

1. PURPOSE

Council is a public body subject to the provisions of the *Public Interest Disclosure Act 2012* (PID Act) (formerly *Protected Disclosures Act 2012*). The purpose of this procedure is to ensure Horsham Rural City Council has effective systems in place to process public interest disclosures of improper conduct or detrimental action.

Providing a clear process for members of the public, Councillors and Council Officers is vital to ensure the welfare of all people involved in the disclosure.

2. INTRODUCTION

Council is committed to the aims of the PID Act and is dedicated to providing a safe and supportive environment for people who wish to make a report on known or suspected incidents of improper conduct or detrimental action.

The purpose of the PID Act is to encourage and facilitate disclosures of improper conduct by public officers, public bodies and other persons and detrimental action taken in reprisal for a person making a disclosure under the Act. The PID Act provides protection to persons who make disclosures or who may suffer detrimental action in reprisal for those disclosures. The Act ensures any disclosures are properly assessed and, where necessary, investigated, and provides confidentiality of the content of disclosures and the identity of people who make them. Under the PID Act, any person or group of individuals can make a disclosure, be a witness, or be the subject of an investigation.

Victorian Councils must now notify Independent Broad-based Anti-corruption Commission (IBAC) if they suspect corruption is occurring. Principal Officers including Council CEOs must notify the IBAC if they suspect corruption is occurring within Council.

The definition of 'corruption' has been expanded to go beyond 'serious allegations'. IBAC can now consider allegations of misconduct in public office which is broadly defined to encompass unlawful conduct and failing to meet ethical and professional standards in the exercise of statutory powers.

IBAC can initiate an investigation when they have reasonable grounds to suspect corrupt conduct.

3. SCOPE

This procedure outlines the steps for reporting disclosures of improper conduct or detrimental action by Councillors, Council employees, Contractors and Volunteers.

Anyone can make a disclosure about improper conduct or detrimental action, members of the public, Council staff, Councillors, Contractors and Volunteers.

Note: Disclosures about Councillors cannot be made to Horsham Rural City Council. All disclosures about Councillors must be made directly to IBAC or the Victorian Ombudsman.

4. ACTIONS

4.1 CONTACTS

Disclosures of improper conduct or detrimental action by Horsham Rural City Council employees (excluding Councillors) may be made to the following officers:

- **The Public Interest Disclosures Co-ordinator**
Chief Executive Officer, Horsham Rural City Council,
Municipal Offices, Roberts Avenue, Horsham 3400 Ph: (03) 5382 9720
- **Public Interest Disclosures Officer**
Director Corporate Services, Horsham Rural City Council,
Municipal Offices, Roberts Avenue, Horsham 3400 Ph: (03) 5382 9785

The Ombudsman/IBAC

A disclosure about improper conduct or detrimental action by a Horsham Rural City Councillor or employees may also be made directly to the Ombudsman or IBAC. Disclosures relating to Councillors can **only** be made directly to the Victorian Ombudsman or IBAC.

- **Victorian Ombudsman**
www.ombudsman.vic.gov.au
Ph: (03) 9613 6222 or Toll Free (regional only): 1800 806 314
- **IBAC**
www.ibac.vic.gov.au
Ph: 1300 735 135

4.2. ROLES AND RESPONSIBILITIES

4.2.1 Employees

Employees must not initiate or participate in improper conduct or detrimental action. Employees are encouraged to report known or suspected incidences of improper conduct or detrimental action in accordance with this procedure.

All employees must refrain from any activity that is, or could be perceived to be, victimisation or harassment of a person who makes a disclosure. Furthermore, they should protect and maintain the confidentiality of a person they know or suspect to have made a disclosure.

4.2.2 Public Interest Disclosures Co-ordinator (PIDC)

The Public Interest Disclosures Co-ordinator plays a vital role in supporting and protecting potential whistleblowers to speak out about wrongdoing in the public service. They will:

- Receive all disclosures that have been made to any relevant person within the organisation
- Impartially assess each disclosure to determine whether it is a public interest disclosure made in accordance with Part 2 of the PID Act (that is, a public interest disclosure)
- Co-ordinate the reporting system used by the organisation
- Be responsible for ensuring that the Horsham Rural City Council carries out its responsibilities under the PID Act and the Guidelines
- Liaise with IBAC in regard to the PID Act
- Arrange for appropriate welfare support via the Welfare Manager for any persons making a public interest disclosure and to protect them from any reprisals
- Advise persons making a public interest disclosure of the progress of an investigation into the disclosed matter
- Establish and manage a confidential filing system
- Collate and publish statistics on disclosures made
- Take all necessary steps to ensure the identity of any persons making public interest

disclosures and the identity of the person who is the subject of the disclosure are kept confidential

