



**WHISTLEBLOWERS PROTECTION
ACT 2001**

EXPLANATION OF PROCEDURES

**South East Water Limited
ABN 89 066 902 547**

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Introduction

South East Water (South East Water Limited ABN 89 066 902 547) has established procedures (**procedures**) under the *Whistleblowers Protection Act (Vic) 2001 (Act)*. The procedures are to be read together with the Act and the Ombudsman's Guidelines issued November 2001 (**guidelines**). The procedures relate to disclosures which could be made under the Act to the Ombudsman or South East Water in relation to activities of certain employees of South East Water.

The Act takes precedence over the guidelines and procedures.

This document is an explanation of South East Water's procedures.

1. Statement of support to whistleblowers

South East Water Limited ABN 89 066 902 547 (“South East Water”) is committed to the aims and objectives of the *Whistleblowers Protection Act 2001* (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 accord natural justice to the person who is the subject of the disclosure and other persons affected by the disclosure, where required.

2. Purpose of this document.

The South East Water whistleblower procedures establish a system for reporting disclosures of improper conduct or detrimental action by South East Water or its employees. The system enables such disclosures to be made to the protected disclosure coordinator or to one of the nominated protected disclosure officers. Disclosures may be made by employees or by members of the public.

This explanatory document explains the procedures. The procedures are designed to complement normal communication channels between supervisors and employees. Employees may take a disclosure of improper conduct or detrimental action under the Act. Employees are also encouraged to continue to raise appropriate matters at any time with their supervisors.

3. Objects of the Act

The *Whistleblowers Protection Act 2001* commenced operation on 1 January 2002. The purpose of the Act is to encourage and facilitate the making of disclosures of improper conduct by public officers and public bodies. The Act provides protection to whistleblowers who make disclosures in accordance with the Act, and establishes a system for the matters disclosed to be investigated and rectifying action to be taken.

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 is defined in s3 of the Act. It means:

- “(a) corrupt conduct; or
 - (b) a substantial mismanagement of public resources; or
 - (c) conduct involving substantial risk to public health or safety; or
 - (d) conduct involving substantial risk to the environment.
- that would, if proved, constitute
- (e) a criminal offence; or
 - (f) reasonable grounds for dismissal (or termination of services).”

Examples of Improper Conduct

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.

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.

4.2 Corrupt conduct

Corrupt conduct is one type of improper conduct and is defined in s3 of the Act. It means:

- “(a) conduct of a person (whether or not a public officer) that adversely affects the honest performance of a public officer's or public body's functions; or
- (b) the performance of a public officer's functions dishonestly or with inappropriate partiality; or
- (c) conduct of a public officer, former public officer or a public body that amounts to a breach of public trust; or
- (d) conduct of a public officer, former 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
- (e) a conspiracy or attempt to engage in the above conduct.”

4.3 Detrimental action

It is an offence for a person to take detrimental action against a person in reprisal for a protected disclosure (s18). Detrimental action is defined in s3 of the Act. It includes:

- “(a) action causing injury, loss or damage; and
- (b) intimidation or harassment; and
- (c) discrimination, disadvantage or adverse treatment in relation to a person’s employment, career, profession, trade or business, including the taking of disciplinary action.”

Examples of detrimental action

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 whistleblower due to the making of a disclosure.

A person threatens, abuses or carries out other forms of harassment directly or indirectly against the whistleblower, his or her family or friends.

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

5. Reporting and assessing disclosures

5.1 Summary of assessment steps

In summary, a disclosure which proceeds to an investigation under the Act will follow the following typical steps:

- (a) Disclosure is made to South East Water (s5);
- (b) Protected disclosure officer or co-ordinator decides if disclosure falls under the Act. It is a protected disclosure? (s5, Part 2)
- (c) If it is a protected disclosure, protected disclosure co-ordinator concludes whether it is a public interest disclosure. If so, it should be referred to the Ombudsman.
- (d) Ombudsman decides if matter is a public interest disclosure (s32). If it is, in most cases Ombudsman will refer matter back to public body for investigation (s42).

5.2 Contact persons within South East Water

Improper conduct or detrimental action by South East Water or its employees, may be disclosed to the following officers:

- Protected disclosure co-ordinator:

Kathryn Pile
Manager Customer Advocacy
20 Corporate Drive, Moorabbin, Victoria
Ph: (03) 9552 3118 Fax: 9552 3693
email: kathryn.pile@sewl.com.au

- Protected disclosure officer:

John Hussey
Manager Human Resources
20 Corporate Drive, Moorabbin, Victoria
Ph: (03) 9552 3683 Fax: 9552 3692
email: john.hussey@sewl.com.au

Once a protected disclosure has been made, the protected disclosure co-ordinator will appoint a welfare manager for the whistleblower, unless the whistleblower is anonymous (see chapters 12.1 of this document).

