



# **LOWER MURRAY WATER**

## **PROTECTED DISCLOSURES PROCEDURE**

## 1.0 Purpose

The purpose of the *Protected Disclosure Act 2012* (the Act) is to encourage and facilitate the making of disclosures of:

- improper conduct by public officers and public bodies and other persons; and
- 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.

Lower Murray Water (LMW) 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.

LMW 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.

LMW 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

LMW is not a public organisation prescribed under the Act to receive a protected disclosure, so disclosures about LMW, 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 LMW is not able to receive disclosures we have made this procedure, as required 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 protected disclosure or cooperating in an investigation into a protected disclosure complaint.

## 3.0 References

Protected Disclosures Act 2012

Protected Disclosures Regulations 2013

IBAC – Guidelines for making and handling protected disclosures

IBAC – Guidelines for protected disclosure welfare management

## 4.0 Definitions

Three key concepts related to protected disclosures are improper conduct, corrupt conduct and detrimental action.

### 4.1 Improper conduct

A disclosure may be made about improper conduct by a public organisation or public official. Improper conduct means conduct that is corrupt, including a substantial mismanagement of public resources, or conduct involving substantial risk to public health or safety or to the environment. 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 of any person (whether or not a public official) that adversely affects the honest performance of a public officer's or public organisation's functions,
- The performance of a public officer's or public organisation functions dishonestly or with inappropriate partiality,
- Conduct of a public officer or a public organisation that amounts to a breach of public trust,
- Conduct by a public officer or a public organisation that amounts to the misuse of information or material acquired in the course of the performance of their official functions, or
- A conspiracy or attempt by a public officer or public organisation to engage in the above corrupt activity.

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

#### 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 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.*

### 4.4 Other Definitions

<b>PD Act</b>	<i>Protected Disclosure Act 2012</i>
<b>Coordinator</b>	Protected 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>Guidelines</b>	The Guidelines published by IBAC under s 57 of the Act as at January 2016 and available on the <a href="#">IBAC website</a> .
<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 four bodies authorised to investigate a protected disclosure complaint, being the IBAC, the Victorian Ombudsman, the Chief Commissioner of Police and the Victorian Inspectorate.

<b>Procedures</b>	This version of the procedures of LMW, as established under s 58 of the Act
<b>Protected 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>Protected disclosure</b>	Any complaint, concern, matter, allegation or disclosure (however described) made in accordance with Part 2 of the PD Act
<b>Protected disclosure complaint</b>	A protected disclosure which has been determined and assessed by the IBAC to be a protected disclosure complaint under s 26 of the Act
<b>Regulations</b>	<i>Protected Disclosure Regulations 2013</i>

## 5.0 Procedure

### 5.1 Roles and Responsibilities

#### 5.1.1 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 LMW 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.

#### 5.1.2 Protected Disclosure Coordinator

LMW has a Protected Disclosure Coordinator (coordinator), who is responsible for how LMW manages obligations under the *Protected Disclosure Act 2012*.

**LMW's Protected Disclosure Coordinator** is the General Manager Customer Service.

The coordinator is the main contact for enquiries about protected disclosures, whether they are from LMW employees or members, or from people outside the organisation, but is **unable to receive disclosures**.

**LMW's Protected Disclosure Officer** is the Coordinator - Customer Service & Compliance and will act as the Protected Disclosure Coordinator in their absence.

The coordinator will:

- Ensure that all employees, officers and members of LMW and the public have access LMW's Protected Disclosure procedures,
- Ensure that employees, officers and members of LMW know to direct anyone attempting to make a disclosure to IBAC or if unsure to direct the enquiry to the coordinator,
- For anonymous disclosures:
  - a) Determine whether the disclosure has been made in accordance with the Protected Disclosure Regulations and under section 13 of the Act,
  - b) Impartially assess each disclosure to determine whether it is a public interest disclosure, and
  - c) Refer all protected disclosures to IBAC for assessment,
- Where a disclosure is not considered to be a protected disclosure, advise the discloser that LMW considers the disclosure is not a protected disclosure and the disclosure has not been notified to IBAC for assessment,
- Regardless of whether the discloser is notified to IBAC 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.

