



**Procedure Title:** Protected Disclosure procedure

**Procedure Location:** Corporate Services

**Responsible Person:** Director Corporate Services

**Contents**

1. Statement of Support for Persons Making Protected Disclosures.....2

2. Purpose of these Procedures .....2

3. Purpose of the Act.....3

4. Definition of Key Terms.....3

4.1. Improper conduct .....3

4.2. Detrimental action .....4

5. The Reporting System .....5

5.1. Protected Disclosure Coordinator.....5

5.2. Acting Protected Disclosure Coordinator .....5

5.3. Protected Disclosure Welfare Manager.....5

5.4. How to make a disclosure .....5

5.4.1. In writing .....5

5.4.2. Orally.....6

5.5. Alternative Contact Persons .....6

6. Roles and Responsibilities .....6

6.1. Employees.....6

6.2. Protected Disclosure Coordinator.....6

6.3. Welfare Manager .....7

7. Confidentiality .....8

8. Collating and Publishing Statistics.....9

9. Receiving and Assessing Disclosures ..... 10

9.1. Has the disclosure been made in accordance with Part 2 of the Act? ..... 10

9.1.1. Has the disclosure been made to the appropriate person? ..... 10

9.1.2. Does the disclosure contain the essential elements of a protected disclosure? ..... 10

9.2. Is the disclosure an assessable disclosure?..... 11

9.3. Is the disclosure a protected disclosure complaint?..... 11

10. Application of the Freedom of Information Act ..... 12

11. Protections for Persons Making Disclosures..... 12

12. Managing the Welfare of the Person Making a Protected Disclosure ..... 12

12.1. Commitment to protecting people who make protected disclosures..... 12

12.2. Occurrence of detrimental action..... 12

12.3. Persons making protected disclosures implicated in improper conduct ..... 13

13.	Management of the Person Against Whom a Disclosure has been made .....	13
14.	Criminal Offences.....	14
15.	Review.....	14

## **1. Statement of Support for Persons Making Protected Disclosures**

Buloke Shire Council is committed to the aims and objectives of the *Protected Disclosure Act 2012* (the **Act**). Council does not tolerate improper conduct by its employees, officers or Councillors, nor the taking of reprisals against those who come forward to disclose such conduct.

The Buloke Shire Council recognises the value of transparency and accountability in its administrative and management practices, and supports the making of disclosures that reveal corrupt conduct (as defined in the *Independent Broad-based Anti-corruption Act 2011*) and specified conduct (as defined in the Act), including conduct involving a substantial mismanagement of public resources, conduct involving a substantial risk to public health or safety and conduct involving a substantial risk to the environment or conduct adversely affecting honest performance, dishonest performance, knowingly or recklessly breaching public trust or misuse of information.

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

## **2. Purpose of these Procedures**

These procedures establish a system for making disclosures of improper conduct or detrimental action by the Council or its Councillors, officers or employees. The system enables such disclosures to be made to the Protected Disclosure Coordinator. Disclosures may be made by individuals who wish to remain anonymous; they may be made verbally or in writing.

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. Employees may make a disclosure of improper conduct or detrimental action under the Act in accordance with these procedures.

Buloke Shire Council is committed to encouraging staff to disclose improper conduct by:

- being clear about what conduct is unacceptable;
- raising awareness within Council of responsibilities to disclose and how to do this;
- advising staff of their right to disclose;
- making sure that there is information readily available on how to make a disclosure, and ensuring staff members are familiar with these procedures and codes of conduct;
- letting staff know that they can seek advice confidentially and anonymously from Council's Protected Disclosure Coordinator;
- reassuring staff that detrimental action will not be tolerated and they will be protected;
- ensuring Council handles protected disclosures consistently and appropriately; and
- being visible, approachable, openly communicating and leading by example.

These procedures also establish protection of persons from detrimental action in contravention of section 45 of the Act taken by Council, Councillors, officers or employees of Council.

### 3. Purpose of the Act

The purpose of the Act is to encourage and facilitate disclosures of improper conduct by public officers, public bodies and other persons and disclosures of detrimental action taken in reprisal for a person making a disclosure under the Act.

The Act provides protection to persons who make those disclosures and persons who may suffer detrimental action in reprisal for those disclosures. The Act also provides for the confidentiality of the content of those disclosures and the identity of the persons who make those disclosures.