All correspondence, phone calls and e-mails from internal or external whistleblowers will be referred to the protected disclosure coordinator.

Where a person is contemplating making a disclosure and is concerned about approaching the protected disclosure coordinator or a protected disclosure officer in the workplace, he or she can call the relevant officer and request a meeting in a discreet location away from the workplace.

In any given case, employees involved in responding to disclosures or assisting whistleblowers will only communicate what is absolutely necessary to other employees also necessarily involved in that matter. (Section 22 of the Act makes it an offence to disclose confidential information other than in accordance with the Act.

5.3 *Alternative contact persons*

Improper conduct or detrimental action by South East Water or its employees, may also be disclosed directly to the Ombudsman:

The Ombudsman Victoria
Level 22, 459 Collins Street
Melbourne Victoria 3000
(DX 210174)

Internet: www.ombudsman.vic.gov.au
Email: ombudvic@ombudsman.vic.gov.au
Tel: 9613 6222 Toll Free: 1800 806 314
Ombudsman: Dr Barry Perry Tel: (03) 9613 6202

Improper conduct or detrimental action by people other than South East Water employees may be disclosed to other public bodies, or the Ombudsman. Contact the Ombudsman if you are not sure about where to make a disclosure.

6. Roles and responsibilities

6.1 Employees

Employees are encouraged to report known or suspected incidents of improper conduct or detrimental action.

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.

6.2 Protected disclosure officers

Protected disclosure officers in South East Water will:

- Be a contact point for general advice about the Act for any person wishing to make a disclosure;
- Arrange for a disclosure to be made privately and discreetly and, if needed, away from the workplace;
- Receive any disclosure made orally or in writing (from internal and external whistleblowers);
- Commit to writing any disclosure made orally;
- Impartially assess the allegation and determine whether it is a disclosure made in accordance with Part 2 of the Act (that is, ‘a protected disclosure’);
- Take all necessary steps to keep confidential the identity of the whistleblower and the identity of the person who is the subject of the disclosure; and
- Forward all disclosures and supporting evidence to the protected disclosure coordinator.

6.3 Protected disclosure coordinator

The protected disclosure coordinator has a central ‘clearinghouse’ role in the internal reporting system. He or she will:

- Receive all disclosures forwarded from the protected disclosure officers;
- Receive all phone calls, e-mails and letters from members of the public or employees seeking to make a disclosure;
- Impartially assess each disclosure to determine whether it is a public interest disclosure;
- Refer all public interest disclosures to the Ombudsman;
- Be responsible for carrying out, or appointing an investigator to carry out, an investigation referred to South East Water by the Ombudsman;
- Be responsible for overseeing and coordinating an investigation where an investigator has been appointed;

- Appoint a welfare manager to support the whistleblower and to protect him or her from any reprisals;
- Advise the whistleblower 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 keep confidential the identity of the whistleblower and the identity of the person who is the subject of the disclosure; and
- Liaise with the chief executive officer of South East Water to the extent practicable.

6.4 Investigator

The investigator will be responsible for carrying out an internal investigation into a disclosure where the Ombudsman has referred a matter to, or back to, the public body. An investigator may be a person from within South East Water or a consultant engaged for that purpose.

6.5 Welfare manager

The welfare manager is responsible for looking after the general welfare of the whistleblower. The welfare manager will:

- Examine the immediate welfare and protection needs of a whistleblower who has made a disclosure and seek to foster a supportive work environment (while keeping the disclosure confidential where required);
- Advise the whistleblower of the legislative and administrative protections available to him or her;
- Listen and respond to any concerns of harassment, intimidation or victimisation in reprisal;
- Ensure the expectations of the whistleblower are realistic; and
- Keep contemporaneous notes of all contact and follow-up action.

7. Confidentiality, information management and anonymous disclosures

South East Water will take all reasonable steps to protect the identity of the whistleblower. Maintaining confidentiality is crucial in ensuring reprisals are not made against a whistleblower.

Where anonymous disclosure are made, (which may indicate an email address or PO Box), South East Water will not generally attempt to communicate with or respond to the anonymous whistleblower. Part of the reason for this is that the recipient of any such contact is unknown, and confidentiality obligations may be breached through such an attempt.

