimination, actions causing injury or loss or damage or any other action taken against the complainant (discloser) in reprisal for having reported the alleged conduct, participated in the investigation of a disclosure or action relating to someone who is considering making a disclosure. It includes actual actions taken and threats to take the action against any person, including the person who made the disclosure.
IBAC	means the Independent Broad-based Anti-corruption Commission.
Improper Conduct	means the definition under section 4 of the <i>Public Interest Disclosures Act 2012</i> , which is corrupt conduct, a criminal offence, serious professional misconduct, dishonest performance of public functions, internal or reckless breach of public trust, intentional or reckless misuse of information, substantial mismanagement of public resources, substantial risk to the health or safety of a person, substantial risk to the environment, conduct of any person that adversely affects the honest performance of a public officer; or conduct of a person that is intended to adversely affect the effective performance of a public officer for the benefit of the other person.
Investigating Entity	means those bodies listed in the <i>Public Interest Disclosures Act 2012</i> to investigate public such as IBAC, the Victorian Inspectorate, Victorian Police and the Victorian Ombudsman.

Misdirected Disclosure	means a disclosure made to the incorrect public body but where the complainant believed that the public body was the correct authority to refer the complaint to (refer to section 18 of the Act). Such disclosures will still be provided with the same confidentiality protections of a disclosure and will be referred to IBAC for further assessment.
Nominated Agency	means an agency nominated under Part 2 of the <i>Public Interest Disclosures Act 2012</i> to receive public interest disclosures.
Public Body	means the definition under section 6 of the <i>Public Interest Disclosures Act 2012</i> .
Public Interest Complaint	means a public interest disclosure that has been determined by IBAC, the Victorian Inspectorate or the Integrity Oversight Committee to be a public interest complaint. Once a disclosure has been categorised as a public interest complaint, additional provisions of the Act apply and the way in which the matter is handled and investigated changes.
Public Interest Disclosure Coordinator	means the person appointed by the Chief Executive Officer <u>under</u> the <i>Public Interest Disclosures Act 2012</i> to receive, assess and if required refer public interest disclosures to the relevant investigating authority.
<u>Public Interest Disclosure Officer</u>	<u>means the person(s) appointed by the Chief Executive Officer to support the Public Interest Disclosure Coordinator in receiving and assisting with public interest disclosures.</u>
Public Officer	means the definition under section 6 of the <i>Public Interest Disclosures Act 2012</i> .
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.
Specified conduct	means a broad range of conduct that does not represent 'corrupt conduct' but where that conduct, if proven, constitutes a criminal offence or reasonable grounds for dismissal, such as substantial mismanagement of public resources, substantial risk to public health or safety or involves substantial risk to the environment.
the Act	means the <i>Public Interest Disclosures Act 2012</i> .
Victorian Inspectorate	means the primary independent oversight body in Victoria's integrity system that is not subject to direction or control by the executive government.
Welfare coordinator	The Coordinator <u>Manager</u> , People & Culture shall be the welfare coordinator appointed at the request of the Public Interest Disclosure Coordinator or IBAC.

16. RELATED POLICIES AND LEGISLATION

The following Council, State, regional and national plans and policies are relevant to this policy.

- *Key changes – Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019*
- *Public Interest Disclosures Act 2012*
- *Public Interest Disclosures Regulations 2019*

- Guidelines for making and handling protected disclosures, IBAC October 2016 (updated to reflect changes introduced in January 2020)
- Guidelines for public interest disclosure welfare management, IBAC January 2020
- Public interest disclosure procedures: requirements for implementation, IBAC September 2019
- Councillor Code of Conduct
- Fraud and Corruption Policy
- Staff Code of Conduct [April](#)

17. POLICY REVIEW

Council may review this policy at any time and at least two years from the date of adoption.

Minor amendments to the policy may be authorised by the CEO at any time where such changes do not alter the substance of the policy (e.g. a change to the name of a related document, or a change in legislation).

18. CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES ACT 2006 AND THE EQUAL OPPORTUNITY ACT 2010

The Council acknowledges the legal responsibility to comply with the Charter of *Human Rights and Responsibilities Act 2006 and the Equal Opportunity Act 2010*. The Charter of Human Rights and Responsibilities Act 2006 is designed to protect the fundamental rights and freedoms of citizens. The Charter gives legal protection to 20 fundamental human rights under four key values that include freedom, respect, equality and dignity.

