



## Purpose

The object of this procedure document is to help protect the integrity of the Commissioner's office in particular, and the public sector in South Australia generally. It will do that by ensuring that the employees of the Commissioner's office are aware of the PID Act – and particularly the protections it offers if they make an appropriate disclosure of information – and that they comply with it.

## Interpretation

In this procedure document, unless otherwise provided:

- **Commissioner** means the Legal Profession Conduct Commissioner;
- **Commissioner's office** means the office of the Legal Profession Conduct Commissioner;
- **ICAC Act** means the *Independent Commissioner Against Corruption Act 2012*;
- **ICAC** means the person holding or acting in the office of the Independent Commissioner Against Corruption under the ICAC Act;
- **OPI** means the Office of Public Integrity established under the ICAC Act;
- **PID Act** means the *Public Interest Disclosure Act 2018*;
- **PID Guideline** means a guideline published by the ICAC for the purposes of the PID Act;
- **PID Regulations** means the *Public Interest Disclosure Regulations 2019*;
- **Responsible Officer** means a person who has been designated by the Commissioner as a responsible officer of the Commissioner's office;
- any term used that is defined in the ICAC Act has the same meaning in this document as it has in the ICAC Act; and
- any term used that is defined in the PID Act has the same meaning in this document as it has in the PID Act.

## Procedures Document

Under section 12(4) of the PID Act, the Commissioner has to ensure that a document is prepared which sets out the procedures related to making and dealing with appropriate disclosures of public interest information, and to make the document publicly available. This is that document for the Commissioner's office. It will be available on the Commissioner's website, as well as the office's intranet (accessible by employees of the Commissioner's office), at all times. A copy of this document will also be available free of charge from the Commissioner's office (at level 10, 30 Currie Street Adelaide) for inspection by members of the public.

The ICAC has published guidelines under the PID Act. This procedure document is intended to comply with the requirements of both the PID Act and the PID Guidelines.

### **General comments and observations about the PID Act**

The PID Act commenced on 1 July 2019. It replaced the *Whistleblowers Protection Act 1993*.

The PID Act strengthens transparency and accountability in government by establishing a scheme that encourages and facilitates the appropriate disclosure of public interest information to certain persons or authorities. It provides protections for some persons who make an appropriate disclosure of public interest information in accordance with the PID Act and sets out processes for dealing with such disclosures.

The PID Act no longer refers to “whistleblowers”, but instead refers to “informants”. It creates an obligation to keep the identity of an informant confidential (subject to some exceptions). Victimising a person who has made an appropriate disclosure in accordance with the PID Act is an offence.

**Public interest information** comprises the following:

- **Public administration information** – where there is potential corruption, misconduct or maladministration in public administration.
- **Environmental and health information** – where there is a substantial risk to the environment or to public health and safety.

A public officer who wants to report corruption, misconduct or maladministration in public administration will have greater protections under the PID Act.

A person who wants to report environmental and health information will have greater protections under the PID Act.

The scope of the PID Act is wider for a report about environmental and health information than it is for a report about public administration information. The former type of report can be made by anyone. The latter type of report is only dealt with under the PID Act if the report is made by a **public officer**. For these purposes, all public service employees are public officers (and that includes all employees of the Commissioner’s office).

It is difficult to imagine circumstances in which the Commissioner’s office (or anyone in it) could do anything that would result in a person considering that he or she should make an appropriate disclosure of environmental and health information (ie something giving rise to a substantial risk to the environment or to public health and safety). Accordingly, this procedure document will not deal with such disclosures at all. Rather, it will focus on disclosures relating to **public administration information**. However, if a person wishes to consider making an appropriate disclosure of environmental and health information, then further information about doing so can be found in [this factsheet](#).

### **Statement of Principles**

The Commissioner expects that every employee of the Commissioner’s office will report any matter that he or she reasonably suspects involves corruption, misconduct or maladministration in public administration. Any such report should be made to a relevant authority – usually either to the Commissioner or to the OPI.

The Commissioner expects that every employee of the Commissioner’s office will comply with the PID Act.

The Commissioner is committed to protecting informants, to the genuine and efficient consideration and action in relation to information provided in an appropriate disclosure of public administration information, and to keeping informants informed of any action taken as a result of any such appropriate disclosure and the outcome of any such action.

The Commissioner will deal with information provided in an appropriate disclosure of public administration information in accordance with the requirements of the PID Act. If an informant believes that his or her appropriate disclosure is not being dealt with appropriately, then the informant should contact the OPI.

If the Commissioner receives an appropriate disclosure of public administration information, then he will provide such details about it, and of any action taken in relation to it, to the OPI in accordance with the requirements of the PID Act and any PID Guidelines.

### **Responsible Officers**

Under section 12 of the PID Act, the Commissioner must ensure:

- that 1 or more officers or employees of the Commissioner are designated as responsible officers for the purposes of the PID Act;
- that the name and contact details of each responsible officer are made available to officers and employees of the Commissioner's office.

The Commissioner has designated himself as a Responsible Officer for the purposes of the PID Act. To be a responsible officer under the PID Act, a person must have completed any training courses approved by the ICAC for these purposes. The Commissioner has completed the Public Interest Disclosure Responsible Officer Training.

For reporting purposes, the Commissioner's direct email address is [greg.may@lpcc.sa.gov.au](mailto:greg.may@lpcc.sa.gov.au). He can be contacted by phone on 08 8212 7924. Or a report can be sent to him by letter addressed to GPO Box 230 Adelaide SA 5001, with the envelope marked "Private & Confidential".

If a public officer wishes to make a disclosure of public administration information concerning the Commissioner's office, then it should be made to the Commissioner. If the public administration information relates to the Commissioner, then the disclosure should be made to the OPI.

