

Aim

Western Water is committed to the aims and objectives of the *Protected Disclosure Act 2012* (the Act). Western Water does not tolerate detrimental action against those who make, or co-operate with, protected disclosures about Western Water. Western Water will take all reasonable steps to protect people who make such disclosures from any detrimental action in reprisal for making a protected disclosure.

Western Water is a public body about which a protected disclosure can be made to the Independent Broad-based Anti-corruption Commission (IBAC), but is **not able to receive disclosures**.

The purpose of this procedure is to facilitate:

- the protection of persons from detrimental action taken by Western Water, its officers or employees in reprisal for a protected disclosure

Scope

A person making a protected disclosure may be employed by Western Water or may be a member of the public. A person co-operating with an investigation into a protected disclosure complaint will also fall into one of the same categories.

Western Water has an obligation to protect people both from inside or outside Western Water from detrimental action taken in reprisal for the making of the disclosure

Detrimental Action

Overview

While Western Water cannot receive disclosures or may not know when a person has made a protected disclosure, this information may be provided to Western Water by IBAC or other entity assessing or investigating a protected disclosure complaint.

It is an offence for a person to take detrimental action against another person for making a protected disclosure.

It is also an offence under the Act if a person threatens to take detrimental action in reprisal for a protected disclosure, or incites or permits another person to do so.

What is detrimental Action?

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.

A person takes detrimental action against another person in reprisal for a protected disclosure if the person takes or threatens to take detrimental action against the other person because or in the belief that the other person or anyone else:

- i. has made or intends to make a protected disclosure; or
- ii. has co-operated or intends to co-operate with an investigation of a protected disclosure.

If an employee takes detrimental action, Western Water may also be jointly and severally liable for the detrimental action.

Management may take detrimental action in relation to an employee who has made a protected disclosure as long as the making of the protected disclosure is not the substantial reason for Management taking action.

Dealing with Detrimental Action

If a person reports an incident of harassment, discrimination or adverse treatment that may amount to detrimental action apparently taken in reprisal for a protected disclosure, the employee who receives the report should record details of the incident and advise the person of their rights under the Act to make a protected disclosure to IBAC.

Where the detrimental action is of a serious nature likely to amount to a criminal offence, consideration should be given to reporting the matter to the police or IBAC. In these circumstances, the Company Secretary should be contacted immediately for advice.

Western Water's Confidentiality Obligations

Western Water will take all reasonable steps to protect the identity of a person making a protected disclosure or assisting with the investigation of a protected disclosure. Maintaining confidentiality is crucial in ensuring reprisals are not made against a person making a protected disclosure.

The Act requires Western Water to keep any information it receives about the content of a protected disclosure or about the identity of a person who has made a protected disclosure, to keep that information confidential, except in certain limited circumstances.

Disclosure of information in breach of the Act is a criminal offence.

There are, however, particular circumstances where information may be disclosed. These include disclosure:

- where a person making a protected disclosure has given written consent to their identity being disclosed
- where IBAC or the Victorian Inspectorate has determined that the assessable disclosure is not a protected disclosure and the person or body subsequently discloses the information
- where necessary for the purpose of exercising functions under the Act or the IBAC Act
- for the purposes of a proceeding for an offence against a relevant Act
- for the purpose of obtaining legal advice
- to an interpreter
- to a parent or guardian of a person who is under 18 years of age, or
- to an independent person for the purposes of enabling a person who is suffering a disability to understand an obligation under the Act.

Before disclosing any information the Company Secretary should be contacted for advice.

To prevent breaches of the confidentiality requirements and to minimise the possibility of detrimental action, Western Water will ensure all files, whether paper or electronic, are kept securely and can only be accessed by a welfare manager (in relation to welfare matters) or a person authorised by Western Water's Managing Director.

All printed material will be kept in files that are clearly marked as "Protected Disclosure Act" matter, and warn of the criminal penalties that apply to any unauthorised access or divulging of information concerning a protected disclosure. All electronic files will be given password protection or have limits on access rights and backup files will be kept. All materials relevant to an investigation, such as tapes from interviews, will also be stored securely with access only to employees authorised by the Managing Director.

Western Water must not email to general or business-wide inboxes or fax documents relevant to a protected disclosure matter and must ensure all phone calls and meetings are conducted in private.

