



Public interest disclosure policy

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1 Purpose

- 1.1 This Public Interest Disclosure policy (**Policy**) applies to all Commissioners, Commission employees (**employees**) and contractors and consultants engaged by the Commission (**contractors and consultants**). All Commissioners, employees, contractors and consultants must comply with this policy.
- 1.2 This document outlines the Essential Services Commission's (**Commission**) policy in relation to the Public Interest Disclosure Act 2018 (**PID Act**) and is to be read in conjunction with that Act and the Independent Commission Against Corruption's Public Interest Disclosure Guideline(s). In the event of any inconsistency between the policy and the PID Act, then the Act is to prevail.
- 1.3 The purpose of this policy is to:
 - 1.3.1 fulfil the Commission's obligations and responsibilities under the PID Act
 - 1.3.2 provide information about how to make appropriate disclosures under the PID Act
 - 1.3.3 encourage and facilitate the disclosure, in the public interest, of information about substantial risks to public health or safety, or to the environment, and about corruption, misconduct and maladministration in public administration
 - 1.3.4 create procedures to provide support and appropriate protection for informants who make appropriate disclosures and to keep these persons informed about the outcome of assessments of and action taken following appropriate disclosures
 - 1.3.5 develop effective procedures for receiving and assessing appropriate disclosures about corruption, misconduct and maladministration in public administration and risks to public health or safety, or to the environment
 - 1.3.6 protect the identity of informants and to prevent victimisation of informants, and
 - 1.3.7 take appropriate action to address any concerns identified through appropriate disclosures.

2 Chief Executive Officer's statement

- 2.1 As the Principal Officer under the PID Act, the Chief Executive Officer is committed to:
 - 2.1.1 providing information to all Commissioners, employees, contractors and consultants and external persons about their right to make public interest disclosures and the proper procedures for them to make public interest disclosures
 - 2.1.2 the development and maintenance of efficient procedures to facilitate persons making appropriate disclosures regarding the Commission, Commissioners, employees and contractors and consultants
 - 2.1.3 undertaking genuine and efficient consideration of appropriate disclosures
 - 2.1.4 providing regular updates to informants who make appropriate disclosures
 - 2.1.5 taking genuine and efficient action to address any identified concerns regarding public administration and environmental and health information as identified through any appropriate disclosures
 - 2.1.6 the protection of informants' identities and personal information
 - 2.1.7 prohibiting any persons from preventing or hindering other persons from making appropriate disclosures or victimising informants, and

2.1.8 allocating appropriate resources to ensure the efficient operation of this policy and to fulfil the Commission's obligations under the PID Act.

2.2 If any person (either Commissioners, employees, contractors and consultants or external persons) believe that an appropriate disclosure is not being appropriately dealt with they may contact the Commission's Chief Executive Officer.

3 Definitions

3.1 **Appropriate disclosure** means a) a disclosure of environmental and health information, b) a disclosure of public administration information, or c) a disclosure made to a journalist or Member of Parliament.

3.2 **Corruption in public administration** means conduct that constitutes:

- (a) an offence against Part 7 Division 4 (Offences relating to public officers) of the Criminal Law Consolidation Act 1935, which includes the following offences:
 - (i) bribery or corruption of public officers;
 - (ii) threats or reprisals against public officers;
 - (iii) abuse of public office;
 - (iv) demanding or requiring benefit on basis of public office;
 - (v) offences relating to appointment to public office; or
- (b) an offence against the Public Sector (Honesty and Accountability) Act 1995 or the Public Corporations Act 1993, or an attempt to commit such an offence; or
- (c) an offence against the Lobbyists Act 2015, or an attempt to commit such an offence; or
- (d) any of the following in relation to an offence referred to in a preceding paragraph:
 - (i) aiding, abetting, counselling or procuring the commission of the offence;
 - (ii) inducing, whether by threats or promises or otherwise, the commission of the offence;
 - (iii) being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence;
 - (iv) conspiring with others to effect the commission of the offence.

3.3 **Environmental and health information** means information that raises a potential issue of a substantial risk to the environment or to the health or safety of the public generally or a significant section of the public (whether occurring before or after the commencement of this Policy or the PID Act).

3.4 **External person** means a person who is not a public officer.

3.5 **Informant** means a person who makes an appropriate disclosure of public interest information.

