

Title	Public Interest Disclosure Procedure (Including Whistleblowing)		
Document Sponsor	Company Secretary		
Prepared By	Governance Officer		
Authorised by	Trust	Date First Adopted:	25/11/2020
Version	00.00	Date This Version Approved:	25/11/2020
Next Review Date (3 years from date of approval or on changes to legislation or Ministerial Direction)	25/11/2023	Document No:	011
Business Function	Governance		
Keywords	Disclosure, fraud, whistleblower,		

UNDER THE PUBLIC INTEREST DISCLOSURES ACT 2012, GMCT IS NOT AN AUTHORISED PUBLIC SECTOR BODY TO RECEIVE A PUBLIC INTEREST DISCLOSURE (PID). REPORTS OF FRAUD, CORRUPTION OR SUSPECTED FRAUD AND CORRUPTION CAN BE MADE TO IBAC AS FOLLOWS:

Independent Broad-Based Anti-Corruption Commission (IBAC)

Telephone: 1300 735 135

Web address: <https://www.ibac.vic.gov.au/reporting-corruption/complaints-form>

Street address: Level 1, North Tower, 459 Collins Street, Melbourne Vic 3000

Postal address: GPO Box 24234, Melbourne Vic 3001

1. Introduction

1.1 Purpose

Under Section 59 (1) of the *Public Interest Disclosures Act 2012* (PID), the Greater Metropolitan Cemeteries Trust (GMCT) must establish procedures for facilitating and dealing with PID relating to GMCT. The procedures must include:

- encouraging and facilitating the disclosure of information of suspected wrongdoing in the public sector
- ensuring that public officials who make public interest disclosures are supported and protected from adverse consequences

GMCT is committed to the highest standards of ethical and accountable conduct and encourages the reporting of wrongdoing under the PID Act. GMCT will also protect disclosers from any reprisals or threats of reprisals as a result of making a disclosure.

This document has been adapted from Fraud, Corruption Control & Public Disclosures Framework template provided by the Department of Health and Human Services.

2 What is a disclosure?

A disclosure is a report about the improper conduct of public bodies or public officers that a person makes to any of the organisations specified in Part 2 of PID. The disclosure can relate to conduct or action that:

- may have already taken place (including conduct that occurred before 10 February 2013 when the PID Act came into effect)
- may be occurring now, or
- may happen in the future.

A disclosure can also be made about detrimental action that a public officer or public body takes against a person in reprisal for them (or another person) having made a public interest disclosure or cooperated with the investigation of a disclosure. A complaint or allegation that is already in the public domain will not normally be a public interest disclosure - for example, if the matter has already been subject to media or other public commentary.

3 Who can make a disclosure?

Any person can make a public interest disclosure about improper conduct occurring in GMCT, or detrimental action taken by GMCT or one of its officers.

A company or business cannot make a public interest disclosure.

You can ask someone else to make a disclosure on your behalf. However, if you ask someone else to make a disclosure on your behalf, only that person will receive the full protection of the Act in relation to that disclosure. Your protection will be limited to confidentiality and protection against detrimental action taken against you in reprisal for the disclosure that has been made. In such circumstances it is recommended to make the disclosure jointly.

You do not have to specifically refer to the Act or the protections in the Act for your disclosure to be a 'public interest disclosure'. You may also advise that you do not want your disclosure to be treated as a 'public interest disclosure'.

4 What can I make a public interest disclosure about?

You may make a public interest disclosure about information that shows or tends to show, or that you believe on reasonable grounds shows or tends to show, that:

- a person, public officer or public body
- is engaging in, or proposing to engage in;
- 'improper conduct' and/or 'detrimental action'.

5 Public officer and public body

The conduct you are disclosing must be in the performance of a person or body's function as a public officer or public body. In other words, there must be a link between the alleged improper conduct and/or detrimental action and the person or body's functions as a public officer or public body.

Public bodies or public officers include GMCT and its agencies. For a full definition of 'public body' and 'public officer' see Schedule 1 of these procedures.

6 Improper conduct and detrimental action

The conduct you are disclosing must be improper conduct and/or detrimental action. The definitions of improper conduct and detrimental action are explained in the diagram below.

