

CITY OF
MONASH

PUBLIC INTEREST DISCLOSURES PROCEDURES

Public Interest Disclosures Act 2012

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1. STATEMENT OF SUPPORT

The Council supports the strengthening of the integrity of the Victorian public sector and the promotion of community confidence in public sector accountability.

The Council takes seriously its responsibilities to those persons who may make a disclosure about improper conduct. It has established these procedures to ensure the confidentiality of the identity of the person making the disclosure and their welfare, are protected.

2. PURPOSE OF THE PROCEDURES

A public body is required to establish written procedures for handling disclosures by section 58 of the *Public Interest Disclosures Act 2012* (the Act).

The procedures seek to facilitate the making of disclosures, the investigation of disclosures, and the protection of persons making disclosures from detrimental actions.

These procedures are in accordance with the Act and the Independent Broad-Based Anti-Corruption Commission Interim Guidelines, required under Part 9 of the Act.

3. OBJECTIVES OF THE ACT

The main objective of the Act is to encourage and facilitate the making of disclosures of improper conduct by public officers and public bodies and establish a system for matters to be investigated.

The Act provides protection from detrimental action to any person affected by a public interest disclosure whether it is a person who makes a disclosure, a witness, or a person who is the subject of an investigation.

4. DEFINITIONS OF KEY TERMS under the Act

assessable disclosure means—

- (a) a disclosure that, under section 21(2), must be notified to the IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee;
- (b) a disclosure that, under section 21(3), may be notified to the IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee;
- (c) a disclosure that, under section 36(2), must be notified to the IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee;
- (d) a disclosure made to the IBAC in accordance with Division 2 of Part 2;
- (e) a disclosure made to the Victorian Inspectorate under section 14(b);
- (f) a disclosure made to the Integrity and Oversight Committee under section 14(a);
- (g) a police complaint disclosure that, under section 22, must be notified to the IBAC;
- (h) a police complaint disclosure made to the IBAC.

corrupt conduct has the meaning given by section 3A of the Independent Broad-based Anti-corruption Commission Act 2011

Council has the same meaning as it has in section 3(1) of the Local Government Act 1989

Councillor has the same meaning as it has in section 3(1) of the Local Government Act 1989

detrimental action includes—

- (a) action causing injury, loss or damage;
- (b) intimidation or harassment;
- (c) discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action;

IBAC means the Independent Broad-based Anti-corruption Commission established under Section 6 of the Independent Broad-based Anti-corruption Commission Act 2011

Improper conduct

"(1) For the purposes of this Act, **improper conduct** means—

- (a) corrupt conduct; or
- (b) conduct of a public officer or public body engaged in by the public officer or public body in their capacity as a public officer or a public body that constitutes—
 - (i) a criminal offence; or
 - (ii) serious professional misconduct; or
 - (iii) dishonest performance of public functions; or
 - (iv) an intentional or reckless breach of public trust; or
 - (v) an intentional or reckless misuse of information or material acquired in the course of the performance of the functions of the public officer or public body; or
 - (vi) a substantial mismanagement of public resources; or
 - (vii) a substantial risk to the health or safety of one or more persons; or
 - (viii) a substantial risk to the environment; or
- (c) conduct of any person that—
 - (i) adversely affects the honest performance by a public officer or public body of their

functions as a public officer or public body; or
(ii) is intended to adversely affect the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body and results in the person, or an associate of the person, obtaining—
(A) a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument;
(B) an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument; or
(C) a financial benefit or real or personal property; or
(D) any other direct or indirect monetary or proprietary gain—
that the person or associate would not have otherwise obtained; or
(d) conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referred to in paragraph (a), (b) or (c).
(2) Despite subsection (1), conduct that is trivial does not constitute improper conduct for the purposes of this Act."

investigating entity means—

- (a) the IBAC;
- (b) the Chief Commissioner of Police;
- (c) the Ombudsman;
- (d) the Victorian Inspectorate

