



# Public Interest Disclosure Procedures

**Procedures for protecting people against detrimental action in reprisal for making a public interest disclosure about corrupt or improper conduct.**

December 2019



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These procedures are made under section 58(5) of the *Public Interest Disclosures Act 2012 (the Act)*. They are intended for and available to Melbourne Water employees, officers and members and the public. They set out Melbourne Water's commitment to the intent of the Act, and how we will protect people from detrimental action in reprisal for making disclosures about corrupt or improper conduct. The procedures should be read in conjunction with the Act and guidelines prepared by the Independent Broad-based Anti-corruption Commission (**IBAC**).

## 1. Statement of support to disclosers

Melbourne Water is committed to the aims and objectives of the Act. Melbourne Water is owned by the Victorian Government and supports the strengthening of the integrity of the Victorian public sector and the promotion of community confidence in public sector accountability. Although Melbourne Water cannot receive disclosures, it is a public entity about which a PID can be made. We do not tolerate improper conduct by our employees, officers or members, nor the taking of reprisals against those who come forward to disclose such conduct.

Melbourne Water 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, conduct involving a substantial risk to public health and safety or the environment, or other improper conduct. Melbourne Water has established these procedures to provide information about PIDs and assist with the proper administration of 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. If someone makes a disclosure to Melbourne Water, because Melbourne Water is not authorised to receive a PID, the disclosure will not be protected under the Act. These procedures provide further advice concerning which organisations can receive disclosures and how Melbourne Water will deal with a PID concerning it or its employees.

Melbourne Water will take all reasonable steps to protect people who make such disclosures from any detrimental action in reprisal for making the disclosure. It will also afford natural justice to the person who is the subject of the disclosure.

## 2. Object of the Act

The object of the Act is to encourage and facilitate the making of disclosures of:

1. improper conduct by public officers and public bodies and other persons, and
2. detrimental action taken in reprisal for a person making a disclosure under the Act.

The Act provides for protection to be afforded to people who have made disclosures and certain others involved from detrimental action in reprisal for those disclosures.

The Act provides for confidentiality of the content of disclosures and the identity of people who make public interest disclosures.

The Act imposes penalties for revealing, except in prescribed circumstances, the identity of disclosers and people who disclosures are about, and for revealing that a disclosure has been made.

### 3. Making disclosures

Melbourne Water is not an organisation that can receive PIDs under the Act, so disclosures about Melbourne Water, its employees, officers or members must be made directly to the Independent Broad-based Anti-corruption Commission (**IBAC**):

Address: IBAC, GPO Box 24234, Melbourne Victoria 3001  
Website: [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)  
Phone : 1300 735 135

Although Melbourne Water is not able to receive disclosures we have made these procedures, as required under section 58(5) of the Act, setting out how we will protect people against detrimental action that might be taken against them in reprisal for making a public interest disclosure or co-operating in an investigation into a public interest complaint. It may also be necessary to consider whether the disclosure could be dealt with according to Melbourne Water's normal complaint handling procedures.

### 4. Definitions of key terms

Four key concepts related to public interest disclosures are improper conduct, corrupt conduct, serious professional misconduct and detrimental action. Definitions of these terms are set out below. Other key terms are defined in section 11 below.

#### 4.1 Improper conduct

A disclosure may be made about improper conduct by a public body or public officer.

Improper conduct means:

- Corrupt conduct,
- Conduct that constitutes a criminal offence,
- Serious professional misconduct,
- Dishonest performance of public functions,
- Intentional or reckless breach of public trust,
- Intentional or reckless misuse of information,
- Substantial mismanagement of public resources,
- Substantial risk to health or safety of a person,
- Substantial risk to the environment,
- Conduct of any person that adversely affects the honest performance by a public officer of their functions,
- Conduct of any person that is intended to adversely affect the effective performance by a public officer of their functions for the benefit of the other person, or
- Conduct that could constitute a conspiracy or attempt to engage in any of these conducts.

However, the conduct must not be trivial.