Any such report can be made by email, by phone or by letter. An employee of the Commissioner's office can make a verbal report by meeting with the Commissioner in private.

The Commissioner will maintain confidential and secure electronic folders, in which he will keep all emails, file notes and other correspondence in relation to any report of public interest information.

### **What is "public administration information"?**

"Public administration information" means information that raises a potential issue of corruption, misconduct or maladministration in public administration. For these purposes, it does not matter whether the relevant conduct occurred before or after 1 July 2019 (ie before or after the commencement of the PID Act).

Every employee of the Commissioner's office is a public officer for the purposes of the ICAC Act. As such, each member of staff is obliged to report to the OPI any matter that he or she reasonably suspect involves:

- corruption in public administration;

- serious or systemic misconduct in public administration;
- serious or systemic maladministration in public administration.

A public officer is not obliged to report to the OPI any matter that he or she reasonably suspects involves misconduct or maladministration in public administration where it is not “serious or systemic”. However, the PID Act applies equally to that conduct, whether or not it is serious or systemic.

### **Immunity for appropriate disclosure of public interest information**

A public officer will not be subject to any liability if he or she makes an appropriate disclosure of public administration information.

In relation to anything that happens in the Commissioner’s office, an appropriate disclosure is made if the informant:

- reasonably suspects that the information raises a potential issue of corruption, misconduct or maladministration in public administration; and
- makes that disclosure to one of the following:
  - the Commissioner;
  - the Commissioner for Public Sector Employment;
  - the Ombudsman;
  - where the information relates to the commission, or suspected commission, of any offence – a member of the police force;
  - a Minister of the Crown;
  - the OPI.

### **False or Misleading Disclosures**

It is an offence under the PID Act to make a disclosure of public interest information knowing that it is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular). The maximum penalty for doing so is \$20,000 or imprisonment for 2 years. A person who makes any such disclosure loses the protection of the PID Act.

### **Preventing or hindering disclosure**

It is also an offence under the PID Act to prevent another person from making an appropriate disclosure of public interest information under the PID Act, or to hinder or obstruct another person in making such a disclosure. The maximum penalty for doing so is \$20,000 or imprisonment for 2 years.

### **Disclosure to a Responsible Officer**

If an appropriate disclosure of public administration information is made to the Commissioner, then he will act in relation to it in accordance with his obligations under section 7 of the PID Act. That is:

1. The Commissioner will assess the information as soon as practicable after the disclosure is made. The criteria that will be applied in the assessment of that information will depend on the nature of the information, but it will always be considered having regard to the Public Sector Code of Ethics, the *Public Sector Act*, and (where appropriate) the *Legal Practitioners Act*.
2. If that assessment leads to the conclusion that:

- (a) no further action is justified; or
  - (b) it relates to a matter that has already been investigated or acted upon by a relevant authority and there is no reason to re-examine the matter; or
  - (c) there is other good reason why no action should be taken in respect of the matter, then the Commissioner will take no further action.
3. If that assessment does not lead to such a conclusion, then the Commissioner will:
    - (a) take action in relation to the information in accordance with any applicable PID Guidelines or, if no applicable PID Guidelines exist, take such action as is appropriate in the circumstances; and
    - (b) take reasonable steps to notify the informant (if his or her identity is known) that an assessment of the information has been made and to advise the informant either:
      - (i) of the action being taken in relation to the information; or
      - (ii) if no action is being taken in relation to the information – of the reasons why not action is being taken;
    - (c) provide the OPI with information relating to the disclosure in accordance with any applicable PID Guidelines.
  4. If the Commissioner takes action in relation to the information that has been disclosed, then he will:
    - (a) take reasonable steps to notify the informant (if his or her identity is known) of the outcome of that action; and
    - (b) provide the OPI with information relating to the outcome of that action in accordance with any applicable PID Guidelines.
  5. To the extent that the Commissioner needs to keep the informant informed as to action taken in respect of a disclosure, that will most likely be done by email or other appropriate form of correspondence.

### **Advice from the Commissioner**

At any time, whether before or after making a disclosure to the Commissioner, an employee of the Commissioner's office can seek advice from the Commissioner in relation to the administration of the PID Act.

### **Further disclosure to a journalist or a member of Parliament**

If an informant makes an appropriate disclosure of public administration information, and if he or she has made their identity known to the Commissioner, and if either:

- the informant isn't notified within 30 days of the action being taken in relation to the information, or that no action is being taken and the reason that it is not being taken;
- the informant isn't notified within 90 days (or such longer period as is allowed in accordance with the PID Act) of the outcome of the action that has been taken (if any was taken),

then the informant may disclose substantially the same information to a journalist or a Member of Parliament (other than a Minister of the Crown).

### **Confidentiality**

If an appropriate disclosure of public administration information is made to the Commissioner, then the informant's identity must be kept confidential in accordance with section 8 of the PID Act. That is, the informant's identity will not, without the informant's consent, be knowingly divulged except:

- so far as may be necessary to ensure that the matters to which the information relates are properly investigated; or

- in accordance with any applicable PID Guidelines.

**Victimisation**

If an appropriate disclosure of public administration information is made, then the informant has certain rights under the PID Act if he or she is subjected to an act of victimisation.

**More information**

The PID Act is available on-line [here](#).

The PID Guidelines are available on-line [here](#). For employees of the Commissioner’s office, a hard copy of the PID Guidelines is available in the office’s “pigeon holes” next to reception.

More information generally about the PID Act, and making a public interest disclosure, is available on the ICAC’s website [here](#).

Greg May  
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