'Improper conduct' is defined as:
'CORRUPT CONDUCT' or 'SPECIFIED CONDUCT'

Corrupt conduct is:

Conduct that:

- adversely affects the honest performance of functions by a public officer or public body;
- involves the dishonest performance of functions by a public officer or public body;
- involves a breach of public trust;
- involves a misuse of information acquired in the performance of functions as a public officer or public body; or
- involves a conspiracy or an attempt to engage in any of the above conduct

AND

- would constitute:
 - an indictable offence;
 - an attempt to pervert the course of justice;
 - bribery of a public official; or
 - perverting the course of justice.

Specified conduct is:

Corrupt conduct that would not constitute an indictable offence, but would constitute either a criminal offence or reasonable grounds for dismissing or terminating the services of the officer engaged in the conduct

OR

Conduct that:

- involves a substantial mismanagement of public resources;
- involves a substantial risk to public health and safety; or
- involves a substantial risk to the environment

AND

- would constitute a criminal offence, or reasonable grounds for dismissing or terminating the services of the officer engaged in the conduct, an attempt to pervert the course of justice, bribery of a public official or perverting the course of justice.

'Detrimental conduct' is defined as:

Action taken against a person who has made a protected disclosure which:

- Causes injury, loss or damage;
- intimidation or harassment; or
- discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business (including disciplinary action).

Detrimental action is not: legitimate management action where there are good and sufficient grounds that would justify the action against any other person in the same circumstances.

Examples of improper conduct – An employee takes a bribe or receives a payment other than his or her wages in exchange for the discharge of a public duty. An employee sells confidential information. A public officer favours unmeritorious applications for jobs or permits by friends and relatives.

Examples of detrimental action - A public body demotes, transfers, isolates in the workplace or changes the duties of a person who has made a disclosure due to the making of a disclosure. A public body discriminates against the person who makes a disclosure or his or her family and associates in subsequent applications for jobs, permits or tenders.

7 To whom do I make my public interest disclosure?

GMCT is not authorised to receive Public Interest Disclosures. If you wish to make a Public Interest Disclosure about GMCT activities or GMCT employees, you must contact IBAC directly as follows:

8 The Independent Broad-based Anti-corruption Commission (IBAC)

IBAC only investigate allegations of corruption occurring within public bodies. Any employee can make a report of corruption or misconduct directly to IBAC. IBAC assesses these reports to determine if they will conduct an investigation, or refer to another investigative body.

Reports of fraud, corruption or suspected fraud and corruption can be made to IBAC as follows:

Telephone: 1300 735 135

Web address: <https://www.ibac.vic.gov.au/reporting-corruption/complaints-form>

Street address: Level 1, North Tower, 459 Collins Street, Melbourne Vic 3000

Postal address: GPO Box 24234, Melbourne Vic 3001

9 What will happen after I make a disclosure?

Disclosures made to IBAC will be handled in accordance with IBAC's guidelines and processes. The receipt of your disclosure will be acknowledged verbally, or in writing (if a postal or email address is known). You will also be advised of the key steps involved in the process for handling your disclosure.

Regardless of whether IBAC determines your disclosure is a public interest disclosure or not, you will still receive the protections under the Act. This includes protection from detrimental action taken in reprisal for you making the disclosure. However, if IBAC determines that your disclosure is not a public interest disclosure, the confidentiality requirements set out in these procedures no longer apply in relation to your disclosure. You will be advised the outcome of the IBAC determination.

10 What protections will I receive?

The Act sets out the protections provided to persons who make a disclosure in accordance with the Act. These include:

- immunity from civil or criminal liability as well as administrative action (including disciplinary action) for making the disclosure
- immunity from committing an offence under the Constitution Act 1975 or any other Act that imposes obligations of confidentiality or otherwise restricts the disclosure of information
- immunity from breaching any other obligation (made by oath or rule of law or practice) requiring the maintenance of confidentiality or otherwise restricting the disclosure of information
- protection from an action for defamation.

These protections apply to a disclosure from the time you make the disclosure and continue to apply even if IBAC determines that the disclosure is not a 'public interest disclosure'. The protections in the Act do not apply if you knowingly provide false or misleading information or claim that a matter is the subject of a public interest disclosure knowing that claim to be false. The protections will apply to further information relating to a public interest disclosure that you provide to IBAC or another investigating entity.

You must not tell anyone else about your public interest disclosure except in the circumstances set out in these procedures or as permitted by the Act. If you repeat your disclosure to someone other than as provided by these procedures or permitted by the Act, you may lose the protections provided for in the Act. For example, if a disclosure is repeated to the media and the media reports on it, you may not be protected from defamation action.