PART 2 PROCEDURES FOR THE RECEIPT, INITIAL ASSESSMENT AND REFERRAL OF A PUBLIC INTEREST DISCLOSURE

19. OVERVIEW OF THE PROCESS ONCE A DISCLOSURE HAS BEEN LODGED WITH COUNCIL

19.1 Verbal Disclosures

If the disclosure is made through verbal communication, whether at a meeting with Council's Public Interest Disclosure Coordinator, the Chief Executive Officer or a manager, or via voicemail, the staff member receiving the disclosure will take notes while the disclosure is being made. The details of the time and place the report was made must also be noted.

The staff member may seek the complainant's agreement to the verbal disclosure being recorded, however the complainant has the right to decline this offer.

A summary of the disclosure will then be read out by the staff member to the complainant to ensure that they have understood the matters being raised and the details of any events or evidence provided.

If the person hearing the complaint is not the Public Interest Disclosure Coordinator, the matter must be referred to the Coordinator within 24 hours of receipt of the disclosure. The matter will then be dealt with by the Coordinator from this point onwards.

The Coordinator will contact the complainant and provide a written summary of the information provided during the verbal disclosure to the complainant for review and confirmation within seven (7) days of the disclosure being made. This correspondence will also highlight to the complainant that it is an offence under section 74 of the Act to reveal that the disclosure has been referred to IBAC for assessment.

19.2 Written Disclosures

All disclosures received in writing must be referred to Council's Public Interest Disclosure Coordinator within 24 hours of receipt.

The Coordinator will save the disclosure and any other written documentation to a confidential file on Council's electronic document management system. Access to this file is strictly limited to the Coordinator, however, should a complaint relate to the Public Interest Coordinator the Chief Executive Officer will request that access rights to the documentation be changed to themselves and, if required, another senior executive.

The Public Interest Disclosure Coordinator will make initial verbal contact with the complainant within 48 hours of the receipt of the correspondence and follow up with confirmation of its receipt within seven (7) days.

19.3 Summary Of The Disclosure Assessment Process

Our Public Interest Disclosure Coordinator will assess your complaint to ensure:

- Council is the correct body to make the complaint to (if we are not they will assist you in finding the right authority); and
- your complaint can be dealt with as a public interest complaint.

A welfare risk assessment will also be undertaken to make sure you have the support you need.

Our Public Interest Disclosure Coordinator will provide you with verbal updates as to the progress of their assessment.

The Coordinator has a maximum of 28 days to inform you both verbally and in writing of the outcome of the assessment.

If our Public Interest Disclosure Coordinator agrees that your complaint **IS** a public interest disclosure, **they will immediately refer the matter to IBAC**. Any relevant information found by the Coordinator during their investigation and assessment will be forwarded to IBAC.

You will be informed of when this is done both in writing and verbally to ensure you are kept informed of the progress of your disclosure at all times.

If your complaint has been assessed as **NOT** being a public interest disclosure, our Public Interest Disclosure Coordinator will discuss alternate courses of action open to you for the issues you raise to be dealt with. Again, this will be done both verbally and in writing.

Once the matter has been referred to IBAC, they will review your disclosure and determine if they believe it is a public interest disclosure. IBAC will investigate the matter further if they agree that it is a public interest disclosure.

IBAC may contact you either through Council's Public Interest Disclosure Coordinator or directly.

Our Public Interest Disclosure Coordinator will keep in contact with you to ensure you have the information you need and that your welfare is assessed on an ongoing basis.

Should you have any questions or concerns throughout the process, even if the matter is referred to IBAC, our Public Interest Disclosure Coordinator will assist you as much as they can.

20. INITIAL ASSESSMENT OF THE DISCLOSURE

20.1 Has The Disclosure Been Made Correctly?

The Public Interest Disclosure Coordinator must firstly ensure that:

- the disclosure has been made by a person or group of people (i.e. not a company or authority)
- it has been made verbally (in private) or confidentially in writing
- the disclosure relates to Strathbogie Shire Council, a Council employee, Councillor or member of a Council appointed committee that is affecting, or may affect in the future, the honest performance of a body or public officer's official function.

If the answer to one or more of these questions is NO, then the matter is probably not a public interest disclosure.