According to the Independent Broad-based Anti-corruption Commission (**IBAC**), 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 'revelation' to the person receiving it.

### 4. Definition of Key Terms

Two key concepts in the reporting system are "improper conduct" and "detrimental action". The definitions of these terms are set out below.

#### 4.1. Improper conduct

Improper conduct is defined to mean:

- Corrupt Conduct (as defined in the *Independent Broad-based Anti-corruption Commission Act 2011*). This means certain forms of conduct that would, if proved beyond reasonable doubt at trial, constitute a relevant offence. Relevant offences are Victorian statutory 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; and
- Specified conduct that is not Corrupt Conduct but that, if proved, would constitute a criminal offence or reasonable grounds for dismissal. Specified conduct is conduct:
  - of any person (whether or not a public official) that adversely affects the honest performance by a public officer or public body of his or her or its functions as a public officer or public body.
  - of a public officer or public body that constitutes or involves the dishonest performance of his or her or its functions as a public officer or public body.
  - of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust.
  - of a public officer or public body that involves the misuse of information or material acquired in the course of the performance of his or her functions as a public officer or public body, whether or not for the benefit of the public officer or public body or any other person.
  - that could constitute a conspiracy or an attempt to engage in the above conduct.
  - conduct of a public officer or public body in his or her capacity as a public officer or its capacity as a public body that involves:
    - a substantial mismanagement of public resources;
    - a substantial risk to public health or safety; or
    - a substantial risk 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*
- *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*

### 4.2. Detrimental action

The Act makes it an offence for a person to take detrimental action against a person in reprisal for a protected disclosure. Detrimental action includes:

- Action causing injury, loss or damage;
- Intimidation or harassment; and
- Discrimination, disadvantage or adverse treatment in relation to a person's employment, careers, 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 detrimental action need not be taken against a discloser, but against any person.

A person takes detrimental action against a person in reprisal if:

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

### Examples

- *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 person who made a protected disclosure due to the making of a disclosure*
- *A person threatens, abuses or carries out other forms of harassment directly or indirectly against a person who made a protected disclosure, his or her family or friends*
- *A public body discriminates against a person who made a protected disclosure or his or her family and associated in subsequent applications for jobs, permits or tenders*

## 5. The Reporting System

### 5.1. Protected Disclosure Coordinator

The person who holds the position below has been appointed as the Protected Disclosure Coordinator by the Chief Executive Officer:

**Director Corporate Services**  
**Buloke Shire Council**  
**A:** Wycheproof District Office  
**P:** 1300 520 520

### 5.2. Acting Protected Disclosure Coordinator

The person who holds the position below has been appointed as the Acting Protected Disclosure Coordinator by the Chief Executive Officer for any periods where the Protected Disclosure Coordinator is unavailable:

**Director Works and Technical Services**  
**Buloke Shire Council**  
**A:** Wycheproof District Office  
**P:** 1300 520 520

### 5.3. Protected Disclosure Welfare Manager

The person who holds the position below has been appointed as the Protected Disclosure Welfare Manager by the Chief Executive Officer:

**Manager Risk and Human Resources**  
**Buloke Shire Council**  
**A:** Wycheproof District Office  
**P:** 1300 520 520

### 5.4. How to make a disclosure

#### 5.4.1. In writing

Disclosures of improper conduct or detrimental action in reprisal for a protected disclosure by the Buloke Shire Council or its employees made in writing must be:

- Delivered personally to the Buloke Shire Council head office at 367 Broadway, Wycheproof VIC 3527;
- Sent by post addressed to the Buloke Shire Council, PO Box 1, Wycheproof, 3527; or
- Sent by email to:
  - [buloke@buloke.vic.gov.au](mailto:buloke@buloke.vic.gov.au) or to the official email address of any of the people referred to below.
    - The Chief Executive Officer
    - The Protected Disclosure Coordinator

### **5.4.2. Orally**

Oral disclosures of improper conduct or detrimental action in reprisal for a protected disclosure by the Buloke Shire Council or its employees should be made to the Protected Disclosure Coordinator.

A person can make an oral disclosure in person, by telephone, by leaving a voice mail message or by any other form of electronic communication that does not require writing. Such disclosures must be made in private.

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 relevant officer and request a meeting in a discreet location away from the workplace.

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

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.

