



Protected Disclosure Act 2012

Protected Disclosures (Whistleblowers) Procedures for the City of Boroondara

2015

Responsible Directorate: Chief Executive Office
Authorised By: ELT
Date of Adoption: 22 September 2015
Review Date: October 2019
Revocation/Sunset Date: Nil
Policy Type: Administrative

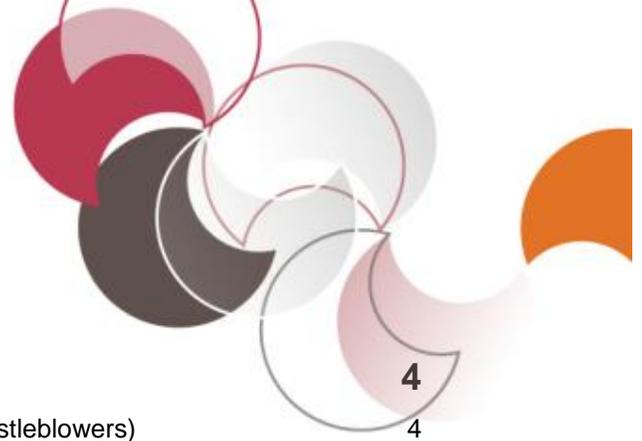
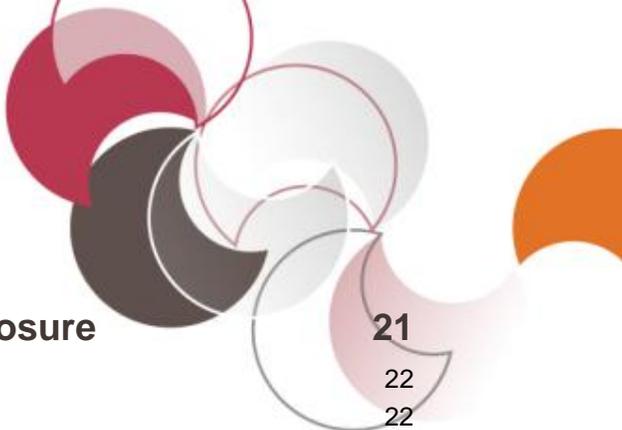


Table of contents

1. Introduction	4
1.1. Statement of support to protected disclosures (whistleblowers)	4
1.2. Purpose of these procedures	4
2. Objects of the Act	5
3. The reporting system - making a disclosure	5
3.1. What is a disclosure?	5
3.2. Procedures for making a disclosure	6
3.3. What is not a disclosure	6
3.4. Who can make a disclosure?	7
3.5. How can a disclosure be made?	7
3.6. Who can receive disclosures?	8
3.7. About whom can a disclosure be made?	9
3.8. About what can a disclosure be made?	9
3.9. Improper conduct by a public body or public officer in the performance of their functions as a public body or public officer	10
4. Definitions of key terms	11
4.1. Improper conduct	11
4.2. Corrupt conduct	12
4.3. Detrimental action	12
4.3.1 Detrimental action taken in reprisal for a protected disclosure	13
4.3.2 Tests for improper conduct or detrimental action	14
5. Handling disclosures	16
5.1. Receiving a disclosure	16
5.2. Assessing a disclosure	16
5.3. Assessment decisions	17
5.4. Notification to IBAC	17
5.5. Protection for public officers	18
6. IBAC assessment	18
6.1. IBAC's determination	18
6.2. Further contact about investigations	19
6.3. Providing information at the conclusion of an investigation	20
6.4. The Freedom of Information Act	20



- 7. Protections for persons making disclosure** **21**
 - 7.1. Protections provided under Part 6 of the Act 22
 - 7.2. Additional limitations on protections 22
 - 7.3. Offences for making an unauthorised disclosure 22

- 8. The reporting system** **24**
 - 8.1. Contact persons within the City of Boroondara 24
 - 8.2. Alternative contact persons 24

- 9. Roles and responsibilities** **26**
 - 9.1. Employees 26
 - 9.2. Protected Disclosure Coordinator 26
 - 9.3. Receipt of disclosures by staff 27
 - 9.4. Welfare manager 27

- 10. Confidentiality** **28**
 - 10.1. Information management 28

- 11. Managing the welfare of the discloser** **29**
 - 11.1. Commitment to protecting discloser 29

- 12. Collating and publishing statistics** **29**

- 13. Review** **29**



1. Introduction

1.1. Statement of support to protected disclosures (whistleblowers)

The City of Boroondara is committed to the aims and objectives of the *Protected Disclosure Act 2012* (the 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.

The City of Boroondara 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.

The City of Boroondara will take all reasonable steps to protect people who make such disclosures from any detrimental action in reprisal for making the disclosure.

1.2. Purpose of these procedures

These procedures establish a system for reporting disclosures of improper conduct or detrimental action by the City of Boroondara or its employees. The system enables such disclosures to be made to the Protected Disclosure Coordinator or to the Independent Broad-based Anti-corruption Commission (IBAC). Disclosures may be made by any person. This includes a person who is a member, officer or employee of the City of Boroondara.

Details of all contact information for the Protected Disclosure Coordinator are listed in **Annexure A**.

These procedures are designed to complement normal communication channels between supervisors and employees. Employees are encouraged to continue to raise appropriate matters at any time with their supervisors. As an alternative, employees may make a disclosure of improper conduct or detrimental action under the Act in accordance with these procedures.

For conduct not meeting the protected disclosure provisions of the Act the City of Boroondara have contracted STOPline Pty Ltd. Complaints or allegations outside the Act criteria can be reported direct to STOPline (See **Annexure A** for contact information). The City of Boroondara offers the same anonymity provisions and assurance that all reasonable steps will be taken to protect anyone making such reports.

The services of STOPline is also available to all employees to seek advice on how to report matters relating to improper conduct should it be considered necessary to go “outside” the City of Boroondara.



2. Objects of the Act

By way of background, the *Protected Disclosure Act 2012 (Act)* commenced operation on 10 February 2013, replacing the former *Whistleblowers Protection Act 2001 (Whistleblowers Act)* and amending the *Ombudsman Act 1973*. Similarly to the Whistleblowers Act, the Act aims to protect people who make disclosures about improper conduct in the public sector.