- Liaise with the Chief Executive Officer regarding a disclosure (when the CEO is not the PIDC)
- Receive any disclosure made orally or in writing (from internal and external sources)
- Commit to writing any disclosure made orally

4.2.3 Public Interest Disclosures Officer (PIDO)

The Public Interest Disclosures Officer will:

- Be a contact point for general advice about the operation of the PID Act for any person wishing to make a disclosure about improper conduct or detrimental action
- Receive directly any disclosure made orally or in writing (from internal and external sources)
- Commit to writing any disclosure made orally
- Take all necessary steps to ensure the identity of any persons making public interest disclosures and the identity of the person who is the subject of the disclosure are kept confidential
- Forward all disclosures and supporting evidence to the Public Interest Disclosures Co-ordinator

4.2.4 Welfare Manager

The Welfare Manager is responsible for looking after the general welfare of any persons making a public interest disclosure and for those who may be the subject of a public interest disclosure.

The Welfare Manager will:

- Examine the immediate welfare and protection needs of any persons who have made a disclosure and seek to foster 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 or victimisation in reprisal for making a disclosure
- Ensure the expectations of any persons making public interest disclosures are realistic
- Be mindful of the welfare implications for the person who may be the subject of a public interest disclosure
- Take all necessary steps to ensure the identity of any persons making public interest disclosures and the identity of the person who is the subject of the disclosure are kept confidential

4.2.5 Delegations when Nominated Officer is Absent

This obligation cannot be delegated. Where another person is acting as the relevant principal or nominated officer, the obligation applies to that person and vicariously the organisation.

4.3 CONFIDENTIALITY

Horsham Rural City Council will take all reasonable steps to protect the identity of any persons making a public interest disclosure.

Maintaining confidentiality is crucial in ensuring there are no reprisals made against persons making a public interest disclosure.

The PID Act requires any person who receives information due to the handling or investigation of a public interest disclosure, not to disclose that information except in certain limited circumstances.

Disclosure of information in breach of Section 52 constitutes an offence that is punishable by a maximum fine of 120 penalty units or 12 months imprisonment or both.

The circumstances in which information may be disclosed about a public interest disclosure include:

- Where exercising the functions of the Horsham Rural City Council under the PID Act or by an investigating entity, or an officer of an investigating entity, where necessary for the purpose of the exercise of functions under the Act
- For the purpose of a disciplinary process or action in respect of conduct that could constitute an offence
- For the purpose of, or in the course of, a restorative engagement process, with the written consent of the person participating in the process who alleges that they are the victim of sex discrimination or sexual harassment
- For the purpose of obtaining legal advice or representation in relation to a witness summons, a confidentiality notice, a notice cancelling a confidentiality notice or an order extending a confidentiality notice
- To an interpreter, a registered health practitioner, a trade union, within the meaning of the *Workplace Relations Act 1996* of the Commonwealth of which the person who made the assessable disclosure is a member or an employee assistance program, for the purpose of assisting the person who made the assessable disclosure to seek advice or support in relation to the assessable disclosure to the Victorian WorkCover Authority for the purpose of a workers' compensation claim, to a prescribed service for a purpose prescribed for that service or for the purpose of an application to the Fair Work Commission, including any related proceeding
- When making a report or recommendation under the PID Act
- When publishing statistics in the annual report of the Horsham Rural City Council no identifying information would be published
- In criminal proceedings for certain offences in the PID Act

The PID Act prohibits the:

- Inclusion of particulars in any report or recommendation that is likely to lead to the identification of any persons making public interest disclosures.
- Disclosure of particulars in an annual report that might lead to the identification of the person who is the subject of the disclosure

4.4 RECORDS MANAGEMENT

To prevent breaches of confidentiality and to minimise the possibility of detrimental action, Horsham Rural City Council will establish a secure electronic and paper filing system.

All printed material will be kept in files that are clearly marked as a Public Interest Disclosures Act matter and warn of the criminal penalties that apply to any unauthorised divulgence of information concerning a protected disclosure.

All electronic files will be password protected and have limitations on access rights. Backup files will be kept on external storage devices. All materials relevant to an investigation, such as interviews, will also be stored securely within the public interest disclosures file.

