



# **PUBLIC INTEREST DISCLOSURES**

## **STANDARD OPERATING PROCEDURE**

**November 2019**

# PUBLIC INTEREST DISCLOSURE SOP

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## 1. PURPOSE

This Standard Operating Procedure (SOP) sets out Westernport Water's (WPW) procedures in relation to public Interest disclosures in accordance with the Public Interest Disclosures Act 2012 ("the Act").

The purpose of the Act is to encourage and facilitate the making of public Interest disclosures related to:

- Improper conduct by public officers and public bodies and other persons; and
- The prevention of detrimental action taken in reprisal for a person making a disclosure under the Act.

## 2. ENACTING GOVERNANCE AND /OR LEGISLATION

- Water Act 1989 ("the Act")
- Public Administration Act 2004 (Vic) ("the PAA")
- Public Interest Disclosures Act 2012
- IBAC – Guidelines for making and handling public interest disclosures

Further information in relation to Public Interest Disclosures can be sourced from the Independent Broad-Based Anti-Corruption Commission (IBAC) at [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au).

## 3. SCOPE

This SOP applies to all functions of WPW and covers all employees, officers, directors and volunteers working for or on behalf of WPW.

Under the Act WPW is not able to receive and investigate disclosures. WPW must establish procedures setting out the mechanisms that exist to protect persons from detrimental action taken against them in reprisal for making a public interest disclosure.

## 4. DEFINITIONS

*Assessable Disclosure* – A disclosure that is made directly, or which must be notified to IBAC, that is considered a public interest disclosure by the notifier.

*Detrimental Action* – has the meaning as set out in section 3 of the Act. It includes action causing injury, loss or damage; intimidation or harassment; and/or discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action.

*Discloser* – a person who makes a disclosure that may be a public interest disclosure.

*Improper Conduct* – has the meaning as defined in section 4 of the Act. It includes conduct that is corrupt conduct, a criminal offence or conduct that if proved would have reasonable grounds for dismissing or terminating the services of the person(s) involved in that conduct.

*Public Interest Disclosure* – is a disclosure made in accordance with the Act.

*Public Interest Disclosure Complaint* – is a disclosure that has been determined by IBAC under section 26 of the Act to be a public interest disclosure complaint.

*Public Interest Disclosure Coordinator (“PDC”)* – is the General Manager Corporate and People.

*Public Interest Disclosure Officer* – is the Manager, Strategy, Performance and Governance.

## **5. WHAT IS A PUBLIC INTEREST DISCLOSURE?**

A disclosure is a report about the improper conduct of public bodies or public officers that a person makes to either the PDC or IBAC.

A disclosure can be made about detrimental action that a public officer or public body takes against a person in reprisal for a public interest disclosure or their cooperation with the investigation into a public interest disclosure.

A disclosure under this procedure can only be made about WPW or its employees or about the conduct of a person which affects WPW or its employees.

## **6. WHO CAN MAKE A PUBLIC INTEREST DISCLOSURE**

Anyone can make a disclosure about improper conduct or detrimental action – both members of the public and employees of a public body.

Disclosures can be made individually or by a group of people but not by a company or a business.

A person does not need to specifically refer to the Act for the matter to be considered a public interest disclosure. A person may choose not to make a complaint under the Act.

A disclosure can be made anonymously however this may present difficulties in assessing the matter and keeping the discloser informed.

A person does not need to be able to identify the person or organisation in order to make a disclosure.

## **7. WHO TO MAKE A PUBLIC INTEREST DISCLOSURE TO**

Disclosures can be made to IBAC directly or to the PDC.

## **8. HOW TO MAKE A PUBLIC INTEREST DISCLOSURE**

Disclosures can be made verbally or in writing. Disclosures can also be made anonymously should the discloser wish to do so.

### **Private Verbal Disclosure**

A verbal disclosure can be made in person, by phone or by leaving a voice message. A verbal disclosure must be made in private where the discloser must reasonably believe that the only people who are present or can hear the conversation are:

- any other person who is also making the disclosure;
- a lawyer representing the discloser(s) (if any); and
- one or more people to whom the disclosure can be made.

The person receiving the verbal notification should make notes at the time. A recording of the conversation could be made in some circumstances with the permission of all attendees.

### **Written Disclosure**

A written disclosure can only be completed by:

- delivering it in person to the office of WPW;
- mail addressed to the office of WPW;
- email to the email address of WPW, or a person nominated in WPW as being able to receive a disclosure; or
- submitting it to IBAC via their online form.

### **Anonymous Disclosure**

A person can make an anonymous disclosure under the Act.

An anonymous disclosure can be made via an unverifiable email address, an anonymous phone call or a private face-to-face conversation where the person refuses to identify themselves.

If the disclosure comes from an email address where the identity of the person cannot be verified then the disclosure should be treated as an anonymous disclosure.

## **9. PROTECTIONS FOR PEOPLE MAKING A PUBLIC INTEREST DISCLOSURE**

WPW will take all reasonable steps to ensure the following protections are provided to any person making a public interest disclosure complaint:

- keeping the identity of the discloser confidential;
- protecting the welfare of the discloser in the workplace;
- protecting the discloser from reprisal including but not limited to bullying, harassment or even legal action.