The Act forms part of the new integrity reforms in Victoria, which also include the establishment of IBAC, the Victorian Inspectorate and the Accountability and Oversight Parliamentary Committee. The Act aims to provide a simplified and strengthened protected disclosure regime. The key purposes of the Act is to re-introduce a new framework to:

- encourage and facilitate disclosures of:
 - improper conduct by public officers, public bodies and other persons
 - detrimental action taken in reprisal for a person making a disclosure under the Act
- provide protection for:
 - persons who make disclosures
 - persons who may have suffered detrimental action in reprisal for a disclosure
- provide for the confidentiality of:
 - the content of disclosures
 - the identity of persons who make disclosures

3. The reporting system - making a disclosure

3.1. What is a disclosure?

A disclosure is a report made by a person about improper conduct of public bodies or public officers to any of the organisations specified in Part 2 of the Act. A disclosure can also be made about detrimental action against a person by public bodies or public officers in reprisal for the making of a protected disclosure by any person.

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 to media or other public commentary. The term 'disclosure' is interpreted under the Act in the ordinary sense of the word as a 'revelation' to the person receiving it.

The disclosure can relate to improper conduct or detrimental action against a person that may already have taken place, may be occurring now, or the public officer or public body may be going to do it in the future. Disclosures can be made about conduct that occurred prior to the commencement of the Act on 10 February 2013.

A disclosure may be made in accordance with the requirements of Part 2 of the Act, even if it is also a complaint, notification or disclosure made under another Act.



3.2. Procedures for making a disclosure

For a disclosure to be a protected disclosure it must be made in accordance with the requirements of Part 2 of the Act, and in accordance with the prescribed procedure, as outlined below.

Who can make a disclosure	– The disclosure can only be made by certain persons
How to make a disclosure	– Must be made verbally, in writing, or in some cases, online, in accordance with specific procedures
Who to make a disclosure to	– The disclosure can only be made to certain persons
Who disclosures can be made about	– Must be made only about the conduct of public bodies or public officers performing public functions
What disclosures can be made about	– Must be about improper conduct or detrimental action taken against a person

3.3. What is not a disclosure

It **will not** be a protected disclosure if:

- it is made to an entity that cannot receive disclosures, or notified to IBAC by such an entity because such disclosures or notifications do not meet all the requirements under Part 2 of the Act
- the disclosure was made about a Public Interest Monitor, the Victorian Inspectorate, a Victorian Inspectorate Officer, or a court
- the discloser expressly states in writing that the disclosure is not a disclosure under the Act
- the disclosure is not a disclosure under the Act if it was made by an officer or employee of an investigating entity in the course of his/her duties or functions **unless** this person expressly states in writing that it is a disclosure and the disclosure is otherwise made in accordance with the Act requirements.
- the disclosure does not meet all the requirements under Part 2 of the Act and the prescribed procedures in the Regulations outlined above.

If the City of Boroondara receives any disclosures which do not meet all of the requirements of Part 2 of the Act or the prescribed procedures in the Regulations, Boroondara City Council will not be required to consider whether it is a protected disclosure under the Act. However, the Council will always consider whether it would be appropriate to inform the discloser how to make the disclosure in a way that would comply with the requirements of the Act and the Regulations in order to ensure that persons are properly afforded the opportunity to receive any appropriate protections available to them under the Act.

In addition, the City of Boroondara is required to consider whether a disclosure that does not meet the requirements of the Act and the Regulations should be treated as a complaint, notification or referral to the Council in accordance with any other laws or internal policies and procedures.



3.4. Who can make a disclosure?

Any person can make a disclosure about improper conduct by public bodies and public officers. This includes a person who is a member, officer or employee of a public body or public officer. However, the making of disclosure is not limited only to 'internal' disclosers.

A company or a business cannot make a disclosure. The person making the disclosure must be an individual or a group of individuals making joint disclosures.

Making a joint disclosure overcomes the following limitation on the protections provided by the Act. The protections in sections 39, 40 and 41 in Part 6 of the Act are only provided to the person who makes a disclosure. This means that if a person makes the disclosure by 'notifying' the organisation on behalf of another person, then it is the 'notifier' who may receive those protections, not the person on whose behalf they have made the disclosure. The person on whose behalf the disclosure has been made will only be entitled to protection against detrimental action taken against them in reprisal for a disclosure made by the 'notifier'.

A disclosure can be made anonymously. However, this creates potential difficulties in being able to assess whether a complaint is a disclosure.

A person can also make a disclosure in circumstances where they cannot identify the person or the organisation to which the disclosure relates.

3.5. How can a disclosure be made?

A person may make a disclosure under Part 2 of the Act verbally or in writing. The disclosure may also be anonymous.

Verbal disclosure

A person can make a verbal disclosure:

- in person
- by phone
- by leaving a voice mail message
- by any other form of electronic communication that does not require writing (note that an email is considered to be a written disclosure).

The disclosure **must** be made in private. This means that the person making the disclosure must reasonably believe that only the following people are present or able to listen to the conversation:

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

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



If the disclosure is made verbally, the City of Boroondara will ensure that the person receiving the disclosure makes notes at the time recording the disclosure. This person may also record the conversation, but should only do so with the discloser's permission or by giving prior warning that the conversation will be recorded.

Written disclosure

A written disclosure can only be provided to the City of Boroondara by:

- personal delivery to the office of the City of Boroondara
- mail addressed to the office of the City of Boroondara
- email to the email address of the office of the City of Boroondara, or to the official email address of a person nominated in these procedures to receive a disclosure.

IBAC and the Ombudsman can also accept a written disclosure via an online form. Disclosures cannot be made by fax.

Anonymous disclosure

A discloser need not identify themselves to the organisation to make a disclosure to that organisation under the Act.

An anonymous disclosure can be made by using unverifiable email addresses, through anonymous phone calls or in a face-to-face conversation or meeting where the person refuses to identify themselves (provided that meeting or conversation takes place 'in private' in accordance with the PD Regulations).

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

3.6. Who can receive disclosures?

Disclosures of improper conduct or detrimental action by the City of Boroondara or its employees, may be made to the Protected Disclosure Coordinator.

The following Officers of Council can receive disclosures:

- Chief Executive Officer; and
- Protected Disclosure Coordinator

The Manager Governance has been appointed as the Protected Disclosure Coordinator.