Ombudsman means the person appointed as the Ombudsman under section 3 of the Ombudsman Act 1973

Public interest disclosure means—

- (a) a disclosure made in accordance with Part 2; or
- (b) a complaint made in accordance with section 86L(2A) of the Police Regulation Act 1958

Public interest disclosure complaint means—

- (a) a disclosure that has been determined under section 26 to be a public interest disclosure complaint; or
- (b) a disclosure that has been determined under section 31 to be a public interest disclosure complaint;

Public body, public officer and public sector

public body means—

- (a) a **public body** within the meaning of section 6 of the Independent Broad-based Anti-corruption Commission Act 2011; or
- (b) the IBAC; or
- (c) the Victorian Inspectorate
- (d) any other body or entity prescribed for the purposes of this definition

public officer means—

- (a) a **public officer** within the meaning of section 6 of the Independent Broad-based Anti-corruption Commission Act 2011; or
- (b) an IBAC Officer;

- (c) A Victorian Inspectorate Officer; or
- (d) A Public Interest Monitor; or
- (e) any other person prescribed for the purposes of this definition

public sector means the sector comprising all public bodies and public officers.

Victorian Inspectorate has the same meaning as it has in section 3(1) of the Victorian Inspectorate Act 2011

5. THE REPORTING SYSTEM

The Council has established a centralised reporting system for receiving and handling disclosures.

The system ensures that:

1. Only a small number of senior executive staff, including the Chief Executive Officer, are involved and retain oversight.
2. Confidentiality of the information and the identity of the persons making disclosures are maintained throughout the process.
3. The roles of assessment of a disclosure are distinct from the welfare management of the person making a disclosure.
4. The identification of clear contact points for reporting disclosures, including all relevant disclosures made in person or by mail, phone calls and emails.

6. ROLES AND RESPONSIBILITIES

Coordinator Public Interest Disclosures (CPID) ***(Manager Corporate Governance and Legal)***

The Coordinator Public Interest Disclosures will:

- impartially assess each disclosure to determine whether it appears to be a public interest disclosure
- coordinate the reporting system used by the organisation
- be a contact point for general advice about the operation of the Act and for integrity agencies such as IBAC
- be responsible for ensuring that the Council carries out its responsibilities under the Act and the Guidelines
- liaise with IBAC in regard to the Act
- arrange for appropriate welfare support for the person making a disclosure
- advise the person making a disclosure of the progress of an investigation into the disclosed matter
- establish and manage a confidential filing system
- collate statistics on disclosures made
- take all necessary steps to ensure the identity of the person making a disclosure and the identity of the person who is the subject of the disclosure are kept confidential
- liaise with the Chief Executive Officer regarding a disclosure.

Central oversight will be maintained by the CPID to ensure accurate reporting on outcomes.

Public Interest Disclosures Officer (PIDO) ***(Coordinator Governance)***

The Public Interest Disclosures Officer will assist the Coordinator Public Interest Disclosures with the receipt of disclosures.

Public Interests Disclosure Welfare Manager ***(Executive Manager People and Safety)***

The senior management of a public body take responsibility for the welfare of a person making a public interest disclosure.

The Public Interest Disclosures Welfare Manager will be responsible for monitoring the needs of the person making a disclosure and to provide advice and support.

The Chief Executive Officer may also receive disclosures.

7. CONFIDENTIALITY

The *Public Interest Disclosures Act 2012* requires any person who receives information due to the handling or investigation of an assessable disclosure, not to disclose that information, except in certain limited circumstances. These circumstances include:

- where exercising the functions of the Council under the Act
- when making a report or recommendation under the Act
- when publishing statistics in the annual report of the Council

The Act prohibits the:

- inclusion of particulars in any report or recommendation that is likely to lead to the identification of the person making a disclosure.
- disclosure of particulars in an annual report and other reports to Parliament that might lead to the identification of a person against whom a disclosure is made.