WPW will also take all reasonable steps to ensure the discloser is informed of the progress and outcome of any investigation by IBAC.

## **10. THE PUBLIC INTEREST DISCLOSURE COORDINATOR & PUBLIC INTEREST DISCLOSURE OFFICER**

The PDC is to receive reports of improper conduct and determine whether they should be referred to IBAC as potential public interest disclosure complaints.

The PDC plays an important role in distilling confidence and providing guidance and support to those who may be considering making a public interest disclosure.

The Public Interest Disclosure Officer plays a support role to the PDC and can assist in determining the due process to be followed. The PDC and Public Interest Disclosure Officer are required to undertake appropriate training to ensure that they are capable of performing those functions.

The Guidelines for making and handling public interest disclosures provide a range of useful questions and considerations that the PDC should refer to in determining whether or not a disclosure is a public interest disclosure for the purposes of the Act.

The PDC must notify IBAC within 28 days of receipt of the disclosure if they consider the disclosure to be a public interest disclosure. They must take all reasonable steps to notify the person(s) who made the disclosure as well as informing them that it is a breach of section 74 of the Act to disclose this information.

All exchanges of information with IBAC are required to be secure and confidential.

In the event that the PDC determines that the disclosure is not a public interest disclosure then they must notify the discloser in writing within 28 days that:

- they do not consider the disclosure to be disclosure under the Act;
- that the disclosure has not been referred to IBAC for investigation; and
- the protections under Part 6 of the PD Act apply to a public interest disclosure, regardless of whether the disclosure is notified to IBAC for assessment.

## 11. THE ROLE OF IBAC

IBAC receives, assesses and investigates disclosures about improper conduct by a public officer or public body and allegations of reprisal action taken against a discloser.

IBAC can receive potential public interest disclosure complaints directly from disclosers or via the PDC. The PDC does not investigate complaints but simply determines whether the disclosure should be referred to IBAC.

IBAC may choose to investigate or not investigate a complaint or alternately refer the complaint to another agency such as the Victorian Ombudsman, Victoria Police or Victorian Inspectorate.

In the event that IBAC determines a potential public interest disclosure complaint does not meet the criteria IBAC will notify the PDC or their agency and the discloser, that the protections under the Act do not apply and that the agency can handle the matter as it sees fit.

## 12. PROTECTIONS AND OFFENCES

Part 6 of the Act sets out the protections provided to those person(s) who make a public interest disclosure. These protection apply from the time a disclosure is made regardless of whether the WPW PDC elects to notify IBAC.

There are limitations on this protection when a person makes knowingly false or misleading complaints.

The protections under the Act include:

- That the discloser is not subject to criminal or civil liability or administrative action for making the disclosure;
- That the discloser is not committing an offence against any Act that imposes confidentiality on the disclosure of information;
- They are not breaching any other obligation (made by oath, rule of law or practice) requiring him or her to maintain confidentiality or otherwise restrict confidentiality; and
- They cannot be held liable for defamation in relation to the information included in a public interest disclosure.

Ensuring confidentiality is one of the ways that disclosers and other persons involved in public interest disclosure investigations are protected. The PDC is responsible for ensuring that all information in relation to any potential public interest disclosure is stored within the WPW record management system in a secure and confidential manner.

WPW must ensure that both the identity of the person(s) making the disclosure, the

information included with any disclosure and the identity of any persons involved in the investigation is kept confidential. This includes ensuring it is stored appropriate in secure folders within the corporate systems.

### **13. WHAT IS NOT A PUBLIC INTEREST DISCLOSURE**

The following are some examples of what is not generally considered to be a complaint that constitutes improper conduct under the Act:

- Behavior that does not meet the standards of public sector employees such as rudeness towards customers;
- Minor breaches of policy and procedures;
- Complaints about issues that are already in the public domain; or
- Minor misconduct arising from an employee conflict.

### **14. PROTECTING THE WELFARE OF THE PARTIES**

WPW is committed to the protection of disclosers against detrimental action taken in reprisal for the making of a public interest disclosure. WPW acknowledge the courage that is required for disclosers to speak up about improper conduct at WPW.

This is consistent with WPW's general obligations to protect the health and well being of its employees under various occupational health and safety laws.

The PDC will determine the immediate welfare and protection needs of any discloser including determining whether a welfare manager should be appointed. The PDC and or welfare manager will work to ensure the discloser:

- Is kept informed;
- Is provided with active support including advising the discloser that they have done the right thing in coming forward;
- Is having their expectations managed;
- Has their confidentiality protected; and
- Is protected from any impact of any investigation.

WPW is also committed to protecting the interests of any witnesses in an investigation and the person(s) who may be the subject of any investigation. This will include keeping those persons informed as to the progress of the investigation, referring staff to the Employee Assistance Program where appropriate, providing natural justice and maintaining confidentiality.

In the event that an investigation has not substantiated that any improper conduct or detrimental action has taken place than WPW and the PDC will take all reasonable steps to ensure that no adverse consequences arise for that person.

### **15. ANNUAL REPORTING**



The PDC will establish a secure register as required to record information that is required to be published within the WPW Annual Report. The register will be confidential and will not include any identifying information for any party.

## **16. QUESTIONS AND QUERIES**

Questions and queries should be directed to the PDC or the Public Interest Disclosure Officer.