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 (section 22). Disclosure of information in breach of

section 22 constitutes an offence that is punishable by a maximum fine of 60 penalty units (\$6000) or six months imprisonment or both.

A person may disclose information obtained about a protected disclosure in the circumstances such as:

- Where exercising the functions of the public body under the Act;
- When making a report or recommendation under the Act;
- When publishing statistics in the annual report of a public body; and
- In criminal proceedings for certain offences in the Act.

However, a person must not include information in any report, (including the annual report) or recommendation that is likely to lead to the identification of the whistleblower.

South East Water will take reasonable steps to ensure all files, whether paper or electronic, are kept secure.

South East Water will not e-mail documents relevant to a whistleblower matter and will ensure all phone calls and meetings are conducted in private.

8. Collating and publishing statistics

The protected disclosure coordinator will establish a secure register to record the information required to be published in the annual report, and to keep account of the status of whistleblower disclosures. The register will be confidential and will not record any information that may identify the whistleblower.

The register will contain information about the number and types of disclosures:

- made to South East Water during the year;
- referred to the Ombudsman for determination as to whether they are public interest disclosures;
- referred to the public body by the Ombudsman for investigation;
- referred by the public body to the Ombudsman for investigation;
- where investigations have been taken over from the public body by the Ombudsman;
- where a whistleblower has asked the Ombudsman to take over an investigation by the public body;
- where the public body has declined to investigate;
- that were substantiated upon investigation, and the action taken on completion of the investigation; and
- any recommendations made by the Ombudsman that relate to the public body.

9. Receiving and assessing disclosures

9.1 Has the disclosure been made in accordance with Part 2 of the Act?

Where a disclosure has been received by the protected disclosure officer or by the protected disclosure coordinator, he or she will assess whether the disclosure has been made in accordance with Part 2 of the Act and is, therefore, a protected disclosure.

9.1.1 Does the disclosure concern South East Water?

For the disclosure to be responded to by South East Water, it must concern an employee, member or officer of South East Water. If the disclosure concerns an employee, officer or member of another public body, the person who has made the disclosure be advised to contact the Ombudsman or other appropriate body. If the disclosure does not concern South East Water and has been made anonymously to South East Water, it should be referred to the Ombudsman.

9.1.2 Is the disclosure a protected disclosure?

To be a protected disclosure, a disclosure must satisfy the following criteria:

- a natural person (that is, an individual person rather than a corporation) made (or appears to have made) the disclosure;
- The disclosure relates to conduct of a public body or public officer acting in their official capacity;
- The alleged conduct is either improper conduct or detrimental action taken against a person in reprisal for making a protected disclosure;
- The person making a disclosure has reasonable grounds for believing the alleged conduct has occurred.

Where a disclosure is assessed to be a protected disclosure, it is referred to the protected disclosure coordinator. The protected disclosure coordinator will determine whether the disclosure is a public interest disclosure.

Where a disclosure is assessed not to be a protected disclosure, the matter **does not need to be dealt with under the Act**. The protected disclosure officer will decide how the matter should be responded to in consultation with the protected disclosure coordinator.

9.2 Is the disclosure a public interest disclosure?

Only public interest disclosures will require investigation under the Act, in accordance with the requirements of the Act and only after the Ombudsman has determined that the matter involves a public interest disclosure.

9.2.1 Public interest disclosures – decision-making process?

Where the protected disclosure officer or coordinator has received a disclosure that has been assessed to be a protected disclosure, the protected disclosure coordinator will conclude whether the disclosure amounts to a public interest disclosure. **This assessment will be made within 45 days of the receipt of the disclosure (s28)**. Once the matter has been referred to the Ombudsman, the Ombudsman will make the final decision as to whether the disclosure is a public interest disclosure under s32.

9.2.2 Is the disclosure a public interest disclosure?

In considering whether a protected disclosure is a public interest disclosure, the protected disclosure coordinator will consider the test in s.28, that is:

“Whether the disclosure **shows or tends to show** that the public officer to whom the disclosure relates:

- (a) has engaged, is engaging or proposes to engage in improper conduct in his or her capacity as a public officer; or
- (b) has taken, is taking or proposes to take detrimental action in contravention of s18”.