3.6 **Maladministration in public administration** means

- (a) conduct of a public officer, or a practice, policy or procedure of a public authority, that results in an irregular and unauthorised use of public money or substantial mismanagement of public resources; or
- (b) conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and

- (c) includes conduct resulting from impropriety, incompetence or negligence; and
 - (d) is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.
- 3.7 **Misconduct in public administration** means an intentional and serious contravention of a code of conduct by a public officer while acting in their capacity as a public officer that constitutes a ground for disciplinary action against the officer;
- 3.8 **Public administration information** means information that raises a potential issue of corruption, misconduct or maladministration in public administration (whether occurring before or after the commencement of this policy or the PID Act).
- 3.9 **Public officer** is defined in Schedule 1 of the Independent Commission Against Corruption Act 2012 (SA), and includes public sector employees (for example, Commission employees), a person who is a member of the governing body of a statutory authority (for example, Commissioners) and a person performing contract work for a public authority or the Crown (ie consultants and contractors engaged to perform work for the Commission).
- 3.10 **Public interest information** means— (a) environmental and health information; or (b) public administration information.
- 3.11 **Relevant authority** means, in the context of the Commission, the Commissioner for Public Sector Employment, Ombudsman SA, or the Commission's responsible officer. Additionally, s5(5) of the PID Act provides examples of the relevant authority for complaints about specific matters (for example, the Environment Protection Authority for risks to the environment and the Auditor-General for an irregular and/or unauthorised use of public money or substantial mismanagement of public resources, or South Australia Police for criminal offences).
- 3.12 **Responsible Officer** means a person designated as a responsible officer under section 12 of the PID Act. The Commission's Responsible Officer is the Director, People and Corporate (or a person acting as the Director, People and Corporate for a period of time).

4 Role of the Responsible Officer, managers and supervisors in the administration of the PID Act

- 4.1 The Director, People and Corporate is the Commission's Responsible Officer for the PID Act.
- 4.2 The Responsible Officer's role for the administration of this policy and compliance with the PID Act is to:
- 4.2.1 receive appropriate disclosures relating to the Commission, Commissioners, employees, contractors and consultants and to take appropriate action to ensure compliance with the PID Act
 - 4.2.2 make appropriate recommendations to the Principal Officer of the Commission in relation to dealing with appropriate disclosures
 - 4.2.3 provide advice and support to Commissioners, employees, contractors and consultants in relation to the proper administration of this policy and the PID Act, and
 - 4.2.4 take such action as required to protect the identity of informants and to prevent the victimisation or harassment of informants (including maintaining appropriate storage of all records of disclosures).
- 4.3 If appropriate disclosures are made to the Responsible Officer they must assess these disclosures and take appropriate action in their role as the Responsible Officer.

- 4.4 As outlined below in clause 5.2.2, appropriate disclosures regarding individual Commission employees, contractors and consultants may also be made to a person responsible for the management or supervision of that relevant public officer (for example, the supervisor or manager of the relevant Commission employee, contractor or consultant).
- 4.5 If an appropriate disclosure is made to a person responsible for the management or supervision of the relevant public officer, then this manager/supervisor and not the Responsible Officer, is responsible for assessing the appropriate disclosure and taking appropriate action in compliance with this Policy.
- 4.6 If a disclosure is made to a manager or supervisor, it is recommended that they seek guidance from the Responsible Officer subject to the confidentiality requirements of this Policy (including not revealing the identity of the informant) to appropriately assess and take action following receiving an appropriate disclosure.
- 4.7 The Responsible Officer may provide advice and guidance to Commissioners, employees, contractors and consultants who may undertake assessment or enquiries regarding appropriate disclosures (noting that the identity of a notifier cannot be divulged as part of seeking advice unless there is an appropriate reason to do so see clauses 8.1.1 to 8.1.3).

5 Appropriate Disclosures

- 5.1 Appropriate disclosures may be made under the PID Act relating to either environmental or health information or public administration information matters (as defined in the definitions clause of this policy).
- 5.2 Appropriate disclosures may be made to the following relevant authority in the following circumstances:
 - 5.2.1 if the information relates to the Commission itself, then appropriate disclosures may be made to the Responsible Officer, to the Commissioner for Public Sector Employment, or Ombudsman SA, and
 - 5.2.2 where the information relates to an individual Commission public officer, appropriate disclosures may be made to the Commission's Responsible Officer or to a person responsible for the management or supervision of the relevant public officer, or to the Commissioner for Public Sector Employment (where the public officer is a public sector employee).
- 5.3 Disclosures about environmental and health information may be made by any person (including members of the public), but to obtain the protections of the PID Act the person must:
 - 5.3.1 make the disclosure to a relevant authority;
 - 5.3.2 believe on reasonable grounds that the information is true, or
 - 5.3.3 if they are not in a position to form a belief of the truth information, but they believe on reasonable grounds that the information may be true and is of sufficient significance to justify its disclosure so that its truth may be investigated.
- 5.4 While anyone can make disclosures about public administration information, only public officers (including Commission employees, contractors, consultants and Commissioners) who make disclosures are eligible to the protections provided under the PID Act. To gain the protections provided under the PID Act, the public officer must:
 - 5.4.1 make the disclosure to a relevant authority, and
 - 5.4.2 they reasonably suspect that the information raises a potential issue of corruption, misconduct or maladministration in public administration.