The Protected Disclosure Coordinator will be the main contact point within the City of Boroondara.



3.7. About whom can a disclosure be made?

Disclosures can be made about public bodies or public officers. For the purposes of the Act the City of Boroondara is a public body and Councillors and Council employees are public officers.

The City of Boroondara can only deal with disclosures which concern Boroondara City Council, its employees, staff or officers.

Disclosures about improper conduct or detrimental action by the Boroondara City Council's Councillors **must** be made to the IBAC or to the Ombudsman. Those disclosures may not be made to the Council.

Disclosures about improper conduct or detrimental action by Boroondara City Council or its employees and staff may be made to City of Boroondara Council or one of 4 external authorities:

- the IBAC;
- the Ombudsman in relation to limited types of disclosures;
- the Victorian Inspectorate in relation to limited types of disclosures; or
- the Chief Commissioner of Police in relation to limited types of disclosures.

In most circumstances, disclosures about the Council, its employees, officers or staff should be made to Boroondara City Council or to the IBAC.

Different procedures apply to the receiving body as detailed in section 8.2 of these procedures.

If the disclosure concerns another public body or employees, members, officers or staff of that other public body, it has not been made in accordance with Part 2 of the Act and cannot be treated as a protected disclosure under the Act. However, if such a disclosure is made to Boroondara City Council, the Council will take reasonable steps to direct the discloser to the (or an) other body which is able to receive a disclosure about that person or body under the Act (also see the table at 8.2). This may not be possible if, for example, the allegation received is made from an anonymous source and the source has not provided any contact details to Boroondara City Council. Where in doubt, a discloser should make their disclosure to the IBAC.

3.8. About what can a disclosure be made?

A disclosure must be about the conduct of a person, public officer or public body in their capacity as a public body or public officer as outlined in the following diagram.

The alleged conduct is either improper conduct or detrimental action taken against a person in reprisal for a protected disclosure

AND EITHER

The information shows or tends to show that the improper conduct or detrimental action against a person has occurred, is occurring, or is proposed to be engaged in by a person

OR

The discloser believes on reasonable grounds the information shows or tends to show the improper conduct or detrimental action against a person has occurred, is occurring, or is proposed to be engaged in by a person

In assessing whether there is improper conduct or detrimental action, the City of Boroondara will look critically at all information about the alleged conduct and about the discloser. Useful preliminary questions to be used include:

- What is the discloser's connection to the alleged conduct - are they a victim, a witness, or a participant?
- How did they come to know about the conduct - were they directly involved in it, did they observe it happening to another person, did someone else tell them about it?
- How detailed is the information provided - is there sufficient information to enable a determination to be whether there is improper conduct or detrimental action?
- How reliable is the information - is it supported by other information?

3.9. Improper conduct by a public body or public officer in the performance of their functions as a public body or public officer

Corrupt conduct and specified conduct definitions both limit improper conduct of a Council staff and Councillors in the 'performance of their functions' as a public officer or public body, to circumstances in which they have breached 'public trust'.

A person acting in their official capacity is exercising 'public power' that is derived from their public office holding and may be controlled or influenced by legislative provisions, administrative directions, or constitutional principles or conventions.

Example

A Councillor swears and Oath or Affirmation to 'undertake the duties of the office of Councillor in the best interests of the people of the municipal district of the City of Boroondara and faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the Local Government Act 1989 or any other Act to the best of my skill and judgment'.



'Public trust' is a concept that provides the basis 'for obligations of honesty and fidelity in public officers that exist to serve, protect and advance the interests of the public'.¹

*Members of the community must rely on and trust their officials to act honestly, impartially and disinterestedly. In doing so, expectations are held that officials will not use their official position for personal advantage, or exercise the powers or the influence of office for collateral or extraneous reasons nor in a manner that is partisan where there is a duty not to favour a person or group.*²

A person making a disclosure needs to identify that there is a link between the person's alleged improper conduct and their function as a public officer.

4. Definitions of key terms

Three key concepts in the reporting system are improper conduct, corrupt conduct and detrimental action. Definitions of these terms are set out below.

4.1. Improper conduct

A disclosure may be made about improper conduct by a public body or public officer. Improper conduct is defined in section 4 of the Act to mean:

- corrupt conduct (as defined in the *IBAC Act*), or
- specified conduct.

There is an overlap in the definitions of 'corrupt conduct' under the *IBAC Act*, and specified conduct under the Act. Essentially, all types of corrupt conduct are types of specified conduct, and improper conduct encompasses both corrupt and specified conduct.

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.

Examples

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

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

Specified 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. The conduct must be serious enough to constitute, if proved, a criminal offence or reasonable grounds for dismissal.

¹ *R v Bembridge* (1783) 99 ER 679.

² Hall, Peter M, *Investigating Corruption and Misconduct in Public Office: Commissions of Inquiry - Powers and Procedures*, Lawbook Co, 2004 @ pp 9-10.



This means that improper conduct which can be either corrupt or specified conduct must, at its lowest threshold level, be either criminal conduct or conduct serious enough to result in a person's dismissal.

4.2. Corrupt conduct

Corrupt conduct is defined by section 4 of the Act and includes conduct:

- of any person that adversely affects the honest performance of a public officer's or public body's functions;
- of public officer's or public body's that constitutes or involves the dishonest performance of his or her or its functions;
- of a public officer or a public body that constitutes or involves knowingly or recklessly breaching public trust; or
- of a public officer or a public body that involves the misuse of information or material acquired in the course of the performance of his or her or its functions.

Under the Act, this conduct would, if the facts were found proved beyond a reasonable doubt at trial, constitute a relevant offence. Relevant offences are:

- indictable offences, or
- the common law offences of attempt to pervert the course of justice, pervert the course of justice or bribery of a public official.

The relevant offences specified above are more serious crimes; offences punishable by imprisonment for five years or more are presumed to be indictable offences.

Examples

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

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

A public officer sells confidential information.

4.3. Detrimental action

The Act makes it an offence for a person to take detrimental action against a person in reprisal for someone making a protected disclosure. The person(s) taking the detrimental action must be a public officer or public body. Section 3 of the Act defines detrimental action by a person as including the following:

- 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 threatened to take the action against the person themselves, but can have incited someone else to do so.

