



The Greater Metropolitan
Cemeteries Trust

Lasting memories, peaceful places.

Protected Disclosure Policy & Procedure

No. 11

Responsible directorate: Finance and Business

Authorised by: Trust

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1 Introduction

1.1 Purpose

The purpose of this policy is to establish minimum practices and GMCT obligations for the treatment of Protected Disclosures under the *Protected Disclosure Act 2012 (Vic)* (**PD Act**). The GMCT is committed to the aims and objectives of the PD Act.

The *Protected Disclosure Act 2012 (Vic)* (**PD Act**) came into operation on 10 February 2013 in Victoria. The purposes of the Act are to:

- Encourage and facilitate disclosures of:
 - i. improper conduct by public officers, public bodies and other persons; and
 - ii. detrimental action taken in reprisal for a person making a disclosure under the PD Act
- Provide protection for:
 - i. persons who make those disclosures (**the discloser**); and
 - ii. persons who may suffer detrimental action in reprisal for those disclosures
- Provide for the confidentiality of the content of those disclosures and the identity of persons who make those disclosures.

The PD Act, subject to some specific exceptions, only applies to Victorian public bodies and public officers.

The PD Act replaces the *Whistleblowers Protection Act 2001* (**WP Act**). However, the WP Act still applies to disclosures made before 10 February 2013.

1.2 Scope

This Policy applies to all GMCT staff, including Trust members, permanent and temporary staff, contractors and volunteers.

The Policy deals with making protected disclosures and GMCT's responsibility in relation to detrimental action.

1.3 Definitions

Term	Definition
PD Act	<i>Protected Disclosure Act 2012 (Vic)</i>
WP Act	<i>Whistleblowers Protection Act 2001</i>
IBAC	Independent Broad-Based Anti-Corruption Commission
<i>Disclosure</i>	A disclosure is a report made by a person about improper conduct of public bodies or public officers to any of the organisations specified in Part 2 of the PD Act
<i>Protected Disclosure</i>	Must be made in accordance with the requirements of Part 2 of the PD Act, and in accordance with the prescribed procedure under the PD Act
<i>Detrimental Action</i>	To take detrimental action against another person in reprisal for someone making a protected disclosure. Includes the following: <ul style="list-style-type: none">• 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.

2 Policy Statement

The GMCT 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.

The GMCT 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 afford natural justice to all parties including the person who is the subject of the disclosure.

3 Receiving Disclosures

GMCT is not a public body prescribed under the PD Act to receive a protected disclosure.

Disclosures about GMCT, its employees, officers or members should be made directly to the Independent Broad-Based Anti-Corruption Commission (**IBAC**).

Address: Independent Broad-Based Anti-Corruption Commission
GPO Box 24234
Melbourne VIC 3001
Internet: <http://www.ibac.vic.gov.au>
Phone: 1300 735 135

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

Protected Disclosure Coordinator

Director Finance & Business
1187 Sydney Road
Fawkner Vic 3060
Tel: (03) 9355 3108

Alternative GMCT Protected Disclosure Coordinator

Chief Executive Officer
1187 Sydney Road
Fawkner Vic 3060
Tel: (03) 9355 3100

4 Protected Disclosure Procedure

These procedures provide information about protected disclosures under the PD Act and establish procedures for reporting detrimental action by the GMCT or its employees.

4.1 Making a disclosure

4.1.1 What is a disclosure?

A disclosure is a report made by a person about improper conduct of public bodies or public officers to any of the organisations specified in Part 2 of the PD Act.

IN THE CASE OF GMCT, DISCLOSURES UNDER PART 2 OF THE PD ACT MUST BE MADE DIRECTLY TO IBAC.

A disclosure can also be made about detrimental action against a person by public bodies or public officers in reprisal for the making of a protected disclosure by any person.

Disclosures about detrimental action can be made to the GMCT Protected Disclosure Coordinator, Chief Executive Officer or to IBAC. GMCT will consider all the circumstances and take all necessary steps to protect the discloser from detrimental action or disclosure.

A complaint or allegation that is already in the public domain will not normally be a protected disclosure. For example, if the matter has already been subject to media or other public commentary. The term "disclosure" is interpreted under the PD Act in the ordinary sense of the word as a 'revelation' to the person receiving it.

The disclosure can relate to improper conduct or detrimental action against a person that may already have taken place, may be occurring now, or the public officer or public body may be intending to do it in the future. Disclosures can be made about conduct that occurred prior to the commencement of the PD Act on 10 February 2013.

A disclosure made in accordance with the requirements of Part 2 of the PD Act, may also be a complaint, notification or disclosure made under another Act.

