



# Protected Disclosure Board Policy and Procedure

## 1. Objective

The objective of this policy and procedure is to encourage and facilitate the making of disclosures of:

- Improper conduct by public officers and public bodies and other persons
- Detrimental action taken in reprisal for a person making a disclosure under the *Protected Disclosure Act 2012*

The *Protected Disclosure Act 2012* provides:

- protection to persons who make disclosures and persons who may suffer detrimental action in reprisal for those disclosures.
- for the confidentiality of the content of disclosures and the identity of persons who make disclosures.

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## 3. Scope

This Policy and Procedure applies to:

- Directors: including non-executive Directors who are members of Board Committees
- Staff: including continuing, fixed term and casual staff and contractors

## 4. Authority

- The Managing Director GMW is responsible for the approval of this Procedure.
- The Board is responsible for the approval of this Policy.

## 5. Definitions

### **GMW**

GMW means Goulburn-Murray Water.

### **The Act**

The Act means the *Protected Disclosure Act 2012*

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

### **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.

### **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.

### **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;



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- 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.

## Protected Disclosure

Refer to section 7.1

## Protected Disclosure Coordinator

The Protected Disclosure Coordinator appointed by GMW is:

Chris Dalton  
Corporate Secretary  
40 Casey Street  
Tatura VIC 3616  
Phone: (03) 5826 3514  
Email: [chris.dalton@gmwater.com.au](mailto:chris.dalton@gmwater.com.au)

## 6. Policy

### 5.1 Policy Overview

GMW is committed to the aims and objectives of the *Protected Disclosure Act 2012* (the Act) to:

- encourage and facilitate the making of disclosures of improper conduct and detrimental action by public officers and public bodies
- provide certain protections for people who make a disclosure, or those who may suffer detrimental action in reprisal for making a disclosure.

GMW:

- 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.
- will ensure information connected with a protected disclosure, including the identity of a discloser and the contents of that disclosure, are kept strictly confidential.
- recognises the value of transparency and accountability in its administrative and management practices
- 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
- will take all reasonable steps to protect people who make such disclosures from any detrimental action in reprisal for making the disclosure.
- will afford natural justice to the person who is the subject of the disclosure.



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## 5.2 Roles and Responsibilities

### 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 GMW 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.

### 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 GMW 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.
- Liaise with IBAC as required.
- Manage the welfare of the disclosure (section 10).



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## 7. Procedure

### 7.1 What is a protected disclosure?

#### Criteria for a protected disclosure

<b>By whom</b>	An individual or group of people, cannot be a company	
<b>How</b>	Verbally, in writing, can be anonymous	Refer to section 7.2
<b>To whom</b>	Only certain organizations – Not GMW	Refer to section 7.3
<b>About whom</b>	Public officers or public bodies	See Further Definitions below
<b>About what</b>	Improper conduct or detrimental action	Refer to section 7.5

A disclosure may be made about 2 things under the Act:

- improper conduct of public bodies or public officers; and
- detrimental action taken by public bodies or public officers in reprisal against a person for the making of a protected disclosure

Further Definitions	
<b>Improper Conduct</b>	Unsuitable or inappropriate behavior including <b>corrupt conduct</b> . Examples of improper conduct include attempting to pervert the course of justice, bribery, recklessly breaching public trust, misuse of information and risking public health, safety or the environment.
<b>Corrupt Conduct</b>	Deliberate or intentional wrongdoing. Examples of corrupt conduct include improper use of knowledge, information or resources to gain financial or personal advantage, dishonest conduct amounting to a breach of public trust and attempting to influence a member of the public or official in a way that it dishonest or biased.
<b>Detrimental Action</b>	Action against a person in reprisal for a protected disclosure. Examples of detrimental action include a demotion, transfer, isolation in a workplace or changes in duties, threats, abuse, direct or indirect harassment or discrimination against the person making the disclosure or his or her family and associates.
<b>Public Bodies</b>	Public service bodies such as government departments and local councils or a body that is performing a public function on behalf of the State. <b>A public body does not include statutory bodies such as GMW.</b>
<b>Public Officers</b>	A person employed in any capacity or holding any office in the public sector.