Western Water's Welfare Management Obligations

Western Water is committed to ensuring the welfare of those who make or co-operate with protected disclosures. IBAC will only notify Western Water of a protected disclosure made about Western Water if it decides it is necessary. If IBAC does notify Western Water of the identity of a discloser, or someone cooperating with an investigation, such notifications are confidential and Western Water is responsible for providing that person with reasonable welfare support.

Where relevant, Western Water will consider appointing a welfare manager when a person has made a protected disclosure or is co-operating, or intending to co-operate, with an investigation of a protected disclosure.

A welfare manager is responsible for:

- examining the discloser and/or witness' immediate welfare and protection needs and, where that person is an employee, fostering a supportive work environment
- providing practical advice and support
- advising the discloser and/or witness of the protections available under the Act
- receiving and responding to any disclosures of detrimental action in reprisal for making the disclosure (e.g. harassment, intimidation or victimisation)
- ensuring that the discloser and/or witness' expectations of the process and outcomes are realistic
- maintaining confidentiality, and
- operating discreetly to protect the discloser and/or witness from being identified as being involved in a protected disclosure.

In determining whether to appoint a welfare management in any particular case, Western Water will consider:

- whether the disclosure has proceeded, or is likely to proceed, to an investigation
- whether there are any real risks of detrimental action against the persons involved, taking into account their particular circumstances
- whether Western Water can provide effective support to the persons involved, including keeping them informed of the progress of the disclosure, and
- whether it is within Western Water's power to protect the person/s involved from suffering repercussions.

Western Water may appoint an internal person as welfare manager or engage a contractor to provide welfare services. Western Water will also consider making use of its Employee Assistance Program (EAP) to provide welfare support.

Staff Protection Against Detrimental Action

Transfer of Employee

A Western Water employee who has made a protected disclosure and who believes on reasonable grounds that detrimental action will be, is being or has been taken against them in reprisal for a protected disclosure may request a transfer of employment. After making a protected disclosure an employee can be transferred internally to another part of Western Water or to a public service body on terms and conditions of employment that are no less favourable overall. This can only happen if the employee requests, or consents to, the transfer and the following conditions apply:

- The Managing Director has reasonable grounds to suspect that detrimental action will be, is being, or has been taken against the employee; and
- The Managing Director considers that the transfer will avoid, reduce or eliminate the risk of detrimental action; and
- If transfer to another public service body or public entity is proposed, the head of that body consents to that transfer.

The transfer can be temporary or permanent, and the employee's new service with a new body is regarded as continuous with their pre-transfer service.

Consequences for persons making disclosures where implicated in improper conduct

Where a person who makes a protected disclosure is implicated in misconduct, Western Water will handle any information it receives and protect the person making the disclosure from reprisals in accordance with the Act, the IBAC guidelines and these procedures.

Western Water acknowledges that the act of making protected disclosures should not shield persons from the reasonable consequences flowing from any involvement in improper conduct. The Act specifically provides that a person's liability for his or her own conduct is not affected by the person's disclosure of that conduct under the Act.

Disciplinary or other action against a person making a protected disclosure invariably creates the perception that it is being taken in retaliation for the protected disclosure, even though Western Water will often not have any information about the matter. If Western Water has information, the Managing Director will make the final decision as to whether disciplinary or other action will be taken against a person making a protected disclosure. Where disciplinary or other action relates to conduct that is the subject of that person's protected disclosure, if Western Water has that information, the disciplinary or other action will only be taken after the protected disclosed matter has been appropriately dealt with.

In all cases where disciplinary or other action is being contemplated, the Managing Director must be satisfied that it has been clearly demonstrated that:

- the intention to proceed with disciplinary action is not causally connected to the making of the protected disclosure (as opposed to the content of the protected disclosure or other available information)
- there are good and sufficient grounds that would fully justify action against any other person in the same circumstances, and
- there are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

The Managing Director will ensure that Western Water thoroughly documents the process including recording the reasons why the disciplinary or other action is being taken, and the reasons why the action is not in retribution for the making of the disclosure. The Managing Director will ensure that Western Water will clearly advise the person making the disclosure of the proposed action to be taken and of any mitigating factors that have been taken into account.

Related Documents

Protected Disclosures Policy
Protected Disclosure Act 2012 (Vic)
Code of Conduct

Responsibility for Implementation

Managing Director

These procedures will be reviewed every three years or earlier if impacted by legislative changes to ensure they meet the objectives of the Act and accord with IBAC guidelines.