Horsham Rural City Council will not email documents relevant to a public interest disclosure matter and will ensure all phone calls and meetings are conducted in private.

4.5 MAKING A DISCLOSURE

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

- a. A natural person (that is, an individual person rather than a corporation) has to have made the disclosure
- b. The disclosure has been made verbally or in writing to either the Public Interest Disclosures Co-ordinator, Chief Executive Officer (when the CEO is not the PIDC) or the Public Interest Disclosures Officer
- c. The disclosure relates to conduct of the Horsham Rural City Councillors or Council officer acting in their official capacity
- d. The alleged conduct is either improper conduct or detrimental action (as defined in section 7, Definitions, of this procedure) 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 may have already taken place, may be occurring now or may happen in the future

Where a person is contemplating making a disclosure and is concerned about approaching the Public Interest Disclosures Co-ordinator or the Public Interest Disclosure Officer (as per section 4.1) in the workplace, they can call the relevant officer and request a meeting in a discreet location away from the workplace.

If one or more of the above elements are not satisfied, the person has not made an assessable disclosure under Part 2 of the PID Act.

Where a disclosure is assessed not to be a public interest disclosure, the matter does not need to be dealt with under the PID Act. The Public Interest Disclosure Co-ordinator will decide how the matter should be responded to.

Where the Public Interest Disclosures Co-ordinator has received a disclosure that has been assessed to be a public interest disclosure, the Public Interest Disclosures Co-ordinator must notify IBAC within 28 days.

4.5.1 A person may make a disclosure:

1. Orally
2. In writing (Disclosures cannot be made by fax)
3. Electronically (email only)
4. Anonymously

Disclosures can be made anonymously, including from unverified email addresses, phone calls, in a conversation or a meeting.

If the disclosure is made orally, the Public Interest Disclosures Co-ordinator will ensure that notes are made immediately at the time of the disclosure.

If the disclosure comes from an email address from which the identity of the person making the disclosure cannot be determined, the disclosure will be treated as an anonymous disclosure.

Any person can submit an allegation or complaint, which may or may not be a disclosure under the PID Act or under these procedures.

4.5.2 Disclosing to the appropriate person or body:

A person must make a disclosure, allegation or complaint to the appropriate person or body for the disclosure to be assessed as a public interest disclosure under the PID Act. Refer section 4.1, Contacts.

Horsham Rural City 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 Horsham Rural City Council officer or employee

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

Where a person seeks to make a disclosure about a Councillor, that disclosure must be made directly to the Independent broad-based anti-corruption commission (IBAC) or the Ombudsman.

The following table sets out where disclosures about persons other than employees of Horsham Rural City Council should be made.

Person who is the subject of the disclosure	Person/body to whom the disclosure must be
Employee, member of a public body	That public body, the Ombudsman or IBAC
Member of Parliament (Legislative Assembly)	Speaker of the Legislative Assembly
Member of Parliament (Legislative Council)	President of the Legislative Council
Councillor	The Ombudsman or IBAC
Chief Commissioner of Police	IBAC
Member of the police force	Prescribed member of Police personnel or IBAC

4.5.3 Misdirected disclosures

The new misdirected disclosure scheme provides that where a disclosure is made to an entity which ordinarily can receive PIDs and which the discloser believed to be the correct place for the disclosure, but it is not the correct place for that particular disclosure, the disclosure can still be notified to IBAC for assessment as a Public Interest Complaint and will receive the protections of the public interest disclosure regime.

When a body receives a misdirected disclosure it should:

- Consider if the disclosure may be one which shows a public officer or public body has engaged in or proposes to engage in improper conduct or detrimental action
- Notify those disclosures to the appropriate entity within 28 days

The appropriate entity to which misdirected disclosures should be notified are:

- The Integrity and Oversight Committee if the disclosure relates to the Victorian Inspectorate or a Victorian Inspectorate officer
- The Victorian Inspectorate if the disclosure relates to IBAC, an IBAC officer or a Public Interest Monitor
- IBAC if the disclosure relates to any other person or body

Beyond this notification, the body that receives a misdirected disclosure is prohibited from disclosing the content of that misdirected disclosure and from disclosing information likely to reveal the identity of the person who made it.