If you are considering releasing information about your disclosure, you may wish to obtain legal advice first. IBAC will only disclose information about you or your disclosure in accordance with the law, including the Act.

11 Detrimental action taken in reprisal for a public interest disclosure

The PID Act creates an offence for a person to take detrimental action against another person in reprisal for someone making a public interest disclosure. The person(s) taking the detrimental action must be a public officer or body.

Section 3 of the PID Act defines detrimental action by a person as including the following:

- action causing injury, loss or damage; or
- intimidation or harassment; or
- discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action.

The person need not have actually taken the action, but can just have threatened to do so. The person need not have taken or threatened to take the action against the person themselves, but can have incited someone else to do so. The detrimental action need not be taken against a discloser, but against any person. The person (or the person they have incited) must take or threaten the action, because, or in the belief that the:

- other person or anyone else has made, or intends to make, the disclosure
- other person or anyone else has cooperated, or intends to cooperate with an investigation of the disclosure.

12 Welfare Management

In addition to the statutory protection from detrimental action, GMCT recognises that the welfare and protection from detrimental action of persons making genuine public interest disclosures is essential for the effective implementation of the Act and is relevant to GMCT's obligation to provide a safe working environment under the *Occupational Health and Safety Act 2004*, the *Charter of Human Rights and Responsibilities Act 2006*, the *Public Administration Act 2004 (Vic)* and the common law.

GMCT will provide welfare support to a discloser or witness in an investigation as the circumstances require, and also where a GMCT employee has a public interest disclosure made against them, in accordance with item 4, Schedule 1 of the Act.

If GMCT becomes aware that an employee has made a public interest disclosure, the Public Interest Disclosure Coordinator may appoint a Welfare Officer for the employee making a disclosure, following due consideration of any risks faced by the employee. At the same time there may also be welfare needs of other people who may be involved in the investigation.

The Welfare Officer may monitor the needs of the discloser/other person and provide practical advice and support. In most circumstances, the Welfare Officer will only be required where a public interest disclosure complaint proceeds to investigation, but each case will be assessed on its own merits.

The Welfare Officer (if appointed) will not be expected to go beyond what is reasonable in providing support. The Welfare Officer will discuss the issue of reasonable expectations with the discloser or other person. An employee who has made a public interest disclosure may wish to use GMCT's employee assistance program for further welfare support.

If a GMCT employee has made a public interest disclosure to IBAC and believes on reasonable grounds that detrimental action will be, is being, or has been taken against them, the employee may request a transfer to another area.

Disclosures about detrimental action can be made to the GMCT Public Interest Disclosure Coordinator, Chief Executive Officer or to IBAC.

GMCT Public Interest Disclosure Coordinator

Company Secretary

1187 Sydney Road, Fawkner Vic 3060

Tel: 03 9355 3175 | Mobile: 0455 140 105

Alternative GMCT Public Interest Disclosure Coordinator

Chief Executive Officer

1187 Sydney Road, Fawkner Vic 3060

Tel: (03) 9355 3100

GMCT will also meet the welfare needs of a person who is the subject of a public interest disclosure. Until a public interest disclosure complaint is resolved – through its dismissal, investigation, or where some other outcome is reached – information about the person is only an allegation. This person is also likely to need support once they become aware that they are the subject of a disclosure.

13 Limitations on protections

A discloser is not protected if they commit an offence under section 72 or 73 of the PID Act, as follows:

- A person must not provide false or misleading information, or further information that relates to a public interest disclosure, that the person knows to be false or misleading in a material particular, intending that the information be acted on as a public interest disclosure
- A person must not claim that a matter is the subject of a public interest disclosure knowing the claim to be false
- A person must not falsely claim that a matter is the subject of a public interest disclosure that IBAC has determined to be a public interest disclosure complaint

Offences of this nature may attract a penalty such as a fine, imprisonment, or both.

An employee making the public interest disclosure is not subject to criminal or civil liability for making the disclosure under section 39 of the PID Act. However section 42 of the PID Act specifically provides that a person remains liable for their own conduct even though the person has made a disclosure of that conduct under the PID Act.