A breach of the Act constitutes a criminal offence.

Particular circumstances where information may be disclosed include:

- where the disclosure is made in accordance with the consent of the disclosing person to the disclosure of their identity
- where IBAC or the Victorian Inspectorate has determined that the assessable disclosure is not a public interest disclosure and the person or body subsequently discloses the information
- an investigating entity publishes a report to Parliament, made in accordance with its confidentiality requirements
- for the purposes of a proceeding for an offence against a relevant Act
- for the purpose of obtaining legal advice
- to an interpreter
- to a parent or guardian of a person who is under 18 years of age
- to an independent person, for the purposes of enabling a person who is suffering a disability to understand an obligation under the Act

Confidential electronic and paper filing system

To prevent breaches of the confidentiality requirements and to minimise the possibility of detrimental action, the Council has established a secure electronic and paper filing system.

The system will ensure that:

- all paper and electronic files are secure and can only be accessed by authorised officers
- all printed material is kept in files that are clearly marked as a public interest disclosure matter and include a prominent warning on the front of the file that criminal penalties apply to any unauthorised divulging of information concerning a disclosure
- any electronic files saved are password protected and have limitations on access rights
- any other material, such as tapes from interviews, are stored securely with access only by authorised officers
- there is security of communication, i.e. sensitive information or documents are not e-mailed or faxed to a machine/PC to which staff have general access.

8. MAKING A DISCLOSURE

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

- a. a natural person (that is, an individual person rather than a corporation) has to have made the disclosure
- b. the disclosure has been made verbally (in private) to either the Councils' Coordinator Public Interest Disclosures (CPID) or Chief Executive Officer or in writing
- c. the disclosure relates to conduct of the Council or public officer acting in their official capacity
- d. the alleged conduct is either improper conduct or detrimental action taken against a person in reprisal for making a disclosure
- e. the person making the disclosure has reasonable grounds for believing the alleged conduct has occurred

If one or more of the above elements are not satisfied, the person has not made an assessable disclosure.

Disclosures can be made about Councils – Council employees and Councillors.

9. RECEIVING AND ASSESSING A DISCLOSURE

How can a disclosure be made?

A person may make a disclosure:

- a. orally
- b. in writing (but not by facsimile as this is not permitted by the Act)
- c. electronically
- d. anonymously

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

If the disclosure is made orally, the CPID will ensure that contemporaneous notes are made of the disclosure.

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

Any person can submit an allegation or complaint.

To whom must a disclosure be made?

A person must make a disclosure to the appropriate person or body for that disclosure to be assessed as a public interest disclosure under the Act.

A disclosure must be made to the public body that the complaint relates to, or to IBAC.

Therefore, the Council can only receive disclosures that relate to the conduct of:

- a. its own officers or employees or
- b. a person/s whose actions relate to a Council officer or employee

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

Where a person seeks to make a disclosure about a Councillor, that disclosure must be made to IBAC.

Requirements for receiving a disclosure

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

Receiving a disclosure

All disclosures are to be received by the:

- a. Coordinator Public Interest Disclosures (CPID) or,
- b. in the absence of the CPID, to the Chief Executive Officer

The CPID or Chief Executive Officer will determine whether the disclosure has been made to the right body and then whether the matter falls under the Act.

There may be situations where the Council receives an allegation of improper conduct or detrimental action, but the person making the allegation has not referred to the Act.

If an allegation raises issues that may fall within the provisions of the Act, the allegations will be assessed in terms of the Act.

Assessing a disclosure

Where the Council receives information relating to the conduct of an employee, member or officer of the Council, it will assess whether the disclosure meets the criteria of the Act to be a public interest disclosure.

Where it is determined that the disclosure falls under the Act, the following action will be taken:

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

Where the Council determines that the disclosure is not an assessable disclosure under the Act, it will advise the person making the disclosure and either:

1. Refer the discloser to IBAC or
2. Advise the discloser that the matter will be addressed by the Council through its complaints processes.

