

Public Interest Disclosures Procedure

Authorised By: General Manager Business Services & Performance

Signature..... Date.....

Custodian: Manager Organisational Performance

To be advised of amendments: All Staff
Audit Committee

Location of Controlled Document: Records Management System
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website
Hardcopy - Box-606

**CONTROLLED DOCUMENT - Amendments to be made by Custodian/s only.
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Record Table for Review of Procedures/Forms/Documents

Revision	Review Due Date	Date Reviewed/ Amended	Reviewer (Title)	Procedure Re-issued? (Yes/No)	Comments
A	April 2017	December 2020	Manager Finance	Yes	Restructure of policy to align with draft Fraud and Corruption Control Framework. Updated in line with changes to Public Interest Disclosure Act 2012.
B	August 2021				

1.0 Purpose

These procedures are made under section 58 of the Public Interest Disclosures Act 2012 (PID Act). The purpose of the PID 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 PID Act.

The PID Act provides protection to persons who make disclosures and persons who may suffer detrimental action in reprisal for those disclosures. The PID 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 PID 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 PID Act to receive a public interest 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

Phone: 1300 735 135

Although LMW is not able to receive disclosures we have made this procedure, as required under section 58 of the PID 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 cooperating in an investigation into a Public interest disclosure complaint.

3.0 References

Public Interest Disclosure Act 2012

Public Interest Disclosure Regulations 2013

IBAC - Guidelines for making and handling Public interest disclosure

IBAC - Guidelines for Public interest disclosure welfare management

4.0 Definitions

Three key concepts related to public interest disclosure 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 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.
- Conduct intended to adversely affect the functions or powers of a public officer or the public organisation and result 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 or a financial benefit or any other direct or indirect monetary gain that would not have otherwise be obtained or that would constitute a conspiracy.

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 PID 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 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

PID Act *Public Interest Disclosure Act 2012*

Coordinator Public Interest Disclosure Coordinator

Discloser A person who (purports to) make(s) a complaint, allegation or disclosure (however described) under the Act

Disclosure	Any complaint, concern, matter, allegation or disclosure (however described) purported to be made in accordance with Part 2 of the Act
IBAC	Independent Broad-based Anti-corruption Commission
IBAC Act	<i>Independent Broad-based Anti-corruption Commission Act 2011</i>
Investigative Organisation	Any one of the four bodies authorised to investigate a public interest disclosure complaint, being the IBAC, the Victorian Ombudsman, the Chief Commissioner of Police and the Victorian Inspectorate.
Public Interest Disclosure	A person who makes a disclosure of improper conduct or detrimental action in accordance with the requirements of the PID Act.
Public Interest Disclosure	Any complaint, concern, matter, allegation or disclosure (however described) made in accordance with PID Act.
Public Interest Disclosure Complaint	A Public interest disclosure which has been determined assessed by the IBAC to be a Public interest disclosure Complaint.
Regulations	<i>Public Interest 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 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 Public Interest Disclosure Coordinator

LMW has two Protected Disclosure Coordinators (coordinator), who are responsible for how LMW manages obligations under the *Public Interest Disclosure Act 2012*.

LMW's Protected Disclosure Coordinators are the General Manager People and Customer and the Corporate Secretary.

The coordinator is the main contact for enquiries about Public interest disclosure, whether they are from LMW 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 LMW and the public have access LMW's Public Interest Disclosure Procedures
- 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 Public Interest Disclosure Regulations and under section 13 of the PID Act,
 - b) impartially assess each disclosure to determine whether it is a public interest disclosure, and
 - c) refer all public interest disclosure to IBAC for assessment.
- where a disclosure is not considered to be a public interest disclosure, advise the discloser that LMW considers the disclosure is not a public interest 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 PID Act are afforded to the discloser.
- where possible, advise the discloser of the progress of an investigation into the disclosed matter and
 - a) establish and manage a confidential filing system.
 - b) collate and publish statistics on disclosures made.
 - c) 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.
 - d) liaise with IBAC as required.

5.1.3 Welfare Manager

In appropriate circumstances, the 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 PID 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 a direction or authorisation given by the organisation investigating the disclosure, and
- when publishing statistics in the annual report.

However, the PID Act prohibits the inclusion of particulars in any report or recommendation that is likely to lead to the identification of the discloser. The PID 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 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 Disclosure 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 in the Records Management System with appropriate Access Controls. All materials relevant to an investigation, such as tapes from interviews, will also be stored securely with the relevant Public Interest Disclosure Act Matter files.

The PID Act provides that information held in relation to public interest disclosure is not subject to the *Freedom of Information Act 1982*.

5.3 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 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 Public Interest Disclosure Procedures and the number of disclosures notified to IBAC under section 21 (2) of the PID 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 public interest disclosure complaint against direct and indirect detrimental action taken either in reprisal for the making of public interest disclosure 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 PID Act if we receive advice from IBAC or the Victorian Inspectorate or another organisation investigating a public interest disclosure complaint.

Once LMW has been made aware of the identity of a discloser, and any other relevant information about the public interest 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 PID 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 public interest 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 public interest disclosure.

Until a public interest 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 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 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 PID 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 PID Act. LMW 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 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 public interest 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.

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 public interest disclosure. 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 disclosure 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 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 public interest 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 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 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 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 PID 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

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 PID Act and accords with IBAC’s guidelines.

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.