The conduct or action being disclosed about may be one which has taken place, is still occurring, or is believed is intended to be taken or engaged in. Disclosures may also be made about conduct that occurred prior to the commencement of the Act on 10 February 2013. A disclosure may also be made even if the person making the



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disclosure cannot identify the person or body to whom or which the disclosure relates. Only a natural person (not a company) may make a disclosure.

### 7.2 What is not a protected disclosure?

The following **are not protected disclosures** under the Act:

- a disclosure that expressly states in writing, that the disclosure is not a disclosure under the Act
- a disclosure made by an officer or employee of an investigating entity in the course of carrying out his or her duties or functions under the relevant legislation, for example a member of the finance team detects an anomaly in a balance sheet. Unless that person expressly states in writing that the disclosure is a disclosure. The disclosure must also be made in accordance with Part 2 of the Act
- the disclosure has not been made in accordance with Part 2 of the Act.

### 7.3 How can a disclosure be made?

A disclosure must be made in accordance with Part 2 of the Act. Part 2 of the Act permits disclosures to be made anonymously, orally or in writing (including email), and need not identify the person or organization.

Generally, a verbal disclosure may be made in person, by telephone, by leaving a voicemail message on a particular telephone or answering machine or by any other form of non-written electronic communication.

IBAC recommends that written disclosures to IBAC be made via its online form available from: <https://www.ibac.vic.gov.au/report-corruption-or-misconduct/online-form>

A disclosure made by email from an address from which the identity of the disclosure cannot be ascertained will be treated as an anonymous disclosure.

A disclosure attempted or purported to be made to GMW will not be a disclosure made in accordance with Part 2 of the Act, because the Act does not permit GMW to receive disclosures. Disclosures must be made directly to IBAC.

### 7.4 Receiving Disclosures

GMW is **not able** to receive disclosures under section 13 of the Act relating to improper or corrupt conduct. If you believe that an officer of GMW has been involved in improper or corrupt conduct, please contact the **Independent Broad based Anti-Corruption Commission (IBAC)** on:

**Phone:**  
1300 735 135

**Postal address:**  
GPO Box 24234, Melbourne, VIC 3001



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Disclosures cannot be made via fax.

However, GMW 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.

## 7.5 Assessing Disclosures

Where a disclosure has been received by the Protected Disclosure Coordinator, they will assess whether the disclosure has been made in accordance with the Act and is, therefore, a protected disclosure.

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?

## 7.6 Confidentiality

GMW 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.



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GMW will maintain confidentiality by:

- ensuring all files, whether paper or electronic, are kept in a secure room and can only be accessed by the Protected Disclosure Coordinator
- keeping all printed material in files that are clearly marked as a Protected Disclosure Act matter
- warning of the criminal penalties that apply to any unauthorised divulging information concerning a protected disclosure
- producing and storing all electronic files on a stand-alone computer that is given password protection. Backup files will be kept on CD
- ensuring all materials relevant to an investigation, such as tapes from interviews, will also be stored securely with the discloser files
- ensuring as far as is possible that other people cannot infer the identity of the discloser or any co-operators
- reminding the discloser or co-operator not to reveal themselves or any information that would enable others to identify them as a discloser
- ensuring that hardcopy and electronic files relating to the disclosure are accessible only to the Protected Disclosure Coordinator
- proactively assessing the risk of detrimental action being taken in reprisal by actively monitoring the workplace.

## 8. Welfare management

### 8.1 Protected Disclosure Coordinator

GMW 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
- Ensure the expectations of the discloser are realistic.

Detrimental action includes:

- Causing injury, loss or damage;
- Intimidation or harassment; and





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- Discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business (including the taking of disciplinary action).

