

Public Interest Disclosures Policy

1. Purpose

This Policy sets out South East Water's approach to supporting the Public Interest Disclosures scheme established under the *Public Interest Disclosures Act 2012 (Vic)* (the **Act**).

The Act encourages and facilitates disclosures about improper conduct or detrimental action involving public officers or public bodies. It also protects persons who make those disclosures.

South East Water is committed to the aims and objectives of the Act. South East Water does not tolerate improper conduct by its employees, officers, directors or contractors, nor the taking of reprisals against those who come forward to disclose such conduct.

South East Water cannot accept public interest disclosures. But South East Water plays an important role in the public interest disclosure scheme by providing information, training and support to its employees regarding how to make a public interest disclosure, the protections available to disclosers and how to manage employees and take effective action in response to reports of improper conduct or detrimental action.

2. Making disclosures

South East Water is **not** a public body to which public interest disclosures may be made. Accordingly, disclosures made to South East Water will not be protected by the public interest disclosure scheme under the Act.

Disclosures about improper conduct and detrimental action of South East Water, its employees, officers, directors or contractors must be made **directly to** the Independent Broad-Based Anti-Corruption Commission (**IBAC**).

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

Complaints can also be made to the Victorian Ombudsman (ombudsman.vic.gov.au) or the Victorian Inspectorate (vicinspectorate.vic.gov.au).

Public interest disclosures may be made by an individual or group (but not by a business or company) and may be made anonymously.

3. What is a public interest disclosure?

Public interest disclosures are reports or allegations made about 'improper conduct' (including 'corrupt conduct') or 'detrimental action' involving the public sector. A disclosure can relate to improper conduct or detrimental action that has already occurred, is currently occurring or that may happen in the future.

Disclosures can be about:

- public bodies, which includes South East Water;
- public officers, which includes South East Water employees, officers, directors and contractors; or

- private individuals, where their conduct is adversely affecting the honest performance of a public body or public officer, or is intended to adversely affect their effective performance.

3.1 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;
- of a public officer or public body that constitutes or involves the dishonest performance of his, her or its functions;
- of a public officer or a public body that amounts to a breach of public trust;
- 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;
- of a person (**first person**) intended to adversely affect the effective performance or exercise of the functions or powers of the public officer or public body and result in the first person or an associate of the first person obtaining:
 - a) a licence, permit, approval, authority or other entitlement under any act or subordinate instrument;
 - b) an appointment to a statutory office or as a member of the board of any public body under any act or subordinate instrument;
 - c) a financial benefit or real or personal property; or
 - d) any other direct or indirect monetary or proprietary gain; or
- that could constitute a conspiracy or attempt to engage in the above corrupt activity.

To constitute 'corrupt conduct', the conduct must also constitute an indictable offence, bribery of a public official, perverting the course of justice or misconduct in public office.

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.

3.2 Improper conduct

Improper conduct is not just limited to what would ordinarily be considered corruption, it refers to a range of dishonest practices relating to the performance of public functions by public bodies and public officers.

Improper conduct means:

- Corrupt conduct (as discussed in section 3.1 of this Policy); or
- Conduct of a public officer or public body in their public capacity that constitutes:
 - a) a criminal offence;
 - b) serious professional misconduct;
 - c) dishonest performance of public functions;
 - d) breach of public trust;
 - e) misuse of information;
 - f) substantial mismanagement of public resources;

- g) a substantial risk to health or safety or to the environment; or
- Conduct of any person (including private individuals) that:
 - a) adversely affects the honest performance by a public officer or public body of their public functions; or
 - b) is intended to adversely affect the effective performance by a public officer or public body of their functions for the benefit of the person (or one of their associates); or
- Conspiring or attempting to engage in any of the above conduct.

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.

3.3 Detrimental action

The Act makes it an offence 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.

Detrimental action is taken 'in reprisal for a public interest disclosure' if the action is taken or threatened because (or in the belief that) the other person (or anyone else):

- has made, or intends to make, a public interest disclosure; or
- has cooperated, or intends to cooperate, with an investigation of a public interest disclosure.

If either of the above reasons forms **any part** of the reason for which detrimental action is taken against a person, it will constitute detrimental action taken in reprisal for a public interest disclosure.

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.

4. Roles and responsibilities

4.1 Employees

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

All employees of South East Water have an important role to play in supporting those who have made a public interest disclosure. Employees who become aware that a public interest disclosure has been made must not victimise or harass the discloser or any other person because of the disclosure. Furthermore, they should protect and maintain the confidentiality of the discloser and not disclose details of the disclosure, unless permitted by law.