An employee who makes a disclosure is not protected from legitimate management action taken by GMCT, and may be held responsible for their own conduct that they disclose as part of the public interest disclosure. The Chief Executive Officer will make the final decision on the advice of the Public Interest Disclosure Coordinator as to whether disciplinary or other action will be taken against an employee discloser regarding their own conduct. Where disciplinary or other action relates to conduct that is the subject of the disclosure, the disciplinary or other action will only be taken after the disclosed matter has been dealt with appropriately.

14 Offences under the *Public Interest Disclosure Act*

There are a number of offences set out in the Act relating to breaches of the requirements of the Act. The key offences to be aware of are:

- (a) it is an offence to take detrimental action against another person in reprisal for a public interest disclosure
- (b) it is an offence to disclose the content, or information about the content, of a disclosure that has been notified to IBAC by the department or information which is likely to lead to the identification of the person who made that disclosure unless permitted to by the Act
- (c) it is an offence for any person to:
 - i. provide false or misleading information, or further information that relates to a public interest disclosure, that the person knows to be false or misleading in a material particular, intending that the information be acted on as a public interest disclosure
 - ii. claim that a matter is the subject of a public interest disclosure knowing the claim to be false
 - iii. falsely claim that a matter is the subject of a disclosure that IBAC has determined to be a public interest disclosure complaint
- (d) it is an offence for any person to:
 - i. disclose that a disclosure has been notified to IBAC for assessment unless permitted to do so by the Act
 - ii. disclose that a disclosure has been determined to be a disclosure complaint unless permitted to do so by the Act.

15 References & Related Materials

Legislation & Regulations

Public Interest Disclosure Act 2012 (Vic)

Independent Broad-Based Anti-Corruption Commission Act 2011 (IBAC Act)

Privacy Act 2000 (Vic)

Related GMCT Documents

Code of Conduct No. 008

16 Document History

Date	Details of Change
February 2014	Replace Whistleblower Protection Policy & Procedure
September 2017	Policy reviewed, simplified and amended
November 2020	Policy reviewed, updated to refer to "Public Interest Disclosure" and new legislation, aligned to DHHS framework

Schedule 1

What is a public body and what is a public officer?

A public body is:

1. a public sector body within the meaning of s 4(1) of the *Public Administration Act 2004*
2. a body, whether corporate or unincorporated, established by or under an Act for a public purpose, including a university
3. the Electoral Boundaries Commission constituted under the *Electoral Boundaries Commission Act 1982*
4. a Council
5. a body that is performing a public function on behalf of the State or a public body or public officer (whether under contract or otherwise)
6. any other body or entity prescribed for the purposes of this definition.

A public officer is:

1. a person employed in any capacity or holding any office in the public sector within the meaning of section 4(1) of the *Public Administration Act 2004*
2. a person to whom a provision of the *Public Administration Act 2004* applies as a result of the application of Part 7 of that Act
3. an ongoing employee or temporary employee in the teaching service under the *Education and Training Reform Act 2006*
4. a judicial employee employed under Division 3 of Part 6 of the *Public Administration Act 2004*
5. a Ministerial officer employed under Division 1 of Part 6 of the *Public Administration Act 2004*
6. an electorate officer within the meaning of the *Parliamentary Administration Act 2005*
7. a Parliamentary adviser employed under Division 2 of Part 6 of the *Public Administration Act 2004*
8. a Parliamentary officer within the meaning of the *Parliamentary Administration Act 2005*
9. a member of police personnel
10. a responsible Minister of the Crown
11. a member of the Legislative Assembly or the Legislative Council
12. a Councillor within the meaning of section 3(1) of the *Local Government Act 1989*
13. a member of Council staff employed under the *Local Government Act 1989*
14. a judge, a magistrate, a coroner or a member of VCAT
15. an associate judge or a judicial registrar
16. a Crown Prosecutor
17. the Chief Crown Prosecutor
18. the Director of Public Prosecutions
19. the Governor, the Lieutenant-Governor or the Administrator of the State
20. the Auditor-General
21. the Ombudsman
22. the Electoral Commissioner
23. the holder of any other statutory office or any other prerogative office
24. any other person in the service of the Crown or a public body
25. a person that is performing a public function on behalf of the State or a public officer or public body (whether under contract or otherwise)

26. a person who holds, or a person who is a member of a class of persons who hold, an office prescribed to be a public office for the purposes of this definition
27. an employee of, or any person otherwise engaged by, or acting on behalf of, or acting as a deputy or delegate of, a public body or a public officer.