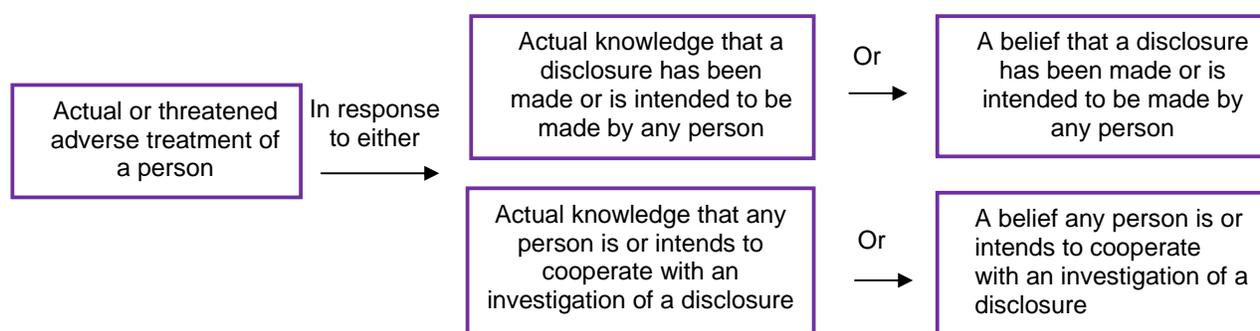
The detrimental action need not be taken against a discloser, but against any person.

4.3.1 Detrimental action taken in reprisal for a protected 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.

The essential elements linked to detrimental action



The reason for the person taking action in reprisal must be a 'substantial' reason, or it is not considered to be detrimental action.

Examples of detrimental action

Some types of detrimental action could involve threats to a person's personal safety and property. This might intimidation or harassment, causing personal injury or prejudice to safety, property damage or loss, done directly or indirectly against the discloser, his or her family or friends.

A public body refuses a deserved promotion of a person who makes a disclosure.

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

A public body discriminates against the discloser, his or her family and associates in subsequent applications for jobs, permits or tenders.



Examples of when it is not detrimental action

A manager may take management action against an employee who has made a protected disclosure, provided the making of the disclosure is not a substantial reason for management action.

Action by a person against the discloser is not detrimental action if the discloser has made a false disclosure or provided false further information relating to a disclosure.

4.3.2 Tests for improper conduct or detrimental action

If the disclosure satisfies the requirements of Part 2 of the Act, the Council is required to determine whether the disclosure may be a protected disclosure by going through the 2 test assessment process recommended by the IBAC as follows.

This will be the case even if the discloser does not refer to the Act or require the protections of the Act. The initial assessment is made on the nature of the information disclosed or on the belief that the discloser has about the nature of the information, and not the discloser's intention.

Test 1

Does the information show or tend to show there is improper conduct or detrimental action?

Does the information itself show or tend to show improper conduct or detrimental action. The information needs to be assessed as to whether it satisfies the 'elements' of either improper conduct or detrimental action, as defined in the Act and whether any of the exceptions apply.

This requires the Council to ascertain whether the information satisfies the 'elements' of improper conduct or detrimental action, as defined in the Act and whether any of the relevant exceptions apply.

This may require the Council to:

- *seek further information;*
- *conduct a discreet initial enquiry;*
- *seek (further) evidence from the discloser; or*
- *ascertain whether there is sufficient supporting material to demonstrate that the conduct or actions covered by the Act have occurred, are occurring or are likely to occur.*

If it is not clear that the information disclosed does show or tend to show that there is improper conduct or detrimental action, then the second test can be applied.



Test 2

Does the discloser believe on reasonable ground that the information shows or tends to show there is improper conduct or detrimental action?

This means that the person must actually believe that the information shows or tends to show there is improper conduct or detrimental action, and his or her belief must be 'reasonable'. This means that the person's belief is based on facts that would be sufficient to make a reasonable person believe there was improper conduct or detrimental action.

This reasonable belief does not have to be based on actual proof that the improper conduct or detrimental action in fact occurred, is occurring, or will occur, but there must be some information supporting this belief. The grounds for the reasonable belief can leave something to surmise or conjecture, but it must be more than just a reasonable suspicion, and the belief must be probable.

According to the IBAC, simply stating that improper conduct or detrimental action is occurring, without providing any supporting information, would not be a sufficient basis for having a reasonable belief. In the IBAC's view, a belief cannot be based on a mere allegation or conclusion unsupported by any further facts or circumstances.

Other matters that the IBAC suggests the Council can consider are:

- the reliability of the information provided by the discloser, even if it is second or third-hand. For example, how would the discloser have obtained the information?
- the amount of detail that has been provided in the information disclosed; and
- the credibility of the discloser, or of those people who have provided the discloser with information.

At the conclusion of the assessment, a decision can be made on what is to be done with the disclosure. If it is a protected disclosure IBAC will be notified. If it is not considered to be a protected disclosure, then it may be a matter that is dealt with through Council's complaint management processes.



5. Handling disclosures

5.1. Receiving a disclosure

When the City of Boroondara receives a complaint, report or allegation of improper conduct or detrimental action, the first step will be to determine whether the disclosure may be a protected disclosure by going through the assessment process set out in the previous section.

The discloser does not need to specifically request the protections of the Act, or refer to the Act at all. The initial assessment is made on the nature of the information disclosed or on the belief that the discloser has about the nature of the information, and not the discloser's intention.

If the disclosure is considered to fall under Part 2 of the Act or is a police complaint disclosure, then those receiving the disclosure need to be aware that protections apply to the discloser under Part 6 of the Act.

5.2. Assessing a disclosure

Where the City of Boroondara receives a disclosure relating to the conduct of an employee, member or officer of Council, it **must** be assessed as to whether the disclosure may be a protected disclosure.

The City of Boroondara will make this assessment as to whether the disclosure meets all of the requirements for a protected disclosure in Part 2 of the Act and the Regulations. If the disclosure does not meet all the requirements, then it is not a protected disclosure and the City of Boroondara will deal with it under its own complaint handling process.

When urgent action is required while an assessment is being made

In some circumstances, the disclosure may be about improper conduct that may pose an immediate threat to health and safety of individuals, preservation of property, or may consist of serious criminal conduct.

Examples could include a child protection worker allegedly sexually assaulting children in care or a Council employee allegedly lighting fires.