## Examples

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

*An agricultural officer delays or declines imposing quarantine to allow a financially distressed farmer to sell diseased stock.*

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

*A town planner has an undeclared conflict of interest in a planning application process.*

*A depot manager repeatedly refuses to obtain three quotes in breach of council procurement rules.*

## 4.2 Corrupt conduct

Corrupt conduct means:

- Conduct of any person (whether or not a public official) that adversely affects the honest performance of a public officer's or public body's functions,
- The performance of a public officer's or public body's functions dishonestly,
- Conduct of a public officer or a public body that amounts to a breach of public trust,
- Conduct by a public officer or a public body that amounts to the misuse of information or material acquired in the course of the performance of their official functions (whether or not for their own, or another person's, benefit),
- Conduct intended to adversely affect the functions or powers of a public officer or the public body and resulting in the person or their associates or relatives obtaining a licence, approval or entitlement under any legislation, or an appointment to a statutory office or the board of a public body or a financial benefit or any other direct or indirect monetary or proprietary gain that would not have otherwise be obtained, or
- A conspiracy or attempt by a public officer or public body to engage in the above corrupt activity,

such conduct constituting an indictable offence against an Act, or the common law offence of perverting, or attempting to pervert, the course of justice, bribery of a public official or misconduct in public office.

## 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 Serious professional misconduct**

Although not defined in the Act, examples of serious professional misconduct may include:

- a serious breach of an established professional code of conduct
- serious departures from a person's professional responsibilities
- a serious failure to exhibit the skills and experience required to perform the functions of a person's office, or
- non-compliance with professional codes of conduct, or the policies, procedures and laws governing behaviour in the public sector and workplace.

To identify whether serious professional misconduct has occurred, IBAC's Guidelines for handling public interest disclosures (January 2020) (**IBAC's Guidelines**) suggest consideration of whether:

- the person has behaved in a way that is inconsistent with the expectations, skills and responsibilities of their office,
- the behaviour the person engaged in was in their capacity as a public officer,
- the misconduct was serious.

IBAC's Guidelines also set out factors to consider when assessing whether misconduct is serious, which are:

- persistent, repeated or premeditated behaviour,
- risks posed to others or the consequences of the behaviour (including for the public officer and others),
- the level of public trust and responsibility attached to the public office,
- the amount of money involved in the wrongdoing,
- how the conduct is perceived by the person's peers,
- whether the conduct would result in significant disciplinary or potentially criminal penalties,
- the size of the discrepancy between what the person should have done and what they did,
- whether it should have been apparent to the person that they were wrong.

### **4.4 Detrimental action**

The Act makes it an offence for a person to take detrimental action against a person in reprisal for a public interest disclosure. A public interest discloser does not have to prove that the public interest disclosure was the *substantial* reason for the detrimental action



taken by their employer or manager – it is sufficient if the employee’s public interest disclosure forms *any part* of the reason for the action.

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, career, profession, trade or business, including the taking of disciplinary action.

According to IBAC’s Guidelines, a person doesn’t need to have actually taken the detrimental action, but can have threatened to do so, or incited or permitted someone else to do so.

### **Examples**

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

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

*A person threatens, abuses or carries out other forms of harassment directly or indirectly against the discloser, his or her family or friends.*

*A public organisation discriminates against the discloser or his or her family and associates in subsequent applications for jobs, permits or tenders, partly or wholly due to the making of a disclosure.*

## **5. Roles and responsibilities**

### **5.1 Employees**

Employees are encouraged to report known or suspected incidences of improper conduct or detrimental action in accordance with this policy and set of procedures.

Employees of Melbourne Water have an important role to play in supporting the making of legitimate disclosures. This support is demonstrated in refraining 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.

### **5.2 Public Interest Disclosure Coordinator**

Melbourne Water’s Public Interest Disclosure Coordinator (Coordinator) is responsible for how Melbourne Water manages obligations under the Act.

Our Coordinator is:

Emma Braun  
General Counsel and Company Secretary  
Melbourne Water  
ADDRESS: PO Box 4342, MELBOURNE Vic 3001  
PHONE: 03 9679 7621

EMAIL: [Emma.Braun@melbournewater.com.au](mailto:Emma.Braun@melbournewater.com.au)

The Coordinator is the main contact for enquiries about public interest disclosures, whether enquiries are from Melbourne Water employees or members, or from people outside the organisation, but is **unable to receive disclosures**.