20.2 Is There Evidence Of Improper Conduct Or Detrimental Action?

The Public Interest Disclosure Coordinator must then assess whether the information disclosed shows, or tends to show, that there is improper conduct or detrimental action that has been taken, is being taken or about to be taken by either a person, public officer or public body. The seriousness of the conduct and its consequences must also be considered.

The definitions of improper conduct and detrimental action under the Act must be met and the Coordinator will review the information provided by the complainant to decide whether these definitions are met or whether any exemptions under the Act apply.

In undertaking this initial assessment, the Coordinator may seek further information from the complainant and undertake a discrete and confidential initial investigation.

Some of the questions that need to be considered during this process include:

- What is the discloser's connection to the alleged conduct – are they a victim, a witness or a participant?
- How did the person become aware of the conduct? Were they involved? Did they witness the conduct or were they told second or third hand about it?
- How detailed is the information provided? Is there enough information for an initial assessment of the disclosure to be undertaken?
- How reliable is the information? Is there other supporting information?

Should the Coordinator believe that there is information to satisfy the requirements of the Act, then the matter will be referred to IBAC within the prescribed 28-day notification period. The person making the disclosure will also be notified verbally and in writing that this referral has taken place.

If the Coordinator does not believe that there is information to satisfy the requirements of the Act, they must make an assessment under section 20.5.

20.3 Are There Reasonable Grounds?

A matter can be considered to be a public interest disclosure if the person making it believes, on reasonable grounds, that the factual information disclosed shows, or tends to show, that there is improper conduct or detrimental action that has been taken, is being taken or about to be taken by either a person, public officer or public body.

This means that a reasonable person, if presented the information, would conclude that the allegations were probable.

The information provided by the disclosure does not have to provide undisputed evidence of the improper conduct or detrimental action, but it must be more than just suspicion.

However, simply stating that improper conduct or detrimental action has, is or is going to take place is not enough for a matter to be considered a public interest disclosure – there has to be some factual information either provided by the complainant or that is uncovered in the initial assessment of the matter.

Should the Public Interest Disclosure Coordinator believe that there is sufficient evidence to satisfy the requirements of the Act, then the matter will be referred to IBAC within the prescribed 28-day notification period.

20.4 Seeking Advice From IBAC

If the Coordinator is in any doubt during their initial assessment, they must contact IBAC for advice before making a conclusion as to whether the matter is a public interest disclosure that requires referral to either IBAC or another investigative entity.

20.5 Conclusion That The Matter Is Not A Public Interest Disclosure

If the Public Interest Disclosure Coordinator believes that, after undertaking the steps outlined in sections 20.1 to 20.3, that the matter does not meet the tests set out in the Act, and therefore it cannot be classified as a public interest disclosure, the person making the disclosure will also be notified verbally and in writing of this decision.

The notification will outline the reasons why the disclosure does not show or tend to show that improper conduct or detrimental action has, is or may occur and provide alternative courses of action to have their matter dealt with by Council or another appropriate body.

The complainant will also be notified that the protections around their identity and the complaint under Part 6 of the Act still apply even though the matter is not considered to be a public interest disclosure if the person making the complaint has asked for the protections of the Act.

This decision and correspondence must be made within 28 days of the receipt of the disclosure under section 24(4)(b) of the Act.

21. PROTECTION FOR THE PERSON MAKING THE PUBLIC INTEREST DISCLOSURE

Part 6 of the Act outlines the protections to be given to the person making the complaint if it has been made in a way that meets Division 2, Part 2 of the Act or if it is a misdirected disclosure. The protections also apply to any further information provided by the person after making the initial complaint.

Generally speaking, the protections provided by the Act include:

- immunity from civil or criminal liability for making the disclosure
- release from confidentiality requirements, an oath, affirmation or agreement to restrict the disclosure of information
- protection from defamation action
- protection from reprisals following the disclosure.

These protections also relate to other people involved in an investigation undertaken by IBAC or an investigative entity.

22. CONFIDENTIALITY

Part 7 of the Act outlines confidentiality provisions for disclosures which relates to the identity of the person making the initial disclosure and the information/details of the disclosure itself.

The provisions apply to a person or body:

- that receives a disclosure in the performance of their duties under the Act (such as the Public Interest Disclosure Coordinator)
- to whom an investigating authority provides information about the content of a disclosure to determine if it is a public interest complaint
- identified under section 52 of the Act.