In these cases the City of Boroondara can take immediate action while considering whether or not it is an assessable disclosure that must be notified to IBAC or awaiting IBAC's decision on a notified matter.

It may be necessary to report criminal conduct to Victoria Police for immediate investigation, or take management action against an employee to prevent future conduct.

The Act allows disclosure of the content of the disclosure by a person or body *'to the extent necessary for the purpose of taking lawful action in relation to the conduct that*



is the subject of an assessable disclosure including disciplinary process or action'. However, this does not allow the identity of the discloser to be revealed. Reporting the alleged conduct to the Victoria Police as criminal conduct, or taking legitimate management action against the subject of the disclosure in order to prevent future conduct, may be appropriate courses of action in these circumstances.

5.3. Assessment decisions

If the City of Boroondara does not consider the disclosure to be a protected disclosure, then it will provide the discloser with the following information in writing within 28 days after the disclosure was made, that:

- the disclosure is not considered to be a protected disclosure;
- the disclosure has not been notified to IBAC for assessment; and
- the protections under Part 6 of the PD Act apply, regardless of whether the disclosure is notified to IBAC for assessment.

However, the City of Boroondara does not have to provide the discloser with the above information unless the discloser has indicated to the entity, or it otherwise appears to the entity, that the discloser wishes to receive the protections that apply to a protected disclosure under this Act.

The City of Boroondara is not required to notify a disclosure to IBAC if it does not consider it may be a protected disclosure. It may also decide to deal with the matter as a complaint directed to Council for resolution.

If the City of Boroondara considers the disclosure may be a protected disclosure, then it is required to notify the disclosure to IBAC for assessment and to notify the discloser. These notifications can be done by persons specified in the Protected Disclosure Regulations 2013 as persons who can receive disclosures. Such a disclosure is called an 'assessable disclosure'.

5.4. Notification to IBAC

The City of Boroondara must provide the discloser with information in writing within 28 days after the disclosure being made that:

- the disclosure has been notified to IBAC for assessment; and
- it is an offence under section 74 of the Act to disclose that the disclosure has been notified to IBAC for assessment under the Act.

The City of Boroondara **must** notify IBAC in writing within 28 days after the disclosure was made that:

- the disclosure may be a protected disclosure; and
- IBAC is being notified about the disclosure for assessment.

The City of Boroondara may also provide IBAC with any information they have obtained regarding the disclosure in the course of their inquiries leading up to the notification. This information can be provided at the time of notification or at any later time.



5.5. Protection for public officers

A public officer is given specific protections under the Act to provide information to other public officers or IBAC in dealing with a disclosure they have received. The public officer does not commit an offence under section 95 of the *Constitution Act* or other Act imposing a duty to maintain confidentiality, or breach confidentiality obligations or information disclosure restrictions when he or she acts in good faith and in accordance with the Act and Regulations and these procedures.

6. IBAC assessment

Once a notification is made to IBAC, then IBAC must assess whether, in IBAC's view, the assessable disclosure is a protected disclosure. If IBAC is of the view that the assessable disclosure is a protected disclosure, then it must determine that the protected disclosure is a 'protected disclosure complaint'.

In making its assessment, IBAC may seek additional information from the notifying entity or from the discloser if IBAC considers there is insufficient information to make a decision.

If IBAC is of the view that the assessable disclosure is not a protected disclosure, then it is not a 'protected disclosure complaint'.

Whether or not IBAC determines the disclosure to be a protected disclosure complaint, the protections for the discloser under Part 6 of the Act apply to the protected disclosure.

Once IBAC has determined that a disclosure is a protected disclosure complaint, the discloser cannot withdraw that disclosure (section 55(4) of the Act). An ordinary complaint made to IBAC differs in that it can be withdrawn at any time after making it. However, under section 68(2)(e) of the Act, IBAC **can decide not to investigate** a protected disclosure complaint if the discloser requests that it not be investigated.

6.1. IBAC's determination

Once IBAC has determined whether or not the assessable disclosure is a protected disclosure complaint, then it determines what action it might take under the Act. Under section 58 of the Act, IBAC may dismiss, investigate, or refer a matter.

If IBAC dismisses a disclosure, then it must do so on one of the grounds set out in section 68 of the Act, and sub-sections 68(2), (3) and (4) which specifically relate to the dismissal of protected disclosure complaints. In particular, IBAC **must** dismiss a protected disclosure complaint if the matter disclosed is a matter that neither IBAC nor an investigating entity may investigate.

IBAC may choose to investigate the alleged conduct if it is reasonably satisfied that it is 'serious corrupt conduct' (ss60(2) of the Act).



IBAC may also choose to refer the protected disclosure complaint to the relevant investigating entity: disclosures about police personnel conduct to the Chief Commissioner of Police, and other disclosures to the Victorian Ombudsman. Any disclosures received by IBAC about the conduct of IBAC or IBAC officers must be referred to the Victorian Inspectorate, and disclosures about the conduct of the Victorian Ombudsman, or the Auditor-General or their officers may be referred to the Victorian Inspectorate.

Once IBAC has made a determination in respect of an assessable disclosure notified to it, then IBAC has a responsibility to advise the relevant notifying entity of its determination, and the action IBAC intends to take. This advice must be provided within a reasonable time of the action being taken, or an investigation commenced. IBAC is also responsible for advising disclosers who have made their disclosures directly to IBAC, or who have had their disclosures notified to IBAC, of the determination and the action IBAC intends to take. This advice must be provided within a reasonable time of the action being taken, or an investigation commenced.

If IBAC determines that the disclosure is not a protected disclosure complaint, and it is otherwise not a complaint or notification under the IBAC Act, it may advise the discloser that they should make a complaint directly to the public body about when they have made a disclosure. If this is the case, IBAC will also advise the relevant notifying entity that the discloser has been given this advice.

6.2. Further contact about investigations

If IBAC or another investigating entity is conducting an investigation of a protected disclosure complaint, it may be in contact with the public body about which the disclosure has been made. This will be for the purpose of conducting investigative inquiries.

The public body or public officer will be able to disclose information about the protected disclosure complaint to the investigating entity without breaching the confidentiality requirements of the PD Act.