The Coordinator will:

- Ensure that all employees, officers and members of Melbourne Water and the public have access to Melbourne Water’s Public Interest Disclosure policy and procedures,
- Ensure with the assistance of the People and Safety group and Customer and Community group that employees, officers and members of Melbourne Water know to direct anyone attempting to make a disclosure to IBAC or, if unsure, to direct the enquiry to the Coordinator,
- Advise the discloser what organisations can receive disclosures (where possible),
- Refer the disclosure to IBAC for determination,
- Ensure that the protections set out in Part 6 of the Act are afforded to the discloser,
- Where possible, advise the discloser of the progress of an investigation into the disclosed matter,
- Establish and manage a confidential filing system,
- Collate and publish statistics on disclosures made,
- Take all necessary steps to ensure the identity of the discloser and the identity of the person who is the subject of the disclosure are kept confidential, and
- Liaise with IBAC as required.

### **5.3 Welfare Manager**

In appropriate circumstances, the Coordinator will appoint a welfare manager to protect a discloser or a co-operator or a staff member who is the subject of a disclosure. More information on the role and responsibilities of welfare manager is in Part 8 below: Managing welfare.

## **6. Confidentiality**

The Act aims to ensure that certain information about a disclosure is kept confidential, including the identity of the person making the disclosure and the content of that disclosure. Melbourne Water and its employees can be the subject of a disclosure made to IBAC (or other organisation authorised to receive PIDs). In light of this, and despite being an organisation that cannot receive a PID, Melbourne Water still has obligations to protect all disclosers and co-operators from detrimental action taken in reprisal for a public interest disclosure. Ensuring confidentiality is one of the ways that disclosers and other people involved in public interest disclosure investigations are protected.

The Act restricts the disclosure of information about the content of disclosures or which could identify the discloser. Where Melbourne Water obtains this information, it must be kept confidential. This includes where an investigating entity provides the information to Melbourne Water when making investigative enquiries or to assist a person to access welfare support.



Melbourne Water 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 public interest disclosure not to disclose that information except in certain limited circumstances.

The circumstances in which a person may disclose information obtained about a public interest disclosure include:

- In accordance with section 54 of the Act,
- In accordance with a direction or authorisation given by the organisation investigating the disclosure, and
- When publishing statistics in the annual report.

However, the Act prohibits the inclusion of particulars in any report or recommendation that is likely to lead to the identification of the discloser. The Act also prohibits the identification of the person who is the subject of the disclosure in any particulars included in an annual report.

Melbourne Water will ensure all files, whether paper or electronic, are kept securely and can only be accessed by the Coordinator, a welfare manager (in relation to welfare matters) if appointed, and investigators.

- All printed material will be kept in files that are clearly marked as a Public Interest Disclosures Act Matter, and warn of the criminal penalties that apply to any unauthorised divulging of information concerning a public interest 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 floppy disc.
- All materials relevant to an investigation, such as tapes from interviews, will also be stored securely with the relevant Public Interest Disclosures Act Matter files.

The *Public Interest Disclosures Act 2012* provides that information held in relation to public interest disclosures is not subject to the *Freedom of Information Act 1982*.

## 7. Register and reporting

The Coordinator will establish a secure register to record statistical information required to be published in the annual report, and to generally keep account of the status of disclosures. The register will be confidential and will not record any information that may identify disclosers or others involved in the disclosure.

The register will contain:

- The number of enquiries received during a financial year about how to make a public interest disclosure,
- The number and types of disclosures made during a financial year in relation to Melbourne Water,
- The number of disclosures referred to IBAC for determination, and

- The number and types of matters referred to IBAC for investigation.

The Coordinator will ensure that Melbourne Water’s annual report includes information about how to access Melbourne Water’s Public Interest Disclosure policy and procedures and the number of disclosures notified to IBAC under section 21(2) of the Act in the financial year.