Please note there are exemptions outlined under section 54, such as the release of information to an investigating entity so that it can undertake its functions under the Act or the commissioning of legal advice.

The Public Interest Disclosure Coordinator, or the person who has received the initial complaint must ensure that all details relating to the matter are kept confidential, only informing the Public Interest Disclosure Coordinator if the Coordinator was not the person who received the initial complaint.

The Chief Executive Officer will be informed of the matter should the Public Interest Disclosure Coordinator decide that the disclosure needs to be referred to IBAC or another investigating agency.

No other party is to be informed of the matter, even while a discrete initial assessment of the complaint is being undertaken to determine whether the matter is a public interest disclosure that requires referral to IBAC.

It must be noted that significant penalties, including imprisonment, can apply if the confidentiality provisions of the Act are not met.

Section 78 of the Act also ensures that the *Freedom of Information Act 1982* does not apply to a document that is in the possession of any person or body so far as it relates to a disclosure or will lead to the identification of a person who made a disclosure.

23. WELFARE OF THOSE INVOLVED IN THE MATTER

As outlined in the Policy, the Public Interest Disclosures Coordinator will undertake a welfare risk analysis for both the complainant and those potentially involved in the matter upon the receipt of a disclosure.

This assessment will include whether a dedicated Welfare Coordinator is required to be appointed for the person making the disclosure and any other party involved, including other people (whether internal to Council or external) that are cooperating with any inquiry undertaken by IBAC or another investigative entity.

Generally speaking, a Welfare Coordinator will only be appointed:

- if there is a real risk of detrimental action
- if IBAC directs Council to appoint one should a disclosure lead to further investigations
- if it is considered the welfare of those named or involved in the disclosure or any investigation requires the support of specialist welfare experts.

The Public Interest Disclosures Coordinator will provide ongoing welfare analysis and support throughout the process by:

- assuring the complainant and anyone cooperating with an investigation that they are doing the right thing
- assuring those involved that all reasonable steps to provide them with the protections required under the Act will be taken
- ensuring the complainant and those cooperating with any investigation understand that they must not reveal themselves or any information that would enable an independent person to identify them or that a disclosure has been made
- ensuring all parties have up to date information both verbally and in writing
- ensuring that any queries from any involved parties are answered expeditiously
- continuously monitoring the workplace, anticipating problems that may heighten the risk of detrimental action being taken in reprisal for making or cooperating with a disclosure
- listening and promptly responding to any concerns those involved in the matter have about harassment, intimidation or victimisation.

24. RESPONDING TO REPORTS OF DETRIMENTAL ACTION

If a report is made of harassment, discrimination or adverse treatment that may amount to detrimental action apparently taken in reprisal for a disclosure, the Public Interest Disclosure Coordinator or Welfare Manager (if one has been appointed and the report is made to them) must record details of the incident and advise the person of their rights under the Act.

Detrimental action is considered to have been taken:

- the person takes, or threatens to take, detrimental action against the other person because, or in the belief that:
 - the other person or anyone else has made, or intends to make, the disclosure; or
 - the other person or anyone else has cooperated, or intends to cooperate, with an investigation of the disclosure; or
 - for either of the reasons above, the person incites or permits someone else to take or threaten to take detrimental action against the other person.

It is a criminal offence to take detrimental action against another person in reprisal for a public interest disclosure under the Act. The penalty for this offence is a fine, two years imprisonment or both.

The Public Interest Disclosure Coordinator will be careful about making preliminary enquiries or gathering information concerning this type of allegation 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.

Furthermore, the taking of detrimental action in reprisal for making a disclosure can be grounds for a person to make a further disclosure with respect to that conduct.

The disclosure of this allegation will then be assessed as a new disclosure under Part 2 of the Act.

Where the detrimental action is of a serious nature likely to amount to a criminal offence, the Council will also consider reporting the matter immediately to the Police or IBAC (if the matter was not already the subject of a disclosure notified to IBAC).

The person who has made the public interest disclosure may also:

- take civil action against the person who took detrimental action against the discloser and seek damages
- take civil action against Council and severally to seek damages if the person who took detrimental action against the discloser took that action in the course of employment with, or while acting as an agent of Council; and
- apply for an order or an injunction from the Supreme Court.