IBAC or the relevant investigating entity may also disclose the identity of the discloser and the content of the disclosure if necessary to do so for the purposes of their investigative action. If this is the case, then the public body or public officer to whom the information has been disclosed, is bound by the confidentiality requirements of Part 7 of the Act.

In addition, if the public body or public officer is advised of the identity of the discloser, then they will be required to look after the welfare of the discloser and provide protection against possible detrimental action.



6.3. Providing information at the conclusion of an investigation

At the conclusion of its investigation, and subject to certain exceptions contained in section 163(4) of the Act, IBAC must provide the discloser with information about the results of its investigation, including any action taken by IBAC and any recommendation by IBAC that action or further action be taken. IBAC may provide written information about the commencement, conduct or result of an investigation, including any actions taken and any recommendation made that any action or further action be taken to the relevant principal officer. However, IBAC must not provide any information that is likely to lead to the identification of a discloser.

IBAC does not have to provide this information to either the discloser or the relevant principal officer if it considers that the disclosure might result in any of the possible adverse outcomes specified in section 163(4) of the Act.

The Ombudsman must inform the discloser of the result of the investigation or other action taken, the recommendations he has made and comments on them (in certain specified circumstances). The Ombudsman may also disclose any additional information that they consider proper to disclose.

The Ombudsman does not have to provide this information to the discloser if they consider that the disclosure might result in any of the possible adverse outcomes specified in the *Ombudsman Act*.

The Chief Commissioner must inform the discloser of the outcome of the investigation unless they consider that to do so might result in any of the possible adverse outcomes specified in the *Police Regulation Act*.

6.4. The Freedom of Information Act

The *Freedom of Information Act 1982* does not apply to any document in the possession of any person or body that relates to a protected disclosure, an assessable disclosure or that is likely to lead to the identification of a person who made an assessable disclosure (section 78 of the Act).

Council's Freedom of Information Officer will give consideration to contacting IBAC prior to providing any document originating from IBAC or relating to a protected disclosure, if requested under the *Freedom of Information Act*.



7. Protections for persons making disclosure

Part 6 of the Act sets out the protections provided to persons who make a disclosure that is a 'protected disclosure' made in accordance with Part 2 of the Act.

The protections apply to a disclosure made under Part 2 of the Act from the time at which the disclosure is made to any of the public bodies specified, or IBAC. They apply even if the public body receiving the disclosure does not notify the disclosure to IBAC, and whether or not IBAC has determined that it is a protected disclosure complaint.

The protections also apply to further information relating to a protected disclosure made by the original discloser, if the further information has been provided, verbally or in writing, to:

- the entity to which the protected disclosure was made
- IBAC, or
- an investigating entity investigating the protected disclosure.

An Council employee who has made a protected disclosure and believes on reasonable grounds that detrimental action will be, is being, or has been taken against them may request a transfer of employment.

However, a discloser is not protected if they commit an offence under section 72 or 73 of the Act, as follows:

- a person must not provide false or misleading information, or further information that relates to a protected disclosure, that the person knows to be false or misleading in a material particular, intending that the information be acted on as a protected disclosure (penalty = 120 penalty units or 12 months imprisonment, or both)
- a person must not claim that a matter is the subject of a protected disclosure knowing the claim to be false (penalty =120 penalty units or 12 months imprisonment, or both)
- a person must not falsely claim that a matter is the subject of a disclosure that IBAC has determined to be a protected disclosure complaint (penalty =120 penalty units or 12 months imprisonment, or both).



7.1. Protections provided under Part 6 of the Act

Protection provided

- 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 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

Limitation on protection

- If the person has made a false disclosure or provided false information, the person is not protected

7.2. Additional limitations on protections

A Council employee who makes a disclosure is not protected against legitimate management action and will still be held liable for their own conduct that they disclose as part of the protected disclosure.

The person making a protected disclosure is not subject to criminal or civil liability for making the disclosure under section 39 of the Act, but section 42 of the Act specifically provides that a person remains liable for their own conduct even though the person has made a disclosure of that conduct under the Act.

7.3. Offences for making an unauthorised disclosure

Part 11 of the Act contains a number of offence provisions relating to unauthorised disclosure of information by either disclosers or persons who have received disclosures.

Disclosers commit an offence if they disclose that:

- their disclosure has been notified to IBAC for assessment, subject to specific exceptions
- IBAC or the Victorian Inspectorate has determined their disclosure to be a protected disclosure complaint, subject to specific exceptions.

Both of these offences carry a penalty of 60 penalty units or six months imprisonment, or both. These offences can also be committed by other people who receive the above types of information from the discloser, subject to the same exceptions as apply to the discloser.



The Act also contains offences that might be committed by persons who take certain actions against a person who has made a disclosure. The offences, their penalties and applicable defences or limitations are set out in **Appendix 2**.

Taking disciplinary or other action against a person who has made a protected disclosure invariably creates the perception that it is being taken in reprisal for the disclosure. In all cases where disciplinary or other action is being contemplated, the Chief Executive Officer or their delegate will have regard to the following:

- the fact that a person has made a protected disclosure is not a substantial reason for their taking of the action against the employee
- there are good and sufficient grounds that would fully justify action against any other person in the same circumstances
- there are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

Care will be taken to thoroughly document the process including recording the reasons why the disciplinary or other action is being taken, and the reasons why the action is not in retribution for making the disclosure.

The person making a protected disclosure should be clearly advised of the proposed action to be taken and of any mitigating factors that have been taken into account.



8. The reporting system

8.1. Contact persons within the City of Boroondara

Disclosures of improper conduct or detrimental action by the City of Boroondara or its employees, may be made to the Protected Disclosure Coordinator or the Chief Executive Officer.

All correspondence, phone calls and emails from internal or external persons making a disclosure must be referred to the Protected Disclosure Coordinator.

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

Advice about reporting any improper conduct or detrimental action may be obtained from the Protected Disclosure Coordinator or STOPline Pty Ltd (See **Annexure A** for contact details).

8.2. Alternative contact persons

A disclosure about improper conduct or detrimental action by the City of Boroondara or its employees may also be made directly to IBAC or to the Victorian Ombudsman (if within the Ombudsman's jurisdiction to investigate). See **Annexure A**.

The following sets out where disclosures about persons other than employees or Councillors of the City of Boroondara should be made.

