

Protected Disclosure Act 2012

Policy and Procedures

South East Water

ABN 89 066 902 547

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1. Statement of support to disclosers

South East Water ABN 89 066 902 547 is committed to the aims and objectives of the *Protected Disclosure Act 2012* (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.

South East 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, or conduct involving a substantial risk to public health and safety or the environment.

South East 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. Objects of the Act

The purposes of the *Protected Disclosure Act 2012* 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.

3. Receiving disclosures

South East Water is not a public body prescribed under the Act to receive a protected disclosure. Disclosures about South East Water, its employees, officers or members should be made directly to the Independent Broad-Based Anti-Corruption Commission (IBAC).

Address: IBAC, GPO Box 24234. Melbourne, Victoria. 3001
Internet: <http://www.ibac.vic.gov.au>
Phone 1300 735 135

South East 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 protected disclosure.

4. Definitions of key terms

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 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 body's functions;
- The performance of a public officer's or public body functions dishonestly or with inappropriate partiality;
- 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; or
- A conspiracy or attempt by a public officer or public body 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 body refuses a deserved promotion of a person who makes a disclosure.

A public body 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 body discriminates against the discloser or his or her family and associates in subsequent applications for jobs, permits or tenders.

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.

All employees of South East 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.

5.2 Protected disclosure coordinator

The protected disclosure coordinator will:

- Ensure all disclosers are advised to direct their disclosures to IBAC for assessment;
- 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;

- c) Refer all protected disclosures to IBAC for assessment;
- Where a disclosure is not considered to be a protected disclosure, advise the discloser that South East Water 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 apply 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.

6. Confidentiality

South East 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 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 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.

South East Water will ensure all files, whether paper or electronic, are kept in a secure room and can only be accessed by the protected disclosure coordinator, protected disclosure officer, the investigator or welfare manager (in relation to welfare matters). 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 information concerning a protected 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 discloser files.

7. Annual Reporting

The protected 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 of disclosures referred to IBAC for determination;
- The number and types of disclosed matters referred to IBAC for investigation;

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

8. Receiving and assessing disclosures

8.1 Has the disclosure been made in accordance with the Act?

Where a disclosure has been received by the protected disclosure coordinator, he or she will assess whether the disclosure has been made in accordance with the Act and is, therefore, a protected disclosure.

8.2 Is the disclosure of improper conduct or detrimental action?

A disclosure must satisfy the following criteria:

- Did a natural person (that is, an individual person rather than a corporation) make the disclosure?
- Does the disclosure show or tend to show that a public body or public officer acting in their official capacity is taking or proposes to take either improper conduct or detrimental action taken against a person in reprisal for making a disclosure?
- Does the person making a disclosure have reasonable grounds for believing the alleged conduct has occurred?

9. Managing the welfare of the discloser

9.1 Commitment to protecting disclosers

South East Water is committed to the protection of disclosers against detrimental action taken in reprisal for the making of protected disclosures. The protected disclosure 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.

The protected 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).

9.2 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 protected disclosure coordinator will:

- Record details of the incident;
- Advise the discloser of his or her rights under the Act; and
- Advise the chief executive officer 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.

10. Review

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