4.6 RECEIVING A DISCLOSURE

As listed in section 4.1, Contacts, disclosures can be received by the following:

- a. Public Interest Disclosures Co-ordinator
- b. Chief Executive Officer (if not the Public Interest Disclosure Co-ordinator)
- c. Public Interest Disclosures Officer
- d. IBAC
- e. Victorian Ombudsman

Any disclosures received by the Public Interest Disclosures Officer will be forwarded to the Public Interest Disclosures Co-ordinator with all relevant documentation.

The Public Interest Disclosures Co-ordinator will determine whether the disclosure has been made to the right body and then whether the matter falls under the PID Act.

There may be situations where the Horsham Rural City Council receives an allegation of improper conduct or detrimental action, but the person making the allegation has not referred to the PID Act. In this case, if the allegation raises issues that may fall within the provisions of the PID Act, the allegations will be assessed in terms of the PID Act.

4.7 ASSESSING A DISCLOSURE

Where the Public Interest Disclosures Co-ordinator receives information relating to the conduct of an employee, member or officer of the Horsham Rural City Council, the Public Interest Disclosures Co-ordinator will assess whether the disclosure meets the criteria of the PID Act to be a public interest disclosure.

Improper Conduct includes corrupt conduct, criminal offences and other conduct specified in the PID Act. If the conduct is trivial, it will not meet the threshold of improper conduct. When assessing allegations of improper conduct, a link needs to be identified between the conduct and the official function of a public officer.

Improper Conduct examples:

To avoid closure of a town's only industry, an environmental health officer ignores or conceals evidence of illegal dumping of waste.

An environmental health officer allows a catering business to continue functioning when health standards have been breached.

A building inspector tolerates poor practices and structural defects in the work of a leading local builder.

A Council employee is witnessed using a Council grader on private property on a weekend.

A finance officer approves a colleague's corporate expense account for payment even though it appears to have non-work related expenditure items listed.

A Council officer takes a bribe or receives a payment other than their wages or salary in exchange for the discharge of a public duty.

A Council officer favours unmeritorious applications for jobs or permits by friends and relatives.

A Council officer sells confidential information.

Detrimental Action examples:

Council refuses a deserved promotion of a person who makes a disclosure.

Council demotes, transfers, isolates in the workplace or changes the duties of a discloser due to the making of a disclosure.

Council threatens, abuses or carries out other forms of harassment directly or indirectly against the discloser, their family or friends.

Council discriminates against the disclosure or their family and associates in subsequent applications for jobs, permits or tenders.

Where Horsham Rural City Council determines that the disclosure is not an assessable public interest disclosure under the PID Act, the discloser must be provided with the following information in writing within 28 days after the disclosure was made:

1. Horsham Rural City Council does not consider the disclosure to be a public interest disclosure
2. The disclosure has not been notified to IBAC for assessment
3. The protections under part 6 of the PID Act (see section 4.8.1) apply, regardless of whether the disclosure is notified to IBAC for assessment

However, Horsham Rural City Council does not have to provide the discloser with the information under (3) above unless the discloser has indicated to Horsham Rural City Council that the discloser wishes to receive the protections that apply to a public interest disclosure under the PID Act.

Council may also advise the discloser that the matter will be addressed by the Horsham Rural City Council through its complaint processes.

4.7.1 Valid Disclosures

Where it is determined that the disclosure falls under the PID Act, the following action will be taken by the Public Interest Disclosures Co-ordinator:

1. Establish contact with the person making the disclosure (if that person has provided their identity and personal details).
2. Advise the Chief Executive Officer of the disclosure (if they are not the PIDC).
3. Establish a confidential file relating to the disclosure.
4. Advise IBAC of the disclosure within 28 days of receiving the disclosure.
5. Advise the person making the disclosure within 28 days of notifying IBAC.
6. Notify the Welfare Manager

Once notification is made to IBAC, they must separately assess whether, in their view, the assessable disclosure is a public interest disclosure.

IBAC will be able to conduct preliminary inquiries into a matter before deciding whether to investigate. As part of a preliminary enquiry IBAC may:

- Request further information from a relevant principle officer of Horsham Rural City Council
- Issue a witness summons requiring a person to produce documents or other things to IBAC
- Issue confidentiality notices

If IBAC determines the disclosure will not be investigated as a public interest disclosure complaint and the discloser wishes to pursue the matter, IBAC may advise the discloser to make a complaint directly to Horsham Rural City Council, to be addressed through its complaint processes.