- 5.5 If public officers (including all Commissioners, employees, contractors and/or consultants) make appropriate disclosures of public interest information, or if any person (including members of the public and/or all Commissioners, employees, contractors and consultants) makes an appropriate environmental and health information disclosure, they are not subject to any liability for the disclosure. This includes, but is not limited to, any failure to comply with confidentiality obligations under the *Essential Services Commission Act 2002 (SA)*, other industry legislation, Commission Policies, any contractual confidentiality obligations or any other restriction on disclosure.
- 5.6 Additional information regarding appropriate disclosures is outlined in sections 5 and 6 of the PID Act and can be obtained from the ICAC website (www.icac.sa.gov.au), the OPI website (www.publicintegrity.sa.gov.au) and Ombudsman SA's website (www.ombudsman.sa.gov.au).
- 5.7 Appropriate disclosures may be made in person, by telephone or in writing by any of the following means:
- ▶ by sending an email to pidactofficer@escosa.sa.gov.au
 - ▶ by telephoning the Responsible Officer on (08) 8463 4444
 - ▶ by contacting the Responsible Officer in person at Level 1, 151 Pirie Street Adelaide SA 5000
 - ▶ where an appropriate disclosure relates to an individual Commissioner, employee or contractor and consultant, by directly contacting the person responsible for their management or supervision (in person at the Commission's office or by telephone to the general number of (08) 8463 4444 or if known the person's direct line), and/or
 - ▶ by posting the appropriate disclosure to Level 1, 151 Pirie Street Adelaide SA 5000, or GPO Box 2605 Adelaide SA 5001 (any envelope should be marked confidential public interest disclosure and addressed to either the Responsible Officer or to a specific manager or supervisor).
- 5.8 Additionally, appropriate disclosure regarding the Commission, Commissioners, employees, contractors or consultants may also be made to:
- ▶ the Office for Public Integrity
 - ▶ the South Australian Ombudsman
 - ▶ a Minister of the Crown
 - ▶ the Environment Protection Authority (EPA) where the disclosure relates to a risk to the environment
 - ▶ the Auditor-General for the irregular and unauthorised use of public money or substantial mismanagement of public resources, or
 - ▶ the South Australia Police where the disclosure relates to a criminal offence.
- 5.9 The person to whom an appropriate disclosure of information is made must comply with the requirements of the PID Act and the procedures outlined within this policy when assessing or taking any action after receiving an appropriate disclosure (including but not limited to the obligation to keep an informant's identity confidential as outlined in clause 8.1).

6 The assessment of appropriate disclosures

- 6.1 Following receipt of an appropriate disclosure, a person to whom an appropriate disclosure of information is made (being either the Responsible Officer or a person responsible for the

management or supervision of the relevant public officer) must undertake an assessment of the disclosure as soon as is practicable after the disclosure is made.