For a disclosure to be a protected disclosure, it must be made in accordance with the requirements of Part 2 of the PD Act, and in accordance with the prescribed procedure under the PD Act.

4.1.2 What is not a protected disclosure?

A complaint will not be a protected disclosure if it is:

- made to an entity that cannot receive disclosures, for example if it is made to GMCT
- the discloser expressly states in writing that the disclosure is not a disclosure under the PD Act, or
- the disclosure does not meet all the requirements under Part 2 of the PD Act and the prescribed procedures in the Regulations.

4.1.3 Who can make a disclosure?

Any person can make a disclosure about improper conduct by public bodies and public officers. This includes a person who is a member, officer or employee of a public body or public officer.

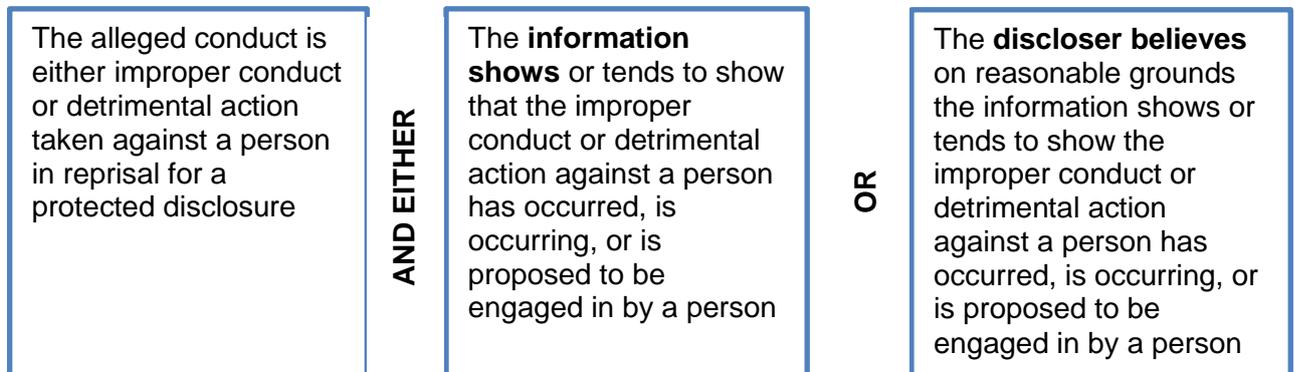
The person making the disclosure must be an individual or a group of individuals making joint disclosures. A company or business cannot make a disclosure.

4.1.4 To whom can a disclosure be made?

In the case of a disclosure relating to GMCT or its personnel, the disclosure is to be made to IBAC.

4.1.5 About what can a disclosure be made?

A disclosure, for the purposes of the PD Act, must be about the conduct of a person, public officer or public body in their capacity as a public body or public officer as outlined in the following diagram.



4.1.6 Defining improper conduct

Improper conduct is defined in section 4 of the PD Act to mean:

- Corrupt conduct (as defined in the IBAC Act), or
- Specified conduct.

In order for this conduct to be corrupt conduct it would, at its lowest, need to fall into the category that, if proved, it would constitute either a criminal offence, or reasonable grounds for dismissing the officer who was, or is, engaged in that conduct.

The examples of specified conduct are conduct:

- a) of any person that adversely affects the honest performance by a public officer or public body of his or her or its functions as a public officer or public body; or
- b) of a public officer or public body that constitutes or involves the dishonest performance of his or her or its functions as a public officer or public body; or
- c) of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust; or
- d) of a public officer or public body that involves the misuse of information or material acquired in the course of the performance of his or her or its functions as a public officer or public body, whether or not for the benefit of the public officer or public body or any other person; or
- e) that could constitute a conspiracy or an attempt to engage in any conduct referred to above; or
- f) of a public officer or public body in his or her capacity as a public officer or its capacity as a public body that:
 - i. involves substantial mismanagement of public resources; or
 - ii. involves substantial risk to public health or safety; or
 - iii. involves substantial risk to the environment.

4.2 Detrimental action

The PD Act creates an offence for a person to take detrimental action against another person in reprisal for someone making a protected disclosure.

The person(s) taking the detrimental action must be a public officer or body.

Section 3 of the PD 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.