4.7.2 Serious professional misconduct in public office

If IBAC determines the disclosure will be investigated they can now consider if allegations could constitute serious professional misconduct in public office. In accordance with the intention to broaden the types of disclosures that receive protection under the scheme, this may include conduct that constitutes a serious breach of an established professional code of conduct and/or other serious departures from the person's professional responsibilities. This may include a serious failure to exhibit the skills and experience required to perform the functions of the office, as well as non-compliance with professional codes of conduct or the policies, procedures and laws that govern behaviour in the public sector and the workplace.

4.8 PROTECTIONS

4.8.1 Protections provided under Part 6 of the PID Act

Part 6 of the PID Act sets out the protections provided to persons who may make a public interest disclosure.

The person making the disclosure will not be:

- Subject to any civil or criminal liability or administrative action (including disciplinary action) for making the disclosure
- 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
- Breaching any other obligation (made by oath, rule of law or practice) requiring them to maintain confidentiality or otherwise restrict confidentiality
- Held liable for defamation in relation to information included in a public interest disclosure

Limits on protection

A number of the protections in the PID Act do not apply if a discloser:

- Knowingly provides false or misleading information
- Claims that a matter is the subject of a public interest disclosure knowing the claim to be false

The PID Act also specifically states that a person is still liable for their own conduct even if they disclose that conduct.

A person who makes a disclosure is not protected against legitimate management action being taken in relation to them.

4.8.2 Preventing Detrimental Actions

Nature of alleged detrimental action

The PID Act creates an offence for a person to take detrimental action against another person in reprisal for someone making a public interest disclosure.

Further:

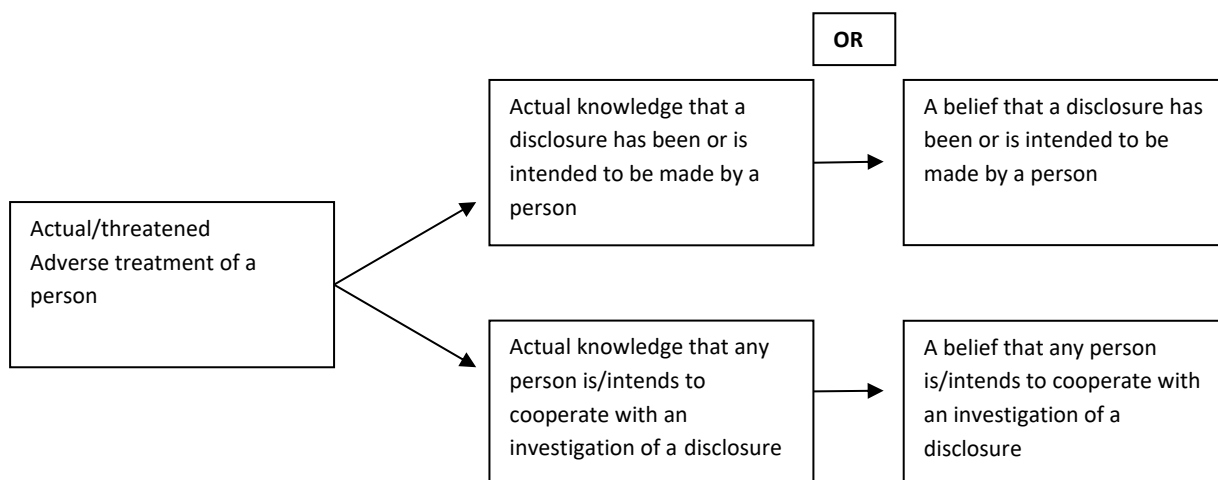
- The person need not actually have taken the action but can just have threatened to do so.
- The person need not have taken or threatened to take the action against the person themselves but can have incited someone else to do so.
- The detrimental action need not to be taken against a discloser, but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

Detrimental action taken in reprisal for a public interest disclosure

The person (or the person they have incited) must 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
- Other person or anyone else has cooperated, or intends to cooperate with an investigation of the disclosure

Essential Elements linked to detrimental action



4.8.3 Protection from reprisals

Section 58 of the PID Act requires public bodies to establish procedures for the protection of a person making a disclosure from reprisal by personnel for making a public interest disclosure. Preserving the confidentiality of their identity will assist in minimising the risk of reprisals.

Persons making such disclosures will be advised that it is in their own interests to keep disclosures confidential by only discussing related matters with authorised persons within the Horsham Rural City Council, ie the Public Interest Disclosures Co-ordinator or the Chief Executive Officer (if not the same person), or officers of IBAC's office or other persons, as authorised by law.

