

PUBLIC INTEREST DISCLOSURES ACT 2012 GUIDELINES AND PROCEDURES

1.0 PURPOSE

The purposes of the *Public Interest Disclosures Act 2012* (the Act) are 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 protection to persons who make disclosures and persons who may suffer detrimental action in reprisal for those disclosures.

The Act provides for the confidentiality of the content of disclosures and the identity of persons who make disclosures.

City West Water ABN 70 066 902 467 is committed to the aims and objectives of the Act. It does not tolerate improper conduct by its employees, officers or members, nor the taking of reprisals against those who come forward to disclose such conduct.

City West Water (CWW) recognises the value of transparency and accountability in its administrative and management practices, and supports the making of disclosures that reveal corrupt conduct, conduct involving a substantial mismanagement of public resources, or conduct involving a substantial risk to public health and safety or the environment.

City West 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.

2.0 SCOPE

The scope of the Act includes all activities of City West Water Corporation. The Procedures will cover all employees and responsible persons associated with City West Water, including Directors, Executives, contractors and staff.

City West Water is **not able** to receive (as defined in the Act) disclosures under section 13 of the Act. However, City West Water still needs to establish procedures under section 58 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.

3.0 REFERENCES

These guidelines and procedures are based upon, and consistent with, guidelines issued by the *Independent Broad-Based Anti-Corruption Commission* Victoria ("IBAC"), as updated over time, including:
"Guidelines for handling public interest disclosures", and
"Guidelines for public interest disclosure welfare management"



Further details on the *Public Interest Disclosures Act 2012* and these guidelines can be found at the IBAC website: <http://www.ibac.vic.gov.au>

4.0 DEFINITIONS

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

4.1 Improper Conduct

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

Improper conduct means:

- (a) corrupt conduct; or
- (b) conduct by a public officer or public body that constitutes:
 - i. a criminal offence; or
 - ii. serious professional misconduct; or
 - iii. dishonest performance of public functions; or
 - iv. an intention 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 public health and safety; or
 - viii. a substantial risk to the environment;
- (c) conduct by 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 or authority or other entitlement under any legislation; or
 - B. an appointment to a statutory office or as a member of the board of any public body under any legislation; or
 - C. a financial benefit or real or personal property; or
 - D. any other direct or indirect monetary or proprietary gain; or
- (d) conduct of any person that could constitute a conspiracy or attempt to engage in any of the above conduct.

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



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

4.2 Corrupt Conduct

Corrupt conduct means conduct:

- (a) of any person that adversely affects the honest performance of a public officer or public body of their functions;
- (b) 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;
- (c) of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust;
- (d) a public officer or a public body that involves the misuse of information or material acquired in the course of the performance of his or her or its functions as a public officer or public body, whether or not for the benefit of the public officer or public body or any other person;
- (e) of a person intended to adversely affect the effective performance or exercise by a public officer or public body of their functions and result 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; or
 - 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 they would not have otherwise obtained; or
- (f) conduct that could constitute a conspiracy or an attempt to engage in any conduct referred to in the bullet points above;

being conduct that would, if the facts were found proved beyond reasonable doubt at a trial, constitute a criminal offence.

Examples

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

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

A public officer sells confidential information



4.3 Detrimental Action

The Act makes it an offence for a person to take detrimental action against a person in reprisal for a public interest 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, career, profession, trade or business, including the taking of disciplinary action.

Examples

A public body refuses a deserved promotion of a person who makes 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 body discriminates against the discloser or his or her family and associates in subsequent applications for jobs, permits or tenders

5.0 PROCEDURE

5.1 Roles and responsibilities

5.1.1 Employees and Contractors

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

All employees and contractors of City West Water 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.

5.1.2 Public Interest Disclosure Coordinator

The Public Interest Disclosure Coordinator for City West Water is the Chief Financial Officer, and is responsible for the receipt, and referral of all disclosures to IBAC and any associated follow up activities, including the welfare of the discloser.

The Public Interest Disclosure Coordinator will:

- Advise all disclosers to make their disclosures directly to IBAC for assessment;
- For anonymous disclosures:
 - a) Determine whether the disclosure has been made in accordance with the Public Interest Disclosures Regulations and under section 13 of the Act;
 - b) Impartially assess each disclosure to determine whether it is a public interest disclosure;
 - c) Refer all public interest disclosures to IBAC for assessment;
- Where a disclosure is not considered to be a public interest disclosure, advise the discloser that City West Water considers the disclosure is not a public interest disclosure and the disclosure has not been notified to IBAC for assessment.



- Advise the discloser to keep the disclosure confidential;
- Regardless of whether the discloser is notified to IBAC ensure that the protections set out in Part 6 of the Act apply to the discloser;
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- Consider relocation if requested, or agreed to, by the discloser;
- 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.

5.2. Confidentiality

City West 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 entity investigating the disclosure; and
- When publishing statistics in the annual report of a public body.

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.

City West Water will ensure all files, whether paper or electronic format, are kept in a secure room and can only be accessed by the Public Interest Disclosure Coordinator, . All printed material will be kept in paper files that are clearly marked as a Public Interest Disclosure Act matter, and warn of the criminal penalties that apply to any unauthorised divulging information concerning a public interest disclosure.

All electronic files will be produced and stored on a dedicated network drive and be given password protection. Backup files will be kept on network backup discs. All materials relevant to an investigation, such as tapes from interviews, will also be stored securely with the discloser files.

5.3. Annual Reporting

The Public Interest 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 disclosures. The register will be confidential and will not record any information that may identify the discloser.



The register will contain the following information:

- The number and types of disclosures made during the year;
- The number and types of disclosed matters referred to IBAC ;

The Public Interest Disclosure Coordinator will ensure that City West Water's Annual Report includes information about how to access City West Water's Public Interest Disclosure Guidelines and Procedures and the number of disclosures notified to IBAC under section 21(2) of the Act during the financial year.

5.4. Management of disclosures

5.4.1 Where a public interest disclosure is made

Where a disclosure has been received by the Public Interest Disclosure Coordinator, he or she will refer the matter to IBAC within 28 days of the disclosure being made.

5.5. Managing the welfare of the discloser

5.5.1 Commitment to protecting disclosers

City West Water is committed to the protection of disclosers against detrimental action taken in reprisal for the making of public interest disclosures. The Public Interest Disclosure Coordinator is responsible for ensuring disclosers – both for those inside or outside CWW (including the public) - are protected from direct and indirect detrimental action, and that the culture of the workplace is supportive of public interest disclosures being made.

The Public Interest Disclosure 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:

- 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).



5.5.2 Occurrence of detrimental action

If a discloser 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 can be an offence against the Act as well as grounds for making a further disclosure.

5.6. Review

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

6.0 DOCUMENTATION

IBAC-issued general Guidelines, as updated over time:

- *Guidelines for handling public interest disclosures*
- *Guidelines for public interest disclosure welfare management*