Where the protected disclosure coordinator concludes that the disclosure amounts to a public interest disclosure, he or she will:

- “(a) Notify the person who made the disclosure of that conclusion; and
- (b) Refer the disclosure to the Ombudsman for a determination as to whether it is a public interest disclosure.” (s29)

Where the protected disclosure coordinator concludes that the disclosure is not a public interest disclosure, he or she will:

- (a) Notify the person who made the disclosure of that conclusion; and
- (b) Advise that person that:
 - “(i) he or she may request the public body to refer the disclosure to the Ombudsman for a formal determination as to whether it is a public interest disclosure; and
 - (ii) the person’s request must be made within 28 days of the notification.” (s30).

In either case, the protected disclosure coordinator will make the notification and the referral within 14 days of the conclusion being reached by the public body. Notification to the whistleblower is not necessary where the disclosure has been made anonymously.

10. Investigations

10.1 Introduction

Where the Ombudsman refers a protected disclosure to South East Water for investigation, the protected disclosure coordinator will appoint an investigator to carry out the investigation. (Investigations under the Act are only required for public interest disclosures and the need for an investigation will always be determined by the Ombudsman. If the matter is not a public interest disclosure South East Water will still consider whether the complaint warrants investigation and a response in line with the normal complaints management process.)

The objectives of an investigation will be:

- To collate information relating to the allegation as quickly as possible. This may involve taking steps to protect or preserve documents, materials and equipment;
- To consider the information collected and to draw conclusions objectively and impartially;
- To maintain procedural fairness in the treatment of witnesses and the person who is the subject of the disclosure; and

- To make recommendations arising from the conclusions drawn concerning remedial or other appropriate action.

10.2 Terms of reference

Before commencing an investigation, the protected disclosure coordinator will draw up terms of reference. The terms of reference will set a date by which the investigation report is to be concluded, and will describe the resources available to the investigator to complete the investigation within the time set. The protected disclosure coordinator may approve, if reasonable, an extension of time requested by the investigator. The terms of reference will require the investigator to make regular reports to the protected disclosure coordinator who, in turn, is to keep the Ombudsman informed of general progress.

10.3 Investigation plan

The investigator will prepare an investigation plan for approval by the protected disclosure coordinator. The plan will list the issues to be substantiated and describe the avenue of inquiry. It will address the following issues:

- What is being alleged?
- What are the possible findings or offences?
- What are the facts in issue?
- How is the inquiry to be conducted?
- What resources are required?

At the commencement of the investigation, the whistleblower should be:

- Notified by the investigator that he or she has been appointed to conduct the investigation;
- Asked to clarify any matters; and
- Provide any additional material he or she might have.

The investigator will be sensitive to the whistleblower's possible fear of reprisals and will be aware of the statutory protections provided to the whistleblower.

10.4 Natural justice

The principles of natural justice will be followed in any investigation of a public interest disclosure. The principles of natural justice concern procedural fairness and ensure a fair decision is reached by an objective decision maker. Maintaining procedural fairness protects the rights of individuals and enhances public confidence in the process.

South East Water will have regard to the following issues to ensure procedural fairness is accorded and that good decision making procedures are followed generally:

- If the investigator is contemplating making a report adverse to the interests of any person, the investigator should consider whether the person affected by the report should be given the opportunity to put forward further material that may influence the outcome of the report;
- All relevant parties to a matter should be heard and all submissions should be considered;
- A decision should not be made until all reasonable inquiries have been made;
- The investigator or any decision maker should not have a personal or direct interest in the matter being investigated;
- All proceedings should be carried out fairly and without bias and the appearance of bias should be avoided; and
- The investigator must be impartial in assessing the credibility of the whistleblowers and any witnesses (and should identify conclusions on credibility issues in the investigation report).

10.5 Conduct of the investigation

The investigator will make contemporaneous notes of all discussions and phone calls, and all interviews with witnesses will be taped. All information gathered in an investigation will be stored securely. Interviews will be conducted in private and the investigator will take all reasonable steps to protect the identity of the whistleblower. Where disclosure of the identity of the whistleblower cannot be avoided, due to the nature of the allegations, the investigator will warn the whistleblower and his or her welfare manager of this probability.

It is in the discretion of the investigator to allow any witness to have legal or other representation or support during an interview. Special needs for legal or other support should be considered.

10.6 Referral of an investigation to the Ombudsman

The protected disclosure coordinator will make a decision regarding the referral of an investigation to the Ombudsman where, on the advice of the investigator:

- The investigation is being obstructed by, for example, the non-cooperation of key witnesses; or
- The investigation has revealed conduct that may constitute a criminal offence.