## **8. Managing welfare**

The IBAC welfare management guidelines state that all public bodies must have procedures to protect people against detrimental action taken in reprisal for a public interest disclosure.

### **8.1 Commitment to protecting the welfare of disclosers and co-operators**

Melbourne Water is committed to protecting the welfare of:

- Genuine disclosers,
- Co-operators (people who have co-operated or intend to co-operate with an investigation), and
- People who are the subject of a public interest complaint against direct and indirect detrimental action taken either in reprisal for the making of public interest disclosures or because a disclosure has been made about them.

Melbourne Water is not able to receive disclosures so we will only be made aware that a person requires protection under the Act if we receive advice from IBAC or the Victorian Inspectorate or another organisation investigating a public interest complaint.

Once Melbourne Water has been made aware of the identity of a discloser, and any other relevant information about the public interest disclosure, Melbourne Water will keep all information it receives confidential, and will manage the welfare of any relevant persons in accordance with its obligations under the Act.

- If the discloser or co-operator is an employee, officer or member of Melbourne Water, Melbourne Water will ensure a supportive work environment and respond in accordance with these procedures and IBAC’s guidelines to any reports of intimidation or harassment against the person.
- If the discloser or co-operator is not an employee, officer or member of Melbourne Water, the Coordinator will take reasonable steps to provide appropriate support and discuss reasonable expectations with the person receiving welfare management in connection with a public interest disclosure.

In supporting a discloser or co-operator the Coordinator will:

- Examine the immediate welfare and protection needs of a discloser who has made a disclosure and, where the discloser is an employee, 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,

- Keep a contemporaneous record of all aspects of the case management of the discloser including all contact and follow-up action, and
- Ensure the expectations of the discloser are realistic.

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, career, profession, trade or business, including the taking of disciplinary action.

If the fact that a discloser or co-operator has made or participated in a disclosure forms *any part* of the reason for action being taken against them, it will constitute 'detrimental action'.

In appropriate circumstances, the Coordinator will appoint a welfare manager to protect a discloser or a co-operator.

In deciding whether to appoint a welfare manager, the Coordinator will take into consideration:

- Whether there are any real risks of detrimental action against the discloser or co-operator, taking into account their particular circumstances,
- Whether Melbourne Water can will take the discloser or co-operator seriously and treat them with respect,
- Whether Melbourne Water will give the discloser or co-operator effective support, including keeping the discloser informed of the status of the disclosure (as far as the Melbourne Water has been provided with such information by a relevant investigative organisation),
- Whether Melbourne Water can protect the person from suffering repercussions, by dealing with the matter discreetly and confidentially, and responding swiftly and fairly to any allegations that the discloser or co-operator has in fact suffered retribution.

Normally a welfare manager will only be required if a public interest complaint proceeds to investigation and the Coordinator believes that a welfare manager is required to ensure appropriate support.

In addition to providing general support, the welfare manager will:

- Advise the discloser or co-operator of the available legislative and administrative protections, and give practical advice,
- Listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making a disclosure,
- Not divulge any details relating to the public interest disclosure to any person other than the Coordinator,

- Ensure all meetings are conducted discreetly to protect the person from being identified as being involved in the public interest disclosure, and
- Ensure the discloser's or co-operator's expectations are realistic and reasonable, and that they understand the limits of the support Melbourne Water is able to reasonably provide in the particular circumstances, particularly where they are not Melbourne Water employees, officers or members.

## **8.2 Commitment to welfare of a person who has had a public interest disclosure made against them**

Melbourne Water will also meet the welfare needs of a person who is the subject of a public interest disclosure.

Until a public interest complaint is resolved, the information about the person and their conduct is only an allegation.

The Coordinator will make a decision about whether or when the subject of a disclosure will be informed about a public interest disclosure involving an allegation made against him or her.

It is possible that the subject of the disclosure may never be told about the disclosure if it is not determined to be a public interest complaint, or if a decision is made to dismiss the disclosure. It may depend on the stage at which the relevant investigative organisation actually informs Melbourne Water of the identity of the subject of a disclosure.