Contact persons under the PID Act and within Horsham Rural City Council are responsible for ensuring persons making a public interest disclosure are protected from direct and indirect detrimental action. Management is responsible for encouraging an organisational culture which is supportive of disclosures being made. A person making a public interest disclosure may be employed by the Horsham Rural City Council or may be a member of the public.

Horsham Rural City Council is obligated to protect both internal and external persons making public interest disclosures from detrimental action taken in reprisal for the making of the disclosure.

The management of both types of persons making public interest disclosures will, however, be different.

Disclosure made by a Horsham Rural City Council employee/officer

Internal persons making public interest disclosures are at risk of suffering reprisals in the workplace.

The Welfare Manager will foster a supportive work environment and respond to any reports of intimidation or harassment against the person making the disclosure.

Disclosure made by a member of the public

Reprisals may also be taken against external persons making public interest disclosures.

The Horsham Rural City Council will, as required, appoint a Welfare Manager for an external person making a public interest disclosure.

4.8.4 Support

The Welfare Manager will provide reasonable support to a person making a disclosure. The Welfare Manager will discuss the issue of reasonable expectations with the person making a public interest disclosure.

The level of support provided to the person will require the written approval of the Chief Executive Officer and will be documented. A copy of the agreement reached will be provided to the person.

4.8.5 Welfare of a Person Making a Public Interest Disclosure

The Welfare Manager will be engaged by the Public Interest Disclosures Co-ordinator where a disclosure is deemed as a public interest disclosure (see section 4.2.4 for level of support).

The Welfare Manager will also:

- Keep contemporaneous records of all aspects of the case management of the person making the public interest disclosure, including all contact and follow up action.
- Not divulge any details relating to the disclosed matter to any person other than the Public Interest Disclosures Co-ordinator or the Chief Executive Officer (when the CEO is not the PIDC).

All meetings between the Welfare Manager and the person making a public interest disclosure will be conducted discreetly to protect the confidentiality of the person making a public interest disclosure.

4.8.6 Occurrence of detrimental action

If a person making a public interest disclosure reports an incident of harassment, discrimination or adverse treatment that would amount to detrimental action apparently taken in reprisal for the making of the disclosure, the Public Interest Disclosures Welfare Manager or the Public Interest Disclosures Co-ordinator will:

- Record details of the incident
- Advise the person making a public interest disclosure of their rights under the PID Act

The Public Interest Disclosures Co-ordinator will:

- Inform the Chief Executive Officer of the Horsham Rural City Council (when the CEO is not the PIDC)
- Inform IBAC, where the detrimental action is of a serious nature likely to amount to a criminal offence

Where detrimental action is reported, the allegation will be assessed as a new disclosure under the PID Act.

Horsham Rural City Council will be extremely cautious about conducting enquiries or gathering information concerning an allegation of detrimental action, as a criminal offence may have been committed and any informal investigation may compromise the integrity of evidence.

4.9 MANAGEMENT OF THE PERSON AGAINST WHOM THE DISCLOSURE IS MADE

4.9.1 Natural justice

The Horsham Rural City Council will ensure that natural justice is adhered to in the receipt and management of a disclosure.

Natural justice means that if a decision is to be made about the conduct of an employee, officer or member of the Horsham Rural City Council, they have the right to:

- Be informed about the substance of the allegations against them
- Be given the opportunity to answer the allegations before a final decision is made
- Be informed about the substance of any adverse comment that may be included in any report arising from an investigation
- Have their defence set out fairly in any report

4.9.2 Confidentiality

The Horsham Rural City Council will take all reasonable steps to ensure confidentiality regarding the identity of any persons against whom a disclosure has been made.

Where the disclosure is dismissed or investigations do not substantiate the allegation, the fact of the investigation, its results, and the identity of the person subject of the disclosure should still be kept confidential.

4.9.3 Protection against reprisal

The Public Interest Disclosures Co-ordinator will take responsibility for ensuring a person against whom a public interest disclosure has been made, is protected from direct or indirect detrimental action.

Horsham Rural City Council recognises that employees against whom disclosures are made must also be supported during the handling and investigation of disclosures.

A Public Interest Disclosures Welfare Manager will be assigned to monitor the welfare of the person against whom a disclosure has been made.

Horsham Rural City Council will give its full support to a person who is the subject of a disclosure where the allegations contained in a disclosure are clearly wrong or unsubstantiated. If the matter has been publicly disclosed, the Chief Executive Officer of the Horsham Rural City Council will consider any request by that person to issue a statement of support setting out that the allegations were clearly wrong or unsubstantiated.