- 6.2 While undertaking the assessment a person to whom an appropriate disclosure of information is made must comply with the requirements to keep the informant's identity confidential, as outlined in clause 8.1.
- 6.3 The person to whom an appropriate disclosure of information is made will assess disclosures to determine:
 - 6.3.1 if the Commission is the relevant authority to assess/receive the disclosure, and
 - 6.3.2 whether the information requires further action.
- 6.4 However, no action is required if:
 - 6.4.1 the information disclosed does not justify the taking of further action, or
 - 6.4.2 the information disclosed 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 there is other good reason why no action should be taken in respect of the matter.
- 6.5 If the assessment determines that the appropriate disclosure requires further action then, unless the matter is reported to the OPI as a potential issue of corruption in public administration, the person to whom an appropriate disclosure of information is made, must ensure that:
 - 6.5.1 such action as may be appropriate in the circumstances is taken by them to ensure the matter the subject of the appropriate disclosure is properly addressed, or alternatively
 - 6.5.2 such information as is necessary to enable action to be taken is communicated to the most appropriate person or relevant authority to take such action.
- 6.6 In addition to conducting an assessment of an appropriate disclosure, the person to whom an appropriate disclosure of information is made must comply with the following obligations:
 - 6.6.1 if the appropriate disclosure suggests that there is an imminent risk of serious physical injury or death to any person or the public generally, they will immediately communicate such information as may be necessary to mitigate that risk to the most appropriate agency. For example, if the appropriate disclosure raises a threat of a person being the victim of a crime, then the information must be communicated to South Australia Police, if the disclosure outlines a threat to the environment the information must be communicated to the EPA, if the disclosure raises a threat of a work health and safety risk the information must be communicated to SafeWork SA, or if the disclosure raises concerns regarding public health the information must be communicated to SA Health or the SA Ambulance, and
 - 6.6.2 if following the assessment, the recipient of the appropriate disclosure forms a reasonable suspicion that the matter(s) the subject of the disclosure involve(s) corruption in public administration, they must comply with their reporting obligations under the *Independent Commission Against Corruption Act 2012 (SA) (ICAC Act)*.
- 6.7 The person to whom an appropriate disclosure of information is made must as soon as is reasonably practicable after receiving the disclosure notify the Office for Public Integrity (OPI) by making an electronic notification via the notification form on the OPI's website. This notification must include the following information:
 - (a) the date the disclosure was received
 - (b) the name and contact details of the recipient of the disclosure

- (c) a summary of the content of the disclosure
 - (d) the assessment made of the disclosure
 - (e) the action taken by the recipient of the disclosure including:
 - (i) whether the disclosure was referred to another relevant authority, public authority, public officer or other person, and
 - (ii) if the disclosure was referred to another relevant authority, public authority, public officer or other person:
 - (A) the date of the referral
 - (B) the identity of the relevant authority, public authority, public officer or other person to whom the disclosure was referred;
 - (C) the manner of referral; and
 - (D) the action to be taken by that relevant authority, public authority, public officer or other person (if known).
 - (f) if no action was taken by the recipient of the disclosure, the reason why no action was taken; and
 - (g) whether the identity of the informant is known only to the recipient of the disclosure or if the identity of the informant has been communicated to a relevant authority, public authority, public officer or other person (and if so, the reasons why such communication was made).
- 6.8 The person to whom an appropriate disclosure of information is made must retain the unique reference number issued by the OPI after the making of a notification and ensure that this unique reference number is provided to any other person or authority to whom the appropriate disclosure is referred.
- 6.9 Following the assessment of the appropriate disclosure, if the informant's identity is known, the person to whom an appropriate disclosure of information is made must take reasonable steps to advise the informant of:
- 6.9.1 the action being taken in relation to the information disclosed, or
 - 6.9.2 if no action will be taken, the reasons explaining why no action will be taken.
- 6.10 If the person to whom an appropriate disclosure of information is made forms the view that no action is required, they must also inform the OPI as outlined in clause 7.5.

7 Taking action following an assessment of an appropriate disclosure

- 7.1 Where an appropriate disclosure requires further action and the Commission is the appropriate authority to take this action, then the person to whom an appropriate disclosure of information is made, will take appropriate action as required in the circumstances.
- 7.2 While undertaking any action the person to whom an appropriate disclosure of information is made must comply with the requirements to keep the informant's identity confidential as outlined in clause 8.1.
- 7.3 The action taken will depend on the specific circumstances but should aim to meet the following goals/objectives:

- 7.3.1 to brief the Chief Executive Officer of the appropriate disclosure (noting the confidentiality requirements outlined in clause 8.1) and to obtain appropriate support and resources to take appropriate action
 - 7.3.2 to address the environmental and health information or public administration information concerns/problems raised in the appropriate disclosure
 - 7.3.3 to prevent the reoccurrence of the concern/problem raised in the appropriate disclosure or similar concerns, for example by making appropriate amendments to any policies or procedures, and
 - 7.3.4 where appropriate disclosures reveal that individual Commissioners, employees, consultants, or contractors, have acted inappropriately, negligently or otherwise failed to properly perform their duties or meet other behavioural expectations, those persons should be counselled, educated or action taken against them using the Commission's managing unsatisfactory work performance and misconduct policy.
- 7.4 Where action is taken following an appropriate disclosure, the person to whom an appropriate disclosure of information was made, must take reasonable steps to notify the informant of the outcome of the action. Further, where action takes longer than four weeks to complete then the person to whom an appropriate disclosure of information was made must provide the informant with an update on the progress of the action being taken at the four-week mark following the appropriate disclosure being received and every four weeks thereafter until the action is completed.
- 7.5 As soon as reasonably practicable following the outcome of action being taken in relation to the appropriate disclosure, the person to whom an appropriate disclosure of information was made must provide the OPI with information relating to the outcome. This notification must include the following information:
- (a) the unique reference number issued by the OPI upon notification of the original disclosure
 - (b) the name and contact details of the notifier
 - (c) the name and contact details of the person or authority responsible for taking the action
 - (d) what (if any) findings were made in respect of the disclosure
 - (e) the nature of the action taken (if any)
 - (f) the outcome of any action taken (if applicable)
 - (g) whether the identity of the informant was disclosed to a person other than the original recipient of the disclosure, and
 - (h) whether the informant was notified of the action taken and, if so, when and how that notification was made.