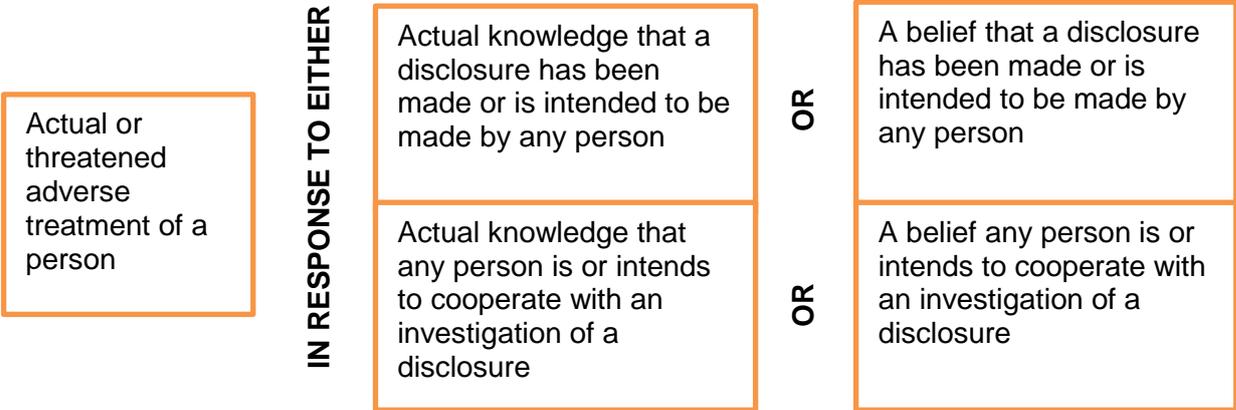
The detrimental action need not be taken against a discloser, but against any person.

4.2.1 Detrimental action taken in reprisal for a protected disclosure

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.

4.2.2 The essential elements linked to detrimental action



4.2.3 Handling disclosures

If the disclosure does not meet all the requirements to be a protected disclosure under the PD Act, then GMCT may consider dealing with it under its own complaint handling process.

The Protected Disclosure Officer may notify IBAC of any matter that they believe on reasonable grounds constitutes corrupt conduct (section 57 of IBAC Act).

4.2.4 Protections for persons making disclosure

If a GMCT employee has made a protected 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.

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

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

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

4.2.5 Additional limitations on protections

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 protected disclosure.

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 an employee discloser. Where disciplinary or other action relates to conduct that is the subject of the protected disclosure, the disciplinary or other action will only be taken after the disclosed matter has been dealt with appropriately.

An employee making the protected disclosure is not subject to criminal or civil liability for making the disclosure under section 39 of the PD Act. However section 42 of the PD 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 PD Act.

4.2.6 Offences for making an unauthorised disclosure

The PD Act contains a number of offence provisions relating to unauthorised disclosure of information by either disclosers or persons who have received disclosures.

Disclosers commit an offence if they disclose that:

- Their disclosure has been notified to IBAC for assessment, subject to specific exceptions
- IBAC or the Victorian Inspectorate has determined their disclosure to be a protected disclosure complaint, subject to specific exceptions

These offences can also be committed by other people who receive the above types of information from the discloser, subject to the same exceptions as apply to the discloser.

5 Appointing a Welfare Manager

If GMCT becomes aware that an employee has made a protected disclosure, the Protected Disclosure Coordinator may appoint a Welfare Officer for the employee making a protected 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/co-operator and provide practical advice and support. In most circumstances, the Welfare Officer will only be required where a protected 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 co-operator. An employee who has made a protected disclosure may wish to use GMCT's employee assistance program for further welfare support.

5.1 Welfare management of persons who are the subject of protected disclosures

GMCT will also meet the welfare needs of a person who is the subject of a protected disclosure. Until a protected 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.

6 Confidentiality

The GMCT will ensure all files relating to a complaint, whether paper or electronic, are kept in a secure place. All printed material will be kept in files that are clearly marked, and warn of the criminal penalties that apply to any unauthorised divulging of information concerning a protected disclosure.

7 Legislation and References

- *Protected Disclosure Act 2012 (Vic)*
- Code of Conduct (GMCT Policy No. 8)
- *Whistleblowers Act 2002 (Vic)*
- *Independent Broad-Based Anti-Corruption Commission Act 2011 (IBAC Act)*

8 Communication

This policy is communicated to all staff via the GMCT Intranet and notification of changes via Weekly wrap ups and ongoing staff education in Leadership and other forums.

9 Enforcement

Employees (including volunteers and contractors) must comply with the requirements of this policy. Any breach of this policy may result in disciplinary action, which may include, but is not limited to:

- A formal warning
- Termination of employment (or, for persons other than employees, the termination or non-renewal of contractual arrangements).

10 Policy Owner

For all queries or feedback regarding this Policy document, please contact the responsible department below:

Contact	Contact number	Contact email
Director Finance & Business	9355 3108	bclingin@gmct.com.au

The responsible department manager coordinates the implementation, maintenance and review of this Policy; ensuring stakeholders are aware of their accountabilities.

11 Policy History

February 2014	Replace Whistleblower Protection Policy & Procedure
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