The Act limits the disclosure of information about the content of an assessable disclosure and the identity of the discloser to certain specified circumstances set out in Part 7 of the Act. Melbourne Water may give information about the disclosure to the subject of the disclosure if it is:

- Directed or authorised to do so by the organisation investigating the public interest complaint, or
- Required for the purpose of taking action with respect to the alleged conduct, including disciplinary action.

Investigative organisations may inform the subject of the public interest complaint in the course of their investigation for the purposes of conducting that investigation, or any actions that they propose to take as a result of the investigation.

If a person is made aware that they are the subject of a disclosure, the Coordinator will consider the matter on a case by case basis, taking into account the information provided by the investigative organisation and the person's particular circumstances.

The Coordinator:

- May, at their discretion, appoint a welfare manager to support the person,
- Will, regardless, provide general support and advice to the person, particularly in relation to their rights and obligations under the Act, these procedures, and any other relevant law or code of conduct.

Melbourne Water is committed to the protection of disclosers against detrimental action taken in reprisal for the making of public interest disclosures. The Coordinator is responsible for ensuring disclosers are protected from direct and indirect detrimental

action, and that the culture of the workplace is supportive of public interest disclosures being made.

### **8.3 If detrimental action occurs**

Melbourne Water will also meet the welfare needs of a person who is the subject of a public interest disclosure.

If a discloser or co-operator reports an incident of harassment, discrimination or adverse treatment that would amount to detrimental action taken in reprisal for the making of the disclosure, the public interest disclosure Coordinator will:

- Record details of the incident;
- Advise the discloser of his or her rights under the Act; and
- Advise the managing director of the detrimental action.

The taking of detrimental action in reprisal for the making of a disclosure, even if only part of the reason for the action, can be an offence against the Act as well as grounds for making a further disclosure.

Where the detrimental action is of a serious nature likely to amount to a criminal offence, Melbourne Water will consider reporting the matter to the police or IBAC.

## **9. Review**

This policy and set of procedures will be reviewed annually to ensure it meets the objectives of the Act and accords with IBAC's guidelines.

## 10. Terms used in this policy and procedures

<b>Act</b>	<i>Public Interest Disclosures Act 2012</i>
<b>Coordinator</b>	Public Interest Disclosure Coordinator
<b>Discloser</b>	A person who (purports to) make(s) a complaint, allegation or disclosure (however described) under the Act.
<b>Disclosure</b>	Any complaint, concern, matter, allegation or disclosure (however described) purported to be made in accordance with Part 2 of the Act.
<b>IBAC</b>	Independent Broad-based Anti-corruption Commission.
<b>IBAC Act</b>	<i>Independent Broad-based Anti-corruption Commission Act 2011.</i>
<b>Investigative organisation</b>	Any one of the bodies authorised to investigate a public interest complaint, being the IBAC, the Victorian Ombudsman, the Chief Commissioner of Police, the Victorian Inspectorate, Judicial Commission of Victoria, the Chief Municipal Inspector, the Information Commissioner and the Racing Integrity Commissioner.
<b>Procedures</b>	This version of the procedures of Melbourne Water, as established under s 58(5) of the Act.
<b>Public interest discloser</b>	A person who makes a disclosure of improper conduct or detrimental action in accordance with the requirements of Part 2 of the Act.
<b>Public interest disclosure (PID)</b>	A disclosure by a natural person of information that shows or tends to show, or information that the person reasonably believes shows or tends to show, improper conduct or detrimental action (where the particular disclosure relates to an earlier PID).



<b>Public interest complaint (PIC)</b>	A public interest disclosure that has been determined by IBAC, the Victorian Inspectorate, or the Integrity and Oversight Committee to be a PIC.
<b>Regulations</b>	<i>Protected Disclosure Regulations 2019</i>

## **11. Where to access Melbourne Water's Public Interest Disclosure Procedures**

To download these procedures from the internet visit: [melbournewater.com.au](http://melbournewater.com.au) (>About us > Legislation and Policies).

To request a hard copy of these procedures or have them emailed, contact our Public Interest Disclosure Coordinator in confidence:

Emma Braun  
General Counsel and Company Secretary  
Melbourne Water  
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PHONE: 03 9679 7621  
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