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

### **5.5. Alternative Contact Persons**

A disclosure about improper conduct or detrimental action in reprisal for a protected disclosure by Buloke Shire Council or its employees, may also be made directly to the IBAC:

IBAC  
Level 1, North Tower, 459 Collins Street  
Melbourne Victoria 3001

Internet: [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)

Postal Address

GPO Box 24234, Melbourne Victoria 3000

Toll Free: 1300 735 135

Fax: (03) 8635 6444

## **6. Roles and Responsibilities**

### **6.1. 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 Buloke Shire Council 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.

### **6.2. Protected Disclosure Coordinator**

The Protected Disclosure Coordinator will:

- 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 persons);
- Commit to writing any disclosure made orally;
- Take all necessary steps to ensure the content or information about the content of an assessable disclosure and the identity of a person who has made an assessable disclosure are kept confidential;
- Receive disclosures forwarded from any person prescribed in the Regulations;
- Receive phone calls privately, emails and letters from members of the public or employees seeking to make a disclosure;
- Coordinate the reporting system used;
- Be a contact point for general advice about the operation of the Act and for integrity agencies such as IBAC;
- Impartially consider whether the disclosure may be a disclosure made in accordance with Part 2 of the Act (that is 'a protected disclosure');
- Be responsible for ensuring that the Buloke Shire Council carries out its responsibilities under the Act and the guidelines, including notifying the IBAC of assessable disclosures and working with the IBAC to determine the most secure way in which an assessable disclosure can be notified to IBAC;
- Liaise with IBAC in regards to the Act;
- Be responsible for on-going education and training for selected personnel in receipt, handling, assessing and notifying disclosures;
- Appoint a welfare manager to support the person making a protected disclosure, involved in an investigation and where appropriate a person who is the subject of a disclosure and ensure on-going education and training for the welfare manager;
- Establish and manage a confidential filing system;
- Collate statistics on the number of disclosures notified to IBAC;
- Take all necessary steps to ensure that the content or information about the content of an assessable disclosure and the identity of a person who has made an assessable disclosure are kept confidential; and
- Liaise with the Chief Executive Officer where appropriate.

### **6.3. Welfare Manager**

The welfare manager is responsible for looking after the general welfare of a person who has made a protected disclosure, whether an internal or external discloser, and also managing the welfare needs of other people who have been involved in an investigation. The welfare manager will:

- Inform
  - Confirm that the disclosure has been received
  - Provide the legislative or administrative protections available to the person
  - Provide a description of the action proposed to be taken
  - If the action has been taken, details about results of the action
- Provide active support
  - Acknowledge the person for having come forward
  - Provide the person with assurance that they have done the right thing, and Buloke Shire Council appreciates it
  - Makes a clear offer of support

- Assurance that all reasonable steps will be taken to protect them
- Give them an undertaking to keep them informed
- Manage expectations
  - Discuss what they want, what are their realistic expectations and what will Buloke Shire Council be able to deliver?
- Maintain confidentiality
  - Make sure that other staff cannot infer the identity of the discloser or a person cooperating with the investigation from any information they receive
  - Remind the discloser not to reveal themselves or give out information that would enable others to identify them as a discloser
  - Make sure that any documents in their possession in relation to the disclosure only be accessible to those who are involved in managing disclosures
- Assess the risks of detrimental action being taken in reprisal
  - Be proactive and do not wait for a complaint of victimisation, but actively monitor the workplace, anticipate problems and deal with them before they develop
- Protect the discloser/co-operator
  - Examine the immediate welfare and protection needs of the person and seek to foster a supportive work environment
  - Listen and respond to any concerns the person may have about harassment, intimidation or victimisation in reprisal for their actions
  - Assess whether the concerns the person may have about harassment, intimidation or victimisation might be due to other causes other than those related to a protected disclosure
- Manage the impact of any investigation
  - Prevent the spread of gossip and rumours about an investigation into the disclosure
- Keep records
  - Keep contemporaneous records of all aspects of the case management of the person, including all contact and follow-up action

## **7. Confidentiality**

The Buloke Shire Council will take all reasonable steps to protect the identity of the person making the disclosure. Maintaining confidentiality is crucial in ensuring detrimental action against a person in reprisal does not occur and persons making disclosures should also be advised as such.