### **5.1.3 Welfare Manager**

In appropriate circumstances, the protected disclosure coordinator will appoint a welfare manager to protect a discloser or a cooperator. More information on the role and responsibilities of welfare manager is in Section 5.4 - Managing welfare.

## **5.2 Confidentiality**

LMW 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 protected disclosure not to disclose that information except in certain limited circumstances.

The circumstances in which a person may disclose information obtained about a protected 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.

LMW will ensure all files, whether paper or electronic, are kept securely and can only be accessed by the protected disclosure 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 Protected Disclosure Act Matter, and warn of the criminal penalties that apply to any unauthorised divulging of information concerning a protected disclosure.
- All electronic files will be produced and stored in the Records Management System with appropriate Access Controls
- The Records Management System is backed up to a dedicated local backup server
- All materials relevant to an investigation, such as tapes from interviews, will also be stored securely with the relevant Protected Disclosure Act Matter files.

The *Protected Disclosure Act 2012* provides that information held in relation to protected disclosures is not subject to the *Freedom of Information Act 1982*.

### **5.3 Register and Reporting**

The protected disclosure 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 and types of disclosures made during a financial year in relation to LMW,
- 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 LMW's annual report includes information about how to access LMW's Protected Disclosure procedures and the number of disclosures notified to IBAC under section 21 (2) of the Act in the financial year.

### **5.4 Managing welfare**

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

LMW is committed to protecting the welfare of:

- Genuine disclosers,
- Cooperators (people who have cooperated or intend to cooperate with an investigation), and

- People who are the subject of a protected disclosure complaint against direct and indirect detrimental action taken either in reprisal for the making of protected disclosures or because a disclosure has been made about them .

**LMW 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 protected disclosure complaint.

Once LMW has been made aware of the identity of a discloser, and any other relevant information about the protected disclosure, LMW 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 cooperator is an employee, officer or member of LMW, LMW 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 cooperator is *not* an employee, officer or member of LMW, the coordinator will take reasonable steps to provide appropriate support and discuss reasonable expectations with the person receiving welfare management in connection with a protected disclosure.

In supporting a discloser or cooperator 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.

#### **5.4.2 Commitment to protecting the welfare of disclosers and cooperators**

LMW will also meet the welfare needs of a person who is the subject of a protected disclosure.

Until a protected disclosure 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 protected 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 protected disclosure 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 LMW 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 protected disclosure 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 protected disclosure 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.

#### **5.4.3 Protecting against detrimental action**

LMW is committed to the protection of disclosers against detrimental action taken in reprisal for the making of protected 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 protected disclosures being made.

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).

In appropriate circumstances, the coordinator will appoint a welfare manager to protect a discloser or a cooperator.

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 cooperator, taking into account their particular circumstances,
- Whether LMW can will take the discloser or cooperator seriously and treat them with respect,
- Whether LMW will give the discloser or cooperator effective support, including keeping the discloser informed of the status of the disclosure (as far as the LMW has been provided with such information by a relevant investigative organisation),
- Whether LMW 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 cooperator has in fact suffered retribution.

Normally a welfare manager will only be required if a protected disclosure 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 cooperator 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 protected disclosure to any person other than the protected disclosure coordinator,
- Ensure all meetings are conducted discreetly to protect the person from being identified as being involved in the protected disclosure, and
- Ensure the discloser's or cooperator's expectations are realistic and reasonable, and that they understand the limits of the support LMW is able to reasonably provide in the particular circumstances, particularly where they are not LMW employees, officers or members.

#### **5.4.4 If detrimental action occurs**

If a discloser or cooperator 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 protected 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.
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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 the detrimental action is of a serious nature likely to amount to a criminal offence, LMW will consider reporting the matter to the police or IBAC.

## **6.0 Review**

- 6.1 It is the responsibility of the Custodian of this procedure to ensure this procedure is reviewed annually, as per the review due date listed in the record table, to ensure it meets the objectives of the Act and accords with IBAC's guidelines.
  
- 6.2 The people listed as "to be advised of amendments" must alert the Custodian to the need for procedure review if any amendments are required to the procedure before the review due date.