Notification of a Disclosure to IBAC

It is important to note that once a disclosure has been notified to IBAC, and that information has been assessed as a public interest disclosure complaint, the disclosure *cannot* be withdrawn.

10. PROTECTIONS

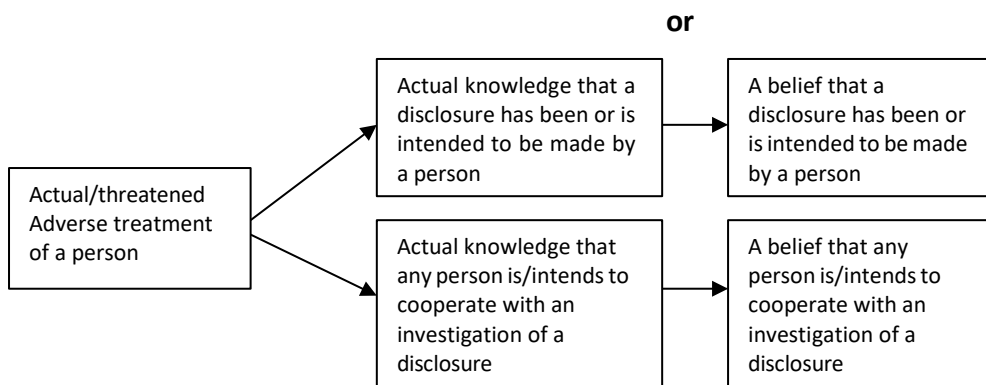
Preventing Detrimental Actions

The Act creates an offence for a person to take detrimental action against a person who has made a public interest disclosure.

Section 3 of the Act defines detrimental action as including:

- a. action causing injury, loss or damage
- b. intimidation or harassment, and
- c. discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action.

Essential Elements of Detrimental Action



Examples of detrimental action

- A public body demotes, transfers, isolates in the workplace or changes the duties of a person making a disclosure due to the making of a disclosure.
- A person threatens, abuses or carries out other forms of harassment directly or indirectly against the person making a disclosure, his or her family or friends.
- A public body discriminates against the person making a disclosure or his or her family and associates in subsequent applications for jobs, permits or tenders.

Protection from reprisals

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

Persons making such disclosures will be advised that it is in their own interests to keep disclosures confidential by only discussing related matters with authorised persons within the Council, ie the CPID or the Chief Executive Officer, or officers of IBAC's office or other persons, as authorised by law.

Council's management is responsible for ensuring persons making a disclosure are protected from direct and indirect detrimental action, and that the culture of Council's workplace is supportive of disclosures being made.

A person making a disclosure may be employed by the Council or may be a member of the public.

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

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

Disclosure made by a Council employee, officer

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

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

Disclosure made by a member of the public

Reprisals may also be taken against external persons making disclosures.

The Council will appoint the Public Interest Disclosures Welfare Manager for an external person making a disclosure.

Support

The Public Interest Disclosures Welfare Manager will provide reasonable support to a person making a disclosure and will discuss the issue of reasonable expectations with the person making a disclosure.

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

Welfare of a Person Making a Public Interest Disclosure

The Public Interest Disclosure Welfare Manager will be engaged by the Coordinator Public Interest Disclosures where a disclosure proceeds to investigation.

The Public Interest Disclosures Welfare Manager will:

- a. examine the immediate welfare and protection needs of a person making a disclosure who has made a disclosure and seek to foster a supportive work environment
- b. advise the person making a disclosure of the legislative and administrative protections available to him or her.
- c. listen and respond to any concerns of harassment, intimidation, or victimisation in reprisal for making a disclosure.
- d. Keep contemporaneous records of all aspects of the case management of the person making the disclosure, including all contact and follow up action.
- e. endeavour to ensure that the expectations of the person making a disclosure are realistic.