4.10 CRIMINAL OFFENCES

The PID Act provides for offences for certain actions. These are detailed below:

Criminal Offences	<p>Detrimental action</p> <p>It is an offence for a person to take or threaten action in reprisal when:</p> <ul style="list-style-type: none"> • A public interest disclosure has been made • A person believes a public interest disclosure has been made • A person believes that another person intends to make a public interest disclosure
	<p>Breach of confidentiality</p> <p>It is an offence for a person to divulge information obtained as a result of handling or investigation of a public interest disclosure without legislative authority</p>
	<p>Provision of false information</p> <p>It is an offence for a person to knowingly provide false information under the PID Act with the intention that it be acted on as a public interest disclosure</p>
Civil Action	<p>A person who takes detrimental action against a person in reprisal for a public interest disclosure may be found liable in damages to that person. The public body may also be found to be vicariously liable.</p>

The Horsham Rural City Council will ensure officers appointed to handle public interest disclosures and all other employees are aware of the following offences by the PID Act:

It is an offence for a person to take or threaten detrimental action against a person in reprisal when:

- A public interest disclosure is being made
- A person believes a public interest disclosure has been made
- A person believes that another person intends to make a public interest disclosure

An employer may also be held to be jointly and civilly liable for the detrimental action of their employee.

Criminal penalty: 240 penalty units or two years imprisonment or both and if convicted or found guilty of an offence.

Civil penalty: Order of court for offender to pay appropriate level of damages to compensate for injury, loss or damage.

A person/body must not disclose content of assessable disclosure or information about content.

Criminal penalty: 120 penalty units or 12 months imprisonment or both.

A person/body must not disclose information likely to lead to the identification of a person who has made an assessable disclosure.

Criminal penalty: 120 penalty units or 12 months imprisonment or both.

A person who takes detrimental action may be subject to proceedings in tort in any court of competent jurisdiction.

Civil penalty: Court order for damages for any injury, loss or damage, including exemplary damages.

4.11 COLLATING AND PUBLISHING STATISTICS

The Horsham Rural City Council, through the Public Interest Disclosures Co-ordinator, will respond to any requests for statistical information through IBAC relating to the number and type of disclosures received.

The Horsham Rural City Council will include in its Annual Report:

- a. Information about how to access the procedures established by the Horsham Rural City Council under Part 9 of the PID Act; and
- b. The number of disclosures notified to the IBAC under section 21 (2) during the financial year.

4.12 MANDATORY NOTIFICATIONS

All instances of matters suspected by relevant principal officers, on reasonable grounds to involve corrupt conduct must be notified to IBAC. Section 4 of the *Independent Broad-based Anti-corruption Commission Act 2011* defines corrupt conduct as conduct, or an attempt or conspiracy to engage in conduct (whether it takes place inside or outside of Victoria), that:

1. Adversely affects the honest performance of the functions of a public officer or public body.
2. Constitutes or involves the dishonest performance of the functions of a public officer or public body.
3. Constitutes or involves knowingly or recklessly breaching public trust by a public officer or public body.
4. Involves the misuse of information or material acquired in the course of the performance of the functions of a public officer or public body; and

5. Is intended to adversely affect the effective performance of the functions or powers of a public officer or public body and results in the person or their associate obtaining a specified benefit.

In order for conduct to be corrupt conduct, it must also be the case that the conduct would constitute a 'relevant offence'. Relevant offence is defined in the IBAC Act to mean an indictable offence against any Act, or the common law offences of attempt to pervert the course of justice, perverting the course of justice, bribery of a public official, and misconduct in public office.

Corrupt conduct is generally deliberate and not a result of a mistake or negligence.

5. COMMUNICATION

This procedure is available on the Councillor Portal, Staff Intranet and readily available to the public via HRCC Website.

6. RESPONSIBILITY

Policy Owner: Director Corporate Services

This Procedure will be reviewed every two years or earlier as required by changed circumstances including changes to legislation and plans, strategies or policies of HRCC.

This procedure is also included in a suite of policies, procedures and frameworks that is incorporated into the Audit and Risk Committee review.