10.7 Reporting requirements

The protected disclosure coordinator will ensure the whistleblower (unless the whistleblower is anonymous) is kept regularly informed concerning the handling of a protected disclosure and an investigation. However, it may not be appropriate to tell the whistleblower all details regarding the investigation.

The protected disclosure coordinator will report to the Ombudsman about the progress of an investigation.

Where the Ombudsman or the whistleblower requests information about the progress of an investigation, that information will be provided within 28 days of the date of the request.

11. Action taken after an investigation

11.1 Investigator's final report

At the conclusion of the investigation, the investigator will submit a written report of his or her findings to the protected disclosure coordinator. The report will contain:

- The allegation/s;
- relevant information obtained;
- reasons for rejecting any evidence;
- conclusions reached and the basis for them; and
- recommendations arising from the conclusions.

Where the investigator has found that the conduct disclosed by the whistleblower has occurred, recommendations made by the investigator will include:

- steps that need to be taken by South East Water to prevent the conduct from occurring in the future; and
- any action that should be taken by South East Water to remedy any harm or loss arising from the conduct. This action may include bringing disciplinary proceedings against the person responsible for the conduct, and referring the matter to an appropriate authority for further consideration.

The report will be accompanied by:

- transcript or other record of any oral evidence taken, including tape recordings; and
- documents, statements or other exhibits received by the officer during the course of the investigation.

Where the investigator's report is to include an adverse comment against any person, that person should generally be given the opportunity to respond to the allegations made against them and to respond to any adverse evidence obtained. As an additional precaution the person affected may be given a copy of any proposed adverse conclusions and given an opportunity to comment further on these aspects. His or her defence will be fairly included in the report.

The report should not disclose particulars likely to lead to the identification of the whistleblower.

11.2 Action to be taken

If the protected disclosure coordinator is satisfied that the investigation has found that the disclosed conduct has occurred, he or she will recommend to the chief executive officer the action that must be taken to prevent the conduct from continuing or occurring in the future. The protected disclosure coordinator may also recommend that action be taken to remedy any harm or loss arising from the conduct.

The protected disclosure coordinator will provide a written report to the Minister for Environment and Conservation, the Ombudsman, and the whistleblower, setting out the findings of the investigation and any remedial steps taken.

Where the investigation concludes that the disclosed conduct did not occur, the protected disclosure coordinator will report these findings to the Ombudsman and to the whistleblower.

12. Managing the welfare of the whistleblower

12.1 Commitment to protecting whistleblowers

South East Water is committed to the protection of genuine whistleblowers (see chapter 1 of this document).

All whistleblowers will be allocated a welfare manager (see chapter 5.2 and 6.5 of this document).

The Act prohibits detrimental action against whistleblowers (see chapter 4.3 of this document).

12.2 Keeping the whistleblower informed

The protected disclosure coordinator will ensure the whistleblower (unless the whistleblower is anonymous) is kept informed of action taken in relation to his or her disclosure, and the time frames that apply. The whistleblower will be informed of the objectives of an investigation, the findings of an investigation, and the steps taken by South East Water to address any improper conduct that has been found to have occurred. The whistleblower will be given reasons for decisions made by South East Water in relation to a protected disclosure. All communication with the whistleblower will usually be in plain English.

12.3 Occurrence of detrimental action

If a whistleblower 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 welfare manager will:

- record details of the incident;
- advise the whistleblower of his or her rights under the Act; and
- advise the protected disclosure coordinator or 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. Where such detrimental action is reported, the protected disclosure coordinator will assess the report as a new disclosure under the Act. Where the protected disclosure coordinator is satisfied that the disclosure is a public interest disclosure, he or she will refer it to the Ombudsman. If the Ombudsman subsequently determines the matter to

be a public interest disclosure, the Ombudsman may investigate the matter or refer it to another body for investigation as outlined in the Act.

12.4 Whistleblowers implicated in improper conduct

Where a person who makes a disclosure is implicated in misconduct, South East Water will handle the disclosure and protect the whistleblower from reprisals in accordance with the Act, the Ombudsman's guidelines and the procedures. South East Water acknowledges that the act of whistleblowing should not shield whistleblowers from the reasonable consequences flowing from any involvement in improper conduct. Section 17 of 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. However, in some circumstances, an admission may be a mitigating factor when considering disciplinary or other action.

The chief executive officer will make the final decision on the advice of the protected disclosure coordinator as to whether disciplinary or other action will be taken against a whistleblower. Where disciplinary or other action relates to conduct that is the subject of the whistleblower's disclosure, the disciplinary or other action will only be taken after the disclosed matter has been appropriately dealt with.