The Public Interest Disclosures Welfare Manager will not divulge any details relating to the disclosed matter to any person other than the Coordinator Public Interest Disclosures, the investigator or the Chief Executive Officer.

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

Occurrence of detrimental action

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

- record details of the incident
- advise the person making a disclosure of his or her rights under the Act

The CPID will:

- Inform the Chief Executive Officer.
- Inform IBAC where the detrimental action is of a serious nature likely to amount to a criminal offence.

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

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

Protection of public officers

The Act provides for protection where:

- (a) a public officer of a receiving entity discloses—
 - (i) information to another public officer of that entity in the course of handling a disclosure; or
 - (ii) information in the course of notifying a disclosure to the IBAC; or
 - (iii) information to the IBAC; and
 - (b) the disclosure of the information is made in good faith; and
 - (c) the disclosure is made in accordance with—
 - (i) this Act and the regulations made under this Act; and
 - (ii) the guidelines issued by the IBAC; and
 - (iii) the procedures of the receiving entity or, in the case of a member of police personnel, the procedures of the Chief Commissioner of Police.
- (2) By disclosing the information, the public officer does not—
- (a) commit an offence under section 95 of the **Constitution Act 1975** or a provision of any other Act that imposes a duty to maintain confidentiality with respect to a matter or any other restriction on the disclosure of information; or
 - (b) breach an obligation by way of oath or rule of law or practice or under an agreement requiring him or her to maintain confidentiality or otherwise restricting the disclosure of information with respect to a matter.
- (3) The public officer is not subject to any civil or criminal liability or any liability arising by way of administrative process (including disciplinary action) for disclosing the information.
- (4) In this section—
- public officer of a receiving entity** means—
- (a) an employee, member or officer of the receiving entity; or
 - (b) if the receiving entity is a public officer, that public officer; or
 - (c) a member of police personnel prescribed for the purposes of section 18;
- receiving entity** means an entity to which a disclosure may be made under Division 2 of Part 2.

11. MANAGEMENT OF THE PERSON AGAINST WHOM THE DISCLOSURE IS MADE

Natural justice

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

Employers, Officers or members of the Council who are the subject of a disclosure will be provided with notification, in writing, of the disclosure, where that notification does not compromise the identity of the person making the disclosure or the investigation into the disclosure.

Confidentiality

The Council will ensure the confidentiality of the identity of the person against whom a disclosure has been made.

Protection against reprisal

Council's senior management will take responsibility for ensuring a person against whom a disclosure has been made, is protected from direct or indirect detrimental action.

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

12. ACTION BY IBAC

Assessment of disclosure and determination by the IBAC

- 1) The following applies if—
 - (a) a disclosure is made in accordance with Division 2 of Part 2 of the Act, directly to the IBAC; or
 - (b) a disclosure is notified to the IBAC under section 21 or 22; or
 - (c) a police complaint disclosure is made directly to the IBAC.
- (2) The IBAC must assess whether, in its view, the disclosure is a public interest disclosure.
- (3) Following an assessment under subsection (2), the IBAC must—
 - (a) if the IBAC is of the view that the disclosure is a public interest disclosure—determine that the disclosure is a public interest disclosure complaint; or
 - (b) in any other case—determine that the disclosure is not a public interest disclosure complaint.

Note

The protections under the Act apply to a disclosure whether or not the IBAC has determined that the disclosure is a public interest disclosure complaint.

- (4) A determination must be made within a reasonable time after the disclosure is made, or notified, to the IBAC.

Advice to notifying entity

- (1) If a disclosure has been notified to the IBAC by an entity under section 21 or 22 of the P Act, it must advise the entity of the IBAC's determination.
- (2) The advice must be in writing and be given within a reasonable time after the determination is made.

Determination by IBAC

- (1) If the IBAC determines that a disclosure is a public interest disclosure complaint, it must advise the person who made the disclosure that—
 - (a) it has determined that the disclosure is a public interest disclosure complaint; and
 - (b) regardless of whether the IBAC has determined that the disclosure is a public interest disclosure complaint, the protections under the Act.