Under the Act, a person who is handling an assessable disclosure or who receives an assessable disclosure or information about the content of an assessable disclosure in contravention of the Act, must not disclose the content or information about the content of an assessable disclosure, except in limited circumstances. These include:

- in accordance with a direction or authorisation by the investigating entity or to the extent necessary for taking lawful action in relation to the conduct that is the subject of the assessable disclosure, including a disciplinary process or action;
- the IBAC or the Victorian Inspectorate has determined that the assessable disclosure is not a protected disclosure complaint and the person or body subsequently discloses the content or information about the content; or

- an investigating entity has lawfully published in a report to Parliament or otherwise made public the content or information about the content and the person or body subsequently discloses the content or information about the content.

The Act also requires that a person or body must not disclose information likely to lead to the identification of a person who has made an assessable disclosure except in limited circumstances. These include:

- where a person who made an assessable disclosure has given written consent to an investigating entity to disclose and the disclosure by the investigating entity occurs after and in accordance with that consent;
- the IBAC or the Victorian Inspectorate has determined that the assessable disclosure is not a protected disclosure complaint and the person or body subsequently discloses the information; or
- an investigating entity has lawfully published in a report to Parliament or otherwise made public the information and the person or body subsequently discloses the information.

Disclosure in breach of these provisions constitutes an offence. In the case of a natural person, a maximum fine of 120 penalty units (\$17,323.20) or 12 months imprisonment and in the case of a body corporate, a maximum fine of up to 600 penalty units (\$86,616).

There are also general exemptions to both confidentiality provisions. Broadly, these include:

- where necessary for the purpose of the exercise of the functions under the Act;
- by an investigating entity or an officer of an investigating entity where necessary for the purpose of the exercise of the functions under the Independent Broad-based Anti-corruption Commission Act 2011, the Victorian Inspectorate Act 2011, the Ombudsman Act 1973 or Part IVB of the Police Regulation Act 1958;
- for the purpose of a proceeding for an offence against a relevant Act;
- for the purpose of a disciplinary process or action instituted in respect of conduct that could constitute an offence against a relevant Act;
- for the purpose of obtaining legal advice or representation;
- to an interpreter;
- to a parent or guardian of a person under 18 years; and
- to an independent person for the purposes of enabling a person who is illiterate or has an impairment to understand an obligation of the Act.

The Buloke Shire Council will ensure that all personnel are provided with training on their confidentiality obligations.

The Buloke Shire Council 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 criminal penalties that apply to any unauthorised divulging information concerning a protected disclosure. All electronic files will be produced and stored in Council’s Records Management System, in a secure environment with password protection.

The Buloke Shire Council will not email documents relevant to a protected disclosure matter and will ensure all phone calls and meetings are conducted in private.

## **8. Collating and Publishing Statistics**

The Protected Disclosure Coordinator will establish a secure register to record the information required to be published in the annual report, and to generally keep account of the status of protected

disclosures. The register will be confidential and will not record any information that may identify the person making the protected disclosure.

## **9. Receiving and Assessing Disclosures**

### **9.1. Has the disclosure been made in accordance with Part 2 of the Act?**

Where a disclosure has been received by the Protected Disclosure Coordinator, he or she will assess whether the disclosure has been made in accordance with Part 2 of the Act and is, therefore, a protected disclosure.

A disclosure may be a disclosure under the Act even if it is a complaint, notification or disclosure (however described) made under another Act.

The discloser does not need to specifically request the protections of the Act or refer to 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.

#### **9.1.1. Has the disclosure been made to the appropriate person?**

For the disclosure to be responded to by the Buloke Shire Council, it must concern Council or an employee, member or officer of the Council. If the disclosure concerns an employee, officer or member of another public body or public officer, the person who has made the disclosure must be advised of the correct person or body to whom the disclosure should be directed.

Furthermore, the disclosure must be made to one of the persons identified in paragraph 5 above.

#### **9.1.2. Does the disclosure contain the essential elements of a protected disclosure?**

To be a protected disclosure, a disclosure must satisfy the following criteria:

- Did a natural person (that is, an individual person rather than a corporation) make the disclosure?
- Is there information which shows or tends to show:
  - that a person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct; or
  - a public officer or public body has taken, is taking or proposes to take detrimental action in reprisal for a protected disclosure? or
- Is there information that the person believes on reasonable grounds shows or tends to show:
  - that a person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct; or
  - a public officer or public body has taken, is taking or proposes to take detrimental action in reprisal for a protected disclosure?