7. DEFINITIONS

Definition	Meaning
Assessable Disclosure	<ul style="list-style-type: none"> • a disclosure that, under section 21(2), must be notified to the IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee. • a disclosure that, under section 21(3), may be notified to the IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee. • a disclosure that, under section 36(2), must be notified to the IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee. • a disclosure made to the IBAC in accordance with Division 2 of Part 2. • a disclosure made to the Victorian Inspectorate under section 14(b). • a disclosure made to the Integrity and Oversight Committee under section 14(a)
Detrimental Action	<p>Detrimental action is action in reprisal for a public interest disclosure and can include:</p> <ul style="list-style-type: none"> • 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
Improper Conduct	<p>A disclosure may be made about improper conduct by a public body or public official. Improper conduct means conduct that is corrupt, a substantial mismanagement of public resources, or conduct involving substantial risk to public health or safety or to the environment.</p> <p>Improper conduct now includes: Corrupt conduct and/or any of the following conduct by a public officer or public body in their capacity as a public officer or public body:</p> <ul style="list-style-type: none"> • a criminal offence • serious professional misconduct • dishonest performance of public functions • an intentional breach or reckless breach of public trust • an intentional or reckless misuse of information or material acquired in the course of the performance of public functions • a substantial mismanagement of public resources • a substantial risk to the health or safety of one or more persons • a substantial risk to the environment

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
Misconduct in public office	Misconduct in public office is broadly defined. It can be any conduct by a public sector employee which is unlawful or fails to meet the ethical or professional standards required in the performance of duties or the exercise of powers entrusted to them
Penalty Unit	In Australian law, a penalty unit (abbreviated as PU) is an amount of money used to compute pecuniary penalties for many breaches of statute law. Fines are calculated by multiplying the value of one penalty unit by the number of penalty units prescribed for the offence. The different jurisdictions that make up Australia each have their own penalty units. The value of a penalty unit, and the manner and frequency of varying that value, differ from state to state, and there are also federal penalty units that apply only to federal offences
Public Interest Complaint (PIC)	A Public Interest Disclosure that has been determined by IBAC, the Victorian Inspectorate, or the Integrity and Oversight Committee to be a PIC. PICs were previously known as protected disclosure complaints
Public Interest Disclosure (PID)	A disclosure by a natural person (a human being, not a legal entity like a corporate body) or information that shows or tends to show, or information that the person reasonably believes shows or tends to show, improper conduct or detrimental action (where the particular disclosure relates to an earlier PID), PIDs were previously known as protected disclosures
Public Interest Disclosures Co-ordinator (PIDC)	The Public Interest Disclosures Co-ordinator has a central role in distributing information or assistance in the internal reporting system
Public Interest Disclosures Officer (PIDO)	The Public Interest Disclosures Officer will be a contact point for general advice about the operation of the PID Act
Public Body and Public Officers	Public bodies and officers can include: <ul style="list-style-type: none"> • government departments and agencies • statutory authorities • Councillors • officers of municipal councils • government-appointed boards and committees • government-owned companies • universities • TAFE colleges • public hospitals • state-funded residential care services • health services contractors • correctional services contractors
Serious Professional Misconduct	Conduct that constitutes a serious breach of an established professional code of conduct and/or other serious departures from the person's professional responsibilities
Welfare Manager	The Welfare Manager is responsible for looking after the general welfare of any persons making public interest disclosures, or for those who may be the subject of a public interest disclosure

8. SUPPORTING DOCUMENTS

Document	Location
Complaint Resolution Policy	Intranet
Complaint Resolution Procedure	Intranet
Councillor Code of Conduct	Website & Councillor Portal
Fraud and Corruption Control Policy and Framework	Intranet & Website
IBAC – Guidelines for making and handling protected disclosures	www.ibac.vic.gov.au
IBAC – Guidelines for protected disclosure welfare management	www.ibac.vic.gov.au
Staff Code of Conduct	Intranet

9. DOCUMENT CONTROL

Version	Approval Date	Approval by	Amendment	Review date
01	29 July 2013	EMG	Replaces whistle blowers procedures	
02	6 February 2017	EMG	Review and updates to the IBAC Act	6 February 2020
03	4 February 2020	EMT	Amendments in relation to renaming the Act and other legislative changes	4 February 2023
04	27 March 2024	EMT	Administrative changes, update to HRCC reporting to officers and new policy template. Endorsed by Audit & Risk Committee 21 Mar 2024.	27 March 2026

It is recognised that from time-to-time circumstances may change leading to the need for minor administrative changes to Procedures. Where an update does not materially alter a Procedure, such a change may be made administratively, without the need for formal adoption by EMT or Council. Examples include a change to the name of a Council Department/Position Title, 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, all changes will be noted in the document control section and version number updated.