In all cases where disciplinary or other action is being contemplated, the chief executive officer 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 disclosure (as opposed to the content of the disclosure or other available information);
- There are good and sufficient grounds that would fully justify action against any non-whistleblower in the same circumstances; and
- There are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

The protected disclosure coordinator will thoroughly document 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 protected disclosure coordinator will clearly advise the whistleblower of the proposed action to be taken, and of any mitigating factors that have been taken into account.

13. Management of the person against whom a disclosure has been made

South East Water recognises that employees against whom disclosures are made must also be supported during the handling and investigation of disclosures. South East Water will take all reasonable steps to ensure the confidentiality of the person who is the subject of the disclosure during the assessment and investigation process. Where investigations do not substantiate disclosures, the fact that the investigation has been carried out, the results of the investigation, and the identity of the person who is the subject of the disclosure will remain confidential.

The protected disclosure coordinator will ensure the person who is the subject of any disclosure investigated by or on behalf of a public body is:

- informed as to the substance of the allegations;
- given the opportunity to answer the allegations before a final decision is made;
- informed of any adverse evidence obtained;
- given the opportunity to respond, and has his or her defence set out fairly in any report.

As an additional precaution, the person affected may in some cases be given a copy of any proposed adverse conclusions and given an opportunity to comment further on these aspects.

Where the allegations in a disclosure have been investigated, and the person who is the subject of the disclosure is aware of the allegations or the fact of the investigation, the protected disclosure coordinator will formally advise the person who is the subject of the disclosure of the outcome of the investigation.

South East Water will give its full support to a person who is the subject of a disclosure where the allegations contained in a disclosure are clearly wrong or unsubstantiated. If the matter has been publicly disclosed, the chief executive officer of South East Water will consider any request by that person to issue a statement of support setting out that the allegations were clearly wrong or unsubstantiated.

14. Criminal offences

South East Water will ensure officers appointed to handle protected disclosures and all other employees are aware of the following offences created by the Act:

1. It is an offence for a person to take detrimental action against a person in reprisal for a protected disclosure being made. The Act provides a maximum penalty of a fine of 240 penalty units (\$24,000) or two years imprisonment or both.
2. It is an offence for a person to divulge information obtained as a result of the handling or investigation of a protected disclosure without legislative authority. The Act provides a maximum penalty of 60 penalty units (\$6,000) or six months imprisonment or both.
3. It is an offence for a person to obstruct the Ombudsman in performing his responsibilities under the Act. The Act provides a maximum penalty of 240 penalty units (\$24,000) or two years imprisonment or both.
4. It is an offence for a person to knowingly provide false information under the Act with the intention that it be acted on as a disclosed matter. The Act provides a maximum penalty of 240 penalty units (\$24,000) or two years imprisonment or both.

15. Errors to be avoided

The Queensland Criminal Justice Commission (CJC) compiled the list below of errors to be avoided in managing whistleblowers. It can be found on page 29 of the CJC's publication *Exposing Corruption – ACJC guide to whistleblowing in Queensland*, published in October 1996.

The following organisational errors in the management of whistleblower disclosures occur more often than many may think and can have serious consequences. The actions have the potential to effectively contaminate the relationship between the whistleblower and the investigating authority and prejudice the integrity of any investigation:

1. Fail to observe the confidentiality of a disclosure by having information pass through a series of hands with few checks as to who has, or who should, view the material.
2. Tell anyone who asks about the details and investigations of the disclosure.
3. Report to the work group who the whistleblower is, what the allegations are, and whom they are about.
4. Interpret natural justice to mean a person has immediate right to know when a disclosure has been made about them and who made it.
5. Always as a first step, ask the person who is the subject of the disclosure about the allegation.
6. Forward the disclosure and action on it through the chain of command so as many people know about the matter as possible.
7. Forewarn the person who is the subject of an allegation in plenty of time about the allegations and provide them with investigation details.
8. Allow personal biases about the personality of the whistleblower to influence the assessment of a disclosure.
9. Do not take seriously the concerns expressed by a whistleblower about the possibility of reprisal.
10. Ignore potential conflicts of interest when deciding who should assess or investigate the disclosure.
11. Allow political considerations to influence the assessment of a disclosure or the findings of an investigation.
12. Delay the investigation for as long as possible so any evidence of wrongdoing can be altered or destroyed.

16. Review of the procedures

The South East Water whistleblower procedures will be reviewed annually to ensure they meet the objectives of the Act and accord with the Ombudsman's guidelines.

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