Conduct that does **not** amount to a public interest disclosure may be subject to other South East Water policies and procedures, such as the Anti-Discrimination, Harassment & Bullying Policy and Grievance Procedure. Employees should report actual or suspected wrongdoing even if it is not covered in this policy to ensure that it can be considered and addressed.

4.2 STOPline

STOPline is an alternative, external and independent avenue to raise concerns about fraud, corruption or other improper conduct within the workplace, which sits alongside existing South East Water policies and procedures. STOPline provides a confidential and impartial helpline service so if you don't feel comfortable speaking to your People Leader or People, Safety and Governance representative about these issues, you can raise the concern with STOPline (anonymously if you wish). If you do not wish People, Safety and Governance to be made aware of your complaint, this must be stated clearly.

4.3 Public Interest Disclosure Coordinator

The Public Interest Disclosure Coordinator (**PID Coordinator**) will:

- Ensure all disclosers are advised to direct their disclosures to IBAC for assessment;
- For anonymous disclosures:
 - a) Consider whether the disclosure is a public interest disclosure;
 - b) If considered likely to be a public interest disclosure, refer the disclosure to the Managing Director to consider whether the conduct should be notified to IBAC;
 - c) Where a disclosure is not considered to be a public interest disclosure, take no further action under this policy.
- In the event the discloser can be identified, ensure that the protections set out in Part 6 of the Act apply to a public interest discloser;
- Establish and manage a confidential filing system for the secure storage of public interest disclosure material; and
- Liaise with IBAC as required.

5. Confidentiality

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. This includes to the extent necessary for taking lawful action in relation to the conduct that is the subject of the disclosure.

South East Water will ensure all files, whether paper or electronic, are kept securely and can only be accessed by the Managing Director (as principal officer), PID Coordinator, South East Water employees supporting the PID Coordinator, or welfare manager (in relation to welfare matters) or South East Water's lawyers or other advisors or investigators (as required).

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 disclosure of information concerning a public interest disclosure. All electronic files will be given password protection.

6. Annual Reporting

The PID Coordinator will ensure that South East Water's Annual Report includes information about how to access the procedures set out in this policy.

7. Managing the welfare of the discloser

7.1 Commitment to protecting disclosers

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

As South East Water cannot receive public interest disclosures, South East Water may not be aware someone has made a public interest disclosure about South East Water. IBAC will only notify South East Water of a public interest disclosure made about South East Water if it decides it is necessary. If IBAC does notify South East Water of the identity of a discloser, or someone cooperating with an investigation, such notifications are confidential and South East Water is responsible for providing that person with reasonable welfare support.

The PID 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 disclosures being made. Where relevant, South East Water will consider appointing a welfare manager when a person has made a public interest disclosure or is cooperating, or intending to cooperate, with an investigation of a public interest disclosure.

The PID 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 them;
- Listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making the disclosure;
- Keep a contemporaneous record of all aspects of the case management of the discloser including all contact and follow-up action; and
- Manage the expectations of the discloser to ensure that they are realistic.

7.2 Occurrence of detrimental action

If a discloser reports an incident of harassment, discrimination or adverse treatment taken in reprisal for the making of the disclosure, the PID 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.

8. Mandatory Notifications

If the Managing Director becomes aware of a matter which the Managing Director suspects, on reasonable grounds, involves corrupt conduct occurring or having occurred, they must notify IBAC.

Accordingly, any matter that may involve corrupt conduct that is reported to South East Water will be forwarded to the Managing Director by the PID Coordinator.

The Managing Director may also take urgent action to deal with an issue immediately in certain circumstances, such as where that action is:

- Necessary to lessen or prevent a threat to the life, health, safety or welfare of an individual or to public health or safety;
- Taken to comply with another legal obligation, such as a duty to report the matter under other legislation or to take immediate action; or
- Reporting the matter to Victoria Police.

9. Review

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

10. Related Policies

- BS 2809 Allegations Policy
- BS 2189 Anti-Discrimination, Harassment & Bullying Policy and Grievance Procedure
- BS 2173 Fraud, Corrupt Conduct & Other Losses Policy
- BS 1005 Code of Conduct
- BS 2447 Gifts, Benefits and Hospitality Policy
- BS 1055 Privacy Charter

11. Legislation and Related Documents

- *Public Interest Disclosure Act 2012 (Vic)*
- *Independent Broad-based Anti-corruption Commission Act 2011 (Vic)*
- Code of Conduct for Victorian Sector Employees
- IBAC Guidelines for making and handling public interest disclosures
- IBAC Guidelines for public interest disclosure welfare management
- IBAC Directions for making mandatory notifications of suspected corruption

12. Approval

Approved by: South East Water Executive

Approved on: 16 August 2023



Sponsor: General Manager People, Safety and Governance

Implementer: General Counsel

Review date: 16 August 2024