The advice must be in writing and be given within a reasonable time after the determination has been made.

If the IBAC determines that a disclosure is not a public interest disclosure complaint, it must advise the person who made the disclosure.

The advice must be in writing and be given within a reasonable time after the determination is made.

Advice regarding alternative procedures for dealing with disclosure

If the IBAC determines that a disclosure is not a public interest disclosure complaint but is of the view that the matter which is the subject of the disclosure may be able to be dealt with by another entity, the IBAC may advise the person who made the disclosure that—

- (a) the matter which is the subject of the disclosure may be able to be dealt with by that entity other than as a public interest disclosure complaint; and
- (b) if the person wishes to pursue the matter, the person should make a complaint directly to that entity.

13. COLLATING AND PUBLISHING STATISTICS

The Council, through the Coordinator Public Interest Disclosures, will respond to any requests for statistical information from IBAC relating to the number and type of disclosures received.

The Council will include in its Annual Report:

(a) information about how to access the procedures established by the Council;
and

(b) the number of disclosures notified to the IBAC during the financial year.

14. REFERENCES

The reference documents for these Procedures are:

The Public Interest Disclosures Act 2012

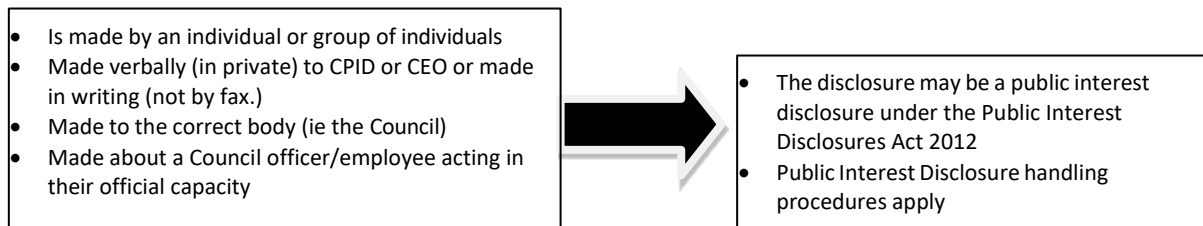
The “Independent Broad-Based Anti-Corruption Commission Interim Guidelines”

DISCLOSURES

ASSESSMENT PROCESS

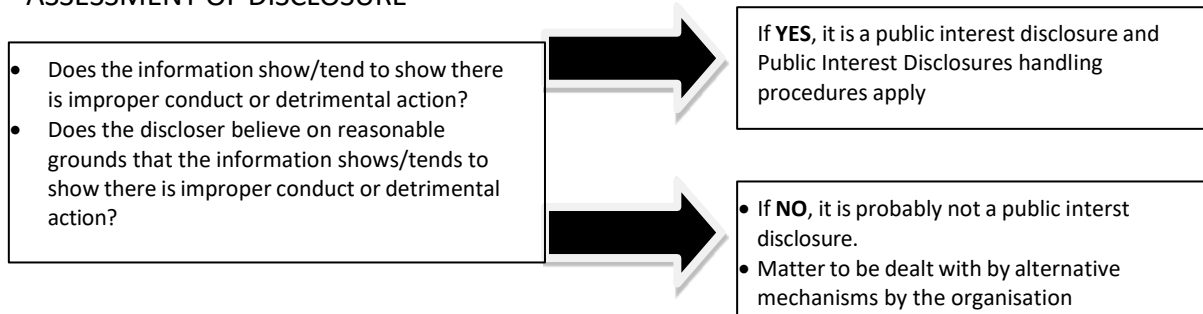
PHASE 1

RECEIPT OF DISCLOSURE



PHASE 2

ASSESSMENT OF DISCLOSURE



PHASE 3

NOTIFICATIONS