Disclosures can only be made to IBAC if they relate to:

- the Chief Commissioner of Police
- the Director of Public Prosecutions
- the Chief Crown Prosecutor
- the Solicitor-General
- the Governor
- the Lieutenant- Governor or Administrator
- the Director, Police Integrity
- the Electoral Commissioner
- certain persons appointed or given a commission by the Governor
- a member of VCAT who is not a judicial officer
- a judicial employee
- a ministerial officer
- a Parliamentary adviser
- an electorate officer
- a Parliamentary officer

→ IBAC



<ul style="list-style-type: none">• a Councillor;• the Freedom of Information Commissioner;• the Privacy Commissioner;• the Health Services Commissioner; or• the Commissioner for Law Enforcement Data Security	→	IBAC or the Ombudsman
<ul style="list-style-type: none">• an Ombudsman officer• a VAGO officer or• the Chief Examiner or an Examiner appointed under section 21 of the <i>Major Crimes (Investigative Powers) Act 2004</i>	→	IBAC or the Victorian Inspectorate
<ul style="list-style-type: none">• a member of police personnel (other than the Chief Commissioner)	→	IBAC or a Prescribed Member of Police Personnel
<ul style="list-style-type: none">• IBAC or an IBAC Officer	→	Victorian Inspectorate
<ul style="list-style-type: none">• members of the of the Legislative Assembly (including Ministers)	→	Speaker of the Legislative Assembly
<ul style="list-style-type: none">• Legislative Council (including Ministers)	→	President of the Legislative Council

If the City of Boroondara receives a disclosure about an employee, officer or member of another public body, the disclosure has not been made in accordance with Part 2 of the Act.

The City of Boroondara will, if possible, advise the person or body where the disclosure should be made. In such circumstances the City of Boroondara will generally advise the person to make their disclosure to IBAC.



9. Roles and responsibilities

9.1. Employees

Employees are encouraged to report known or suspected incidences of improper conduct or detrimental action in accordance with these procedures.

All employees of the City of Boroondara have an important role to play in supporting those who have made a legitimate disclosure. They 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.

9.2. Protected Disclosure Coordinator

The Protected Disclosure Coordinator will be a contact point within the City of Boroondara and will:

- Establish and manage a confidential filing system;
- Receive all disclosures;
- Receive phone calls, emails and letters from members of the public or the City of Boroondara employees seeking to make a disclosure;
- Be a contact point for general advice about the operation of the Act for any person wishing to make a disclosure about improper conduct or detrimental action;
- Make arrangements for a disclosure to be made privately and discreetly and, if necessary, away from the workplace;
- Receive any disclosure made orally or in writing (from internal and external person);
- Commit to writing any disclosure made orally;
- Impartially assess the allegation and determine whether it is a disclosure made in accordance with Part 2 of the Act (that is, a protected disclosure);
- Take all necessary steps to ensure the identity of the person making the disclosure and the identity of the person who is the subject of the disclosure are kept confidential;
- Impartially assess each disclosure to determine whether it is a protected disclosure;
- Refer all protected disclosures to IBAC;
- Appoint a Welfare Manager to support the person making the disclosure and to protect him or her from any reprisals; and
- Collate and provide statistics on disclosures made.



9.3. Receipt of disclosures by staff

The City of Boroondara staff receiving telephone calls must not enquire into the circumstances of the disclosure and must refer the caller to the Protected Disclosure Coordinator. If the disclosure is received in the mail or in some other written form, the letter, email, facsimile or document must be immediately and personally delivered to the Protected Disclosure Coordinator without recording any details of the disclosure in any the City of Boroondara correspondence system.

The contents of disclosure telephone calls or mail are confidential and a person divulging any matter relating to a disclosure will be subject to prosecution for offences and any penalties under the Act. (See **Appendix 2**).

9.4. Welfare manager

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

- examine the immediate welfare and protection needs of the discloser and seek to foster a supportive work environment;
- advise the discloser of the legislative and administrative protections available to him or her;
- listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making disclosure; and
- ensure the expectations of the discloser are realistic.

The welfare manager may be a person from within the City of Boroondara or a third party engaged for that purpose.



10. Confidentiality

The City of Boroondara will take all reasonable steps to protect the identity of the discloser. Maintaining confidentiality is crucial in ensuring reprisals are not made against a discloser.

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

It is an offence to disclose the contents of a disclosure made under the Act and the identity of disclosers, punishable by fine (currently \$17,323.20 for a natural person and \$86,616 for a body corporate) or 12 months imprisonment.

The offence provisions do not apply where:

- the discloser has given his or her consent; or
- the IBAC or Victorian Inspectorate has determined that the protected disclosure is not a protected disclosure complaint; or
- it is necessary for the purpose of the exercise of functions under the Act; or
- it is necessary for the purpose of obtaining legal advice.

10.1. Information management

The City of Boroondara will ensure all files, whether paper or electronic, are kept in a secure room and can only be accessed by the protected disclosure coordinator, or welfare manager (in relation to welfare matters). All printed material will be kept in files that are clearly marked as a Protected Disclosure Act matter, and warn of the civil and criminal penalties that apply to any unauthorised divulging information concerning a protected disclosure.

All electronic files will be produced and stored on a stand-alone computer and be given password protection. Backup files will be kept on an encrypted memory stick. All materials relevant to an investigation, such as tapes from interviews, will also be stored securely with the protected disclosure files.

The City of Boroondara will not email documents relevant to a disclosure matter to any computer where general staff have access and will ensure all phone calls and meetings are conducted in private.



11. Managing the welfare of the discloser

11.1. Commitment to protecting discloser

The City of Boroondara is committed to the protection of genuine disclosers against detrimental action taken in reprisal for the making of protected disclosures. The Protected Disclosure Coordinator has the primary responsibility for ensuring the discloser is protected from direct and indirect detrimental action, and that the culture of the workplace is supportive of protected disclosures being made.

The Protected Disclosure Coordinator will appoint a Welfare Manager to all disclosures who have made a protected disclosure.

In addition to these procedures, the Welfare Manager will in accordance with Council's Procedures for Protected Disclosure (Whistleblowers) Welfare Management manage the welfare of persons associated with a protected disclosure.

12. Collating and publishing statistics

Boroondara City Council is required to publish certain statistics about the Act in its annual report. That information relates mainly to how these procedures may be accessed and the number of disclosures notified to the IBAC for assessment under section 21 of the Act during the financial year.