As to the requirement of reasonable belief, this 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. Reasonable belief must, however, be more than just a reasonable suspicion and the belief must be probable.

According to IBAC, it is permissible to consider the credibility of the discloser, or those people who have provided the discloser with information.

### 9.2. Is the disclosure an assessable disclosure?

Where a disclosure expressly states in writing that the disclosure is not a disclosure under the Act, then it will not be a protected disclosure.

In assessing whether a disclosure is an assessable disclosure, Buloke Shire Council will consider a number of preliminary questions, including:

- 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 you to consider whether there is improper conduct or detrimental action?
- how reliable is the information – is it supported by other information?

Where a disclosure is considered that it may be a protected disclosure, it will be an assessable disclosure and must be notified to IBAC.

The Buloke Shire Council will:

- provide this notification to IBAC within **28 days** after the disclosure is made.
- advise in writing the person who made the disclosure that the disclosure has been notified to IBAC for assessment under the Act and advise that it is an offence under section 74 of the Act to disclose that the disclosure has been notified to the IBAC for assessment under the Act. This must occur within **28 days** after the disclosure is made to Council.

If the Buloke Shire Council notifies an assessable disclosure to IBAC, it may also provide IBAC with any information it has obtained regarding the disclosure in the course of its inquiries leading up to the notification. This information can be provided at the time of notification or any later time.

If the Buloke Shire Council does not notify IBAC, it must advise the person who made the disclosure (if the person has indicated that they wish to receive or it appears to be the case they wish to receive the protections that apply to protected disclosures) that:

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

This advice must occur within **28 days**.

The Buloke Shire Council will also, where it appears that the disclosure is about improper conduct or detrimental action which has not met all the requirements of the Act, endeavour to tell the person about the correct way to make a disclosure so that they have an opportunity to meet the legislative requirements.

### 9.3. Is the disclosure a protected disclosure complaint?

If the disclosure is notified to IBAC, the IBAC must assess whether, in its view, the disclosure is a protected disclosure. If so, it will be a protected disclosure complaint and the IBAC will deal with the complaint in accordance with its Act.

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.

IBAC may dismiss, investigate or refer a matter.

IBAC must advise the Buloke Shire Council of its determination in writing and within a reasonable time after the determination is made.

Further reference should be made to page 24 of IBAC's "*Guidelines for making and handling protected disclosures*" in relation to IBAC's obligations depending upon whether it assesses a disclosure to be a protected disclosure complaint.

## **10. Application of the Freedom of Information Act**

The *Freedom of Information Act 1982* (Vic) 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.

Buloke Shire Council will ensure that its officers are aware of this and will contact IBAC prior to providing any document from IBAC or relating to a protected disclosure if requested under the *Freedom of Information Act*.

## **11. Protections for Persons Making Disclosures**

The protections under the Act apply to a disclosure made under Part 2 of the Act from the time at which the disclosure is made to either Buloke Shire Council or IBAC. They apply even if Buloke Shire Council does not notify the disclosure to IBAC and whether or not the IBAC has determined that it is a protected disclosure complaint.

A discloser is not, however, protected if they commit certain offences under the Act.

## **12. Managing the Welfare of the Person Making a Protected Disclosure**

### **12.1. Commitment to protecting people who make protected disclosures**

Buloke Shire Council is committed to the protection of people who make protected disclosures. The Protected Disclosure Coordinator is responsible for ensuring these people are 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 who will be responsible for looking after the general welfare of a person who has made a protected disclosure, whether an internal or external discloser, and also managing the welfare needs of other people who have been involved in an investigation.

All employees will be advised that it is an offence for a person to take detrimental action in reprisal for a protected disclosure. The maximum penalty is a fine of 240 penalty units (\$34,646.40) or two years imprisonment or both. The taking of detrimental action in breach of this provision can also be grounds for making a disclosure under the Act.

### **12.2. Occurrence of detrimental action**

If any person reports an incident of harassment, discrimination or adverse treatment that may amount to detrimental action apparently taken in reprisal for a disclosure, the welfare manager or Protected Disclosure Coordinator must record details of the incident and advise the person of their rights under the Act.