In addition, the Act extends the need for welfare management to people who have cooperated or intend to cooperate with an investigation of a protected disclosure complaint. Persons who are the subject of allegations will also have their welfare looked after. GMW will, where it has been made aware of or has been provided with the identities of disclosers and cooperators, ensure they are protected from direct and indirect detrimental action being taken against them in reprisal for the protected disclosure.

### 8.2 Support available

GMW will support disclosers by:

- keeping them informed, by providing confirmation that the disclosure has been received, if the relevant investigative agency has provided this information to GMW
- informing them of the legislative or administrative protections available to the person
- informing them if action has been taken, details about results of the action known to GMW
- assuring them that all reasonable steps will be taken to protect them;
- giving them an undertaking to keep them informed as far as GMW is reasonably able to
- examining the immediate welfare and protection needs of the person and seeking to foster a supportive work environment
- listening and responding to any concerns the person may have about harassment, intimidation or victimisation in reprisal for their actions
- assessing whether the concerns the person may have about harassment, intimidation or victimisation might be due to other causes other than those related to the protected disclosure; and
- keeping contemporaneous records of all aspects of the case management of the person, including all contact and follow-up action.

### 8.3 Legal support

Staff of GMW may voluntarily or compulsorily be required to attend an interview with law enforcement agencies or integrity protection agencies to be asked about the performance of their GMW duties.

GMW will reimburse any reasonable legal expenses incurred by a staff member in preparing for and attending such an interview provided there is no finding of improper conduct made by the law enforcement agency or integrity protection agency against the staff member.

The definition of improper conduct is that definition used in the *Protected Disclosure Act 2012* (refer Section 7.1)



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### 8.4 Incidents of detrimental action

The protected disclosure coordinator will, in response to any reports of an incident of harassment, discrimination or adverse treatment that would amount to detrimental action taken in reprisal for the making of the disclosure,

- 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. It is an offence under the Act for a public officer or body to take detrimental action against a discloser in reprisal for making a protected disclosure.

Examples of detrimental action prohibited by the Act include:

- threats to a person's personal safety or property;
- intimidating or harassing a discloser or the discloser's family or friends or otherwise causing personal injury or prejudice to the safety or damaging property of a discloser or the discloser's family or friends;
- the demotion, transfer, isolation or change in duties of a discloser due to his or her having made a disclosure;
- discriminating or disadvantaging a person in their career, profession, employment, trade or business; or
- discriminating against the discloser or the disclosers family and associates in subsequent applications for promotions, jobs, permits or tenders resulting in financial loss or reputational damage.

## 9. 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 GMW's Annual Report includes information about how to access GMW's Protected Disclosure Procedures and the number of disclosures notified to IBAC under section 21 (2) of the Act during the financial year.



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## 10. Responsibilities

Who	Responsibility
The Managing Director Board	<ul style="list-style-type: none"> <li>▪ Final authorisation of this Procedure</li> <li>▪ Final authorisation of this Policy</li> </ul>
Corporate Secretary	<ul style="list-style-type: none"> <li>▪ To ensure Policy &amp; Procedure is accessible to all employees and officers</li> <li>▪ To ensure this Policy &amp; Procedure is reviewed annually to ensure it complies with the requirements of the Act and Regulations.</li> </ul>

## 11. Associated Documents

Document name	DM#
IBAC Guidelines for making and handling protected disclosures	3650409
IBAC Guidelines for protected disclosure welfare management	3650408

## 12. Document Control

Version DM#	Approval Date	Approved by	Approval memo DM#	Document owner	Review Due
1	27/08/13	Board, Meeting 223	#3650812	Corporate Secretary	27/08/16
5	27 June 2018	Board	#4640582	Corporate Secretary	June 2020

Summary of Changes	Version #	Date
Criteria for Protected Disclosures table added at 7.1	2	06/09/13