The Protected Disclosure Coordinator will establish a secure register to record such information, and to generally keep account of the status of disclosures made under the Act.

13. Review

These procedures will be reviewed regularly to ensure they meet the objectives of the Act and Regulations and accord with the IBAC guidelines.



ANNEXURE A

For reporting improper conduct or detrimental action under the Protected Disclosure Act

Protected Disclosure Coordinator

Manager Governance, Mr David Thompson

Address: Confidential Protected Disclosure
City of Boroondara
Private Bag 1
CAMBERWELL VIC 3124

Telephone: (03) 9278 4470

Email: protecteddisclosure@boroondara.vic.gov.au

Independent Broad-based Anti-corruption Commission

Address: GPO Box 24234
MELBOURNE VIC 3001

Telephone: 1300 735 135

Fax: (03) 8635 6444

Internet: <http://www.ibac.vic.gov.au/>

Email: <https://www.ibac.vic.gov.au/report-corruption-or-misconduct/online-form>

Ombudsman

Ms Deborah Glass OBE, Ombudsman

Address: Ombudsman Victoria
Level 9, 459 Collins Street
(North Tower)
MELBOURNE VIC 3000
(DX 210174)

Telephone: (03) 9613 6222

Toll Free: 1800 806 314

Internet: www.ombudsman.vic.gov.au

Email: ombudvic@ombudsman.vic.gov.au

For reporting all improper conduct not within the specified criteria of the Protected Disclosure Act or for advice on reporting any improper conduct, corrupt conduct or detrimental action

STOPline

Address: "City of Boroondara"
c/o The STOPline
Locked Bag 8
HAWTHORN VIC 3122

Telephone: 1300 304 550

Fax: "City of Boroondara"
c/o The STOPline
9882 4480

Internet: www.stopline.com.au

Email: Boroondara@stopline.com.au



Appendix 1 - Glossary of terms

Accessible disclosure	a disclosure that must be made directly, or notified, to IBAC or the Victorian Inspectorate, and includes a policy complaint disclosure. In the case of a disclosure notified to IBAC it is a disclosure that the notifier considers may be a protected disclosure
Discloser	a person who makes a disclosure of improper conduct of detrimental action in accordance with the requirements of Part 2 of the PD Act
Entity that can receive disclosure	a public service body within the meaning of the <i>Public Administration Act 2004</i> , a Council (established under the <i>Local Government Act 1989</i>), a public body or public officer prescribed for the purposes of section 13 of the PD Act
Investigating entity	IBAC, the Ombudsman, the Chief Commissioner of Police and the Victorian Inspectorate. Only these entities can investigate a protected disclosure complaint
Police complaint disclosure	a complaint made by a member of the force about another member of the force involving allegations of serious misconduct
Presiding Officer	the Speaker of the Legislative Assembly or the President of the Legislative Council
Protected disclosure	a) A disclosure made in accordance with Part 2 of the PD Act; or b) A complaint made in accordance with section 167 (3) 86L(2A) of the <i>Victoria Police Act 2013</i>
Protected disclosure complaint	a disclosure that has been determined by IBAC under section 26 of the PD Act to be a protected disclosure complaint
Public body	a public body within the meaning of section 6 of the <i>Independent Broad-based Anti-corruption Act 2011</i> , IBAC or any other body prescribed for the purposes of this definition
Public officer	a public officer within the meaning of section 6 of the <i>Independent Broad-based Anti-corruption Act 2011</i> , an IBAC officer or any other person prescribed for the purposes of this definition
Public sector	the sector comprising all public bodies and public officers
Public service body	a Department, an Administrative Office, or the State Services Authority

Source: IBAC - Guidelines for making and handling protected disclosures - V2 June 2013



Appendix 2 – Civil and criminal penalties under the PD Act

	Specific offences	Penalties	Limits on liability / defences
Criminal offences	Detrimental action		
	<i>Liability of an individual</i>		
	It is an offence for a person to take or threaten action in reprisal when: <ul style="list-style-type: none"> a protected disclosure has been made a person believes a protected disclosure has been made a person believes that another person intends to make a protected disclosure 	<ul style="list-style-type: none"> Criminal penalty: 240 penalty units or 2 years imprisonment or both <p>AND (if person is convicted or found guilty of an offence)</p> <ul style="list-style-type: none"> Civil penalty: Order of court for offender to pay appropriate level of damages to compensate for injury, loss or damage 	<ul style="list-style-type: none"> Reason for taking detrimental action is not a 'substantial' reason Discloser has made false disclosure or provided false information IBAC has determined the disclosure is not a protected disclosure complaint and the person taking detrimental action knew about that determination
	<i>Vicarious liability of their employer</i>	Employer may also be held to be jointly and civilly liable for the detrimental action of their employee or agent	<ul style="list-style-type: none"> Criminal penalty: 240 penalty units or 2 years imprisonment or both <p>AND (if person is convicted or found guilty of an offence)</p> <ul style="list-style-type: none"> Civil penalty: Order of court for offender to pay appropriate level of damages to compensate for injury, loss or damage
	Disclosure of content of assessable disclosure		
	A person/body must not disclose content of assessable disclosure or information about content	<ul style="list-style-type: none"> 120 penalty units or 12 months imprisonment or both(person) 600 penalty units (body corporate) 	<ul style="list-style-type: none"> Exceptions as set out in ss52(3) and s54 PD Act
	Disclosure of identity of person making assessable disclosure		
	A person/body must not disclose information likely to lead to the identification of a person who has made an assessable disclosure	<ul style="list-style-type: none"> 120 penalty units or 12 months imprisonment or both(person) 600 penalty units (body corporate) 	<ul style="list-style-type: none"> Exceptions as set out in ss53(2) and s54 PD Act
Civil action	Detrimental action		
	A person who takes detrimental action may be subject to proceedings in tort in any court of competent jurisdiction	<ul style="list-style-type: none"> Civil penalty: Court order for damages for any injury, loss or damage, including exemplary damages 	
	Injunction or interim injunction can be granted by the Supreme Court if the Court is satisfied that a person has taken or intends to take detrimental action against another person in reprisal for a protected disclosure		

Source: IBAC - Guidelines for making and handling protected disclosures - V2 June 2013