8 Maintaining the confidentiality of informants

- 8.1 Commissioners, employees, consultants and/or contractors, must not at any time (including when acting as the Responsible Officer and assessing or taking action to address appropriate disclosures) divulge the identity of informants (or information which could reasonably be used to identify the informant), without the informant's consent except:
- 8.1.1 so far as is necessary to ensure that the matters to which the information relates are properly investigated

- 8.1.2 if the person to whom an appropriate disclosure of information is made (or a person who otherwise knows that a disclosure has been made) believes on reasonable grounds that it is necessary to divulge the identity of the informant to prevent or minimise an imminent risk of serious physical injury or death to any person; and the identity of the informant is divulged to a person or authority that the recipient believes on reasonable grounds is the most appropriate authority or person to be able to take action to prevent or minimise the imminent risk of serious physical injury or death to any person; or
- 8.1.3 in any further situation as applicable within any Guideline published by the Commissioner Against Corruption in accordance with section 14 of the PID Act.
- 8.2 The obligation to maintain confidentiality applies despite any other statutory provision, or a common law rule, to the contrary. The unlawful disclosure of the identity of an informant is an offence which carries a maximum penalty of \$20,000 or imprisonment for 2 years.
- 8.3 To protect the identity of informants the following requirements must be followed at all times by Commissioners, employees, consultants and contractors:
 - 8.3.1 access to the email address for making appropriate disclosures will be limited to the Responsible Officer
 - 8.3.2 all information related to any appropriate disclosures will be stored in a secure manner on the Commission's computer systems
 - 8.3.3 all conversations with informants must be held in suitable locations where privacy can be maintained
 - 8.3.4 all printed materials that relate to an appropriate disclosure will be stored in a secure location, and
 - 8.3.5 Commissioners, employees, consultants and contractors are prohibited from accessing or attempting to access any information relating to appropriate disclosures, unless they are the person to whom a disclosure is made, or a person whom the informant has consented to their identity being divulged to and who is performing a role in assisting with the assessment of and/or taking action following an appropriate disclosure.

9 Prohibitions against victimisation or hindering or preventing appropriate disclosures

- 9.1 A person who causes a detriment to another person on the grounds or substantially on the ground that the person or a third person has made or intends to make an appropriate disclosure of public information commits an act of victimisation.
- 9.2 All Commissioners, employees, consultants and contractors, are prohibited from victimising informants or preventing or hindering appropriate disclosures.
- 9.3 Any person who commits an act of victimisation against an informant commits a criminal offence with a maximum penalty of \$20,000 or imprisonment for two years. Additionally, any act of victimisation may also be dealt with as a tort (civil wrong), or an act of victimisation under the Equal Opportunity Act 1984 (SA). Further, employees who commit any acts of victimisation may be liable for disciplinary action under the managing unsatisfactory work performance and misconduct policy.
- 9.4 It is an offence against the PID Act to prevent another person from making an appropriate disclosure of public interest information, or to hinder or obstruct another person in making such an appropriate disclosure. This offence carries a maximum penalty of \$20,000 or imprisonment for two years.

- 9.5 All Commissioners, employees, consultants and contractors, must report any concerns about victimising informants or preventing or hindering disclosures. These reports must be made to the person to whom the appropriate disclosure of information is made, or if this person is not known to the Responsible Officer, as soon as is reasonably practicable. In making any reports of victimising informants or preventing or hindering disclosures, the person making the report must comply with the requirements to keep the informant's identity confidential as outlined in clause 8.1.
- 9.6 All allegations of victimisation or preventing or hindering disclosures, will be investigated and/or reported to OPI/ICAC. Further, the Commission will fully cooperate in any investigation or prosecution and also may take disciplinary action against employees found to be involved under the unsatisfactory work performance and misconduct policy (following the completion of any investigation and/or prosecution).

10 False or misleading disclosures

- 10.1 A person must not 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 exclusion of a material particular). Any person who makes a false or misleading disclosure commits a criminal