The taking of detrimental action in reprisal for the making of a disclosure can be an offence against the Act as well as grounds for making a further disclosure. Where such detrimental action is reported, the Protected Disclosure Coordinator will assess the report as a new disclosure under the Act.

Where the detrimental action is of a serious nature likely to amount to a criminal offence, consideration should be given to reporting the matter to the police or IBAC.

Buloke Shire Council will be careful about making preliminary enquiries or gathering information concerning such an allegation of serious detrimental action so it does not compromise the integrity of any evidence that might be relied upon in a criminal prosecution.

Where the Protected Disclosure Coordinator considers that the disclosure may be a protected disclosure, he or she will refer it to the IBAC. If the IBAC subsequently considers the matter to be a protected disclosure complaint, the IBAC will deal with the disclosure in accordance with its Act.

### **12.3. Persons making protected disclosures implicated in improper conduct**

Where a person who makes a disclosure is implicated in misconduct, the Buloke Shire Council will handle the disclosure and protect the person from reprisals in accordance with the Act, the IBAC's guidelines and these procedures.

The Council acknowledges that the act of making a protected disclosure should not shield a person from the reasonable consequences flowing from any involvement in improper conduct. Section 42 of the Act specifically provides that a person's liability for his or her own conduct is not affected by the person's disclosure of that conduct under the Act. However, in some circumstances, an admission may be a mitigating factor when considering disciplinary or other action.

The Chief Executive Officer will make the final decision on the advice of the Protected Disclosure Coordinator as to whether disciplinary or other action will be taken against a person.

In all cases where disciplinary or other action is being contemplated, the Chief Executive Officer must be satisfied that it has been clearly demonstrated that:

- The intention to proceed with disciplinary action 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; and
- There are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

The Protected Disclosure Coordinator will 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 the making of the disclosure. The Protected Disclosure Coordinator will clearly advise the person of the proposed action to be taken, and of any mitigating factors that have been taken into account.

## **13. Management of the Person Against Whom a Disclosure has been made**

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

A person who is subject of a disclosure who is made aware of their status may, potentially, have a welfare manager appointed or be referred to the Buloke Shire Council's employee assistance program for welfare assistance.

The Council will take all reasonable steps to ensure the confidentiality of the person who is the subject of the disclosure. Where the disclosure is dismissed or investigations do not substantiate the allegations made against the person, the fact of the investigation, its results, and the identity of the person subject of the disclosure should still be kept confidential.

## **14. Criminal Offences**

Buloke Shire Council will ensure officers appointed to handle protected disclosures and all other employees are aware of the following offences created by the Act:

- It is an offence for a person to take detrimental action against a person in reprisal for a protected disclosure being made. The Act provides a maximum penalty of a fine of 240 penalty units or two years imprisonment or both.
- It is an offence to disclose the content or information about the content of an assessable disclosure, except in a limited number of circumstances. The Act provides for a maximum penalty of a fine for 120 penalty units or 12 months imprisonment or both in the case of a natural person. In the case of a body corporate, a maximum penalty of 600 penalty units.
- It is an offence to disclose information likely to lead to the identification of a person who has made an assessable disclosure, except in a limited number of circumstances. The Act provides for a maximum penalty of a fine for 120 penalty units or 12 months imprisonment or both in the case of a natural person. In the case of a body corporate, a maximum penalty of 600 penalty units.
- It is an offence to provide information under the Act that the person knows is false or misleading intending that the information be acted on as a protected disclosure. It is also an offence to provide further information relating to a protected disclosure that the person knows is false or misleading. The Act provides a maximum penalty of 120 penalty units or 12 months imprisonment or both.
- It is an offence to claim that a matter is the subject of a protected disclosure knowing that claim to be false. It is also an offence to claim that a matter is the subject of a disclosure that the IBAC or the Victorian Inspectorate has determined to be a protected disclosure complaint knowing that claim to be false. The Act provides a maximum penalty of 120 penalty units or 12 months imprisonment or both.
- It is an offence to disclose that a disclosure or a related disclosure has been notified to IBAC for assessment or a disclosure has been determined to be a protected disclosure complaint, except in a limited number of circumstances. The Act provides a maximum penalty of 60 penalty units or 6 months imprisonment or both.

## **15. Review**

These procedures will be reviewed annually (or as required) to ensure they meet the objectives of the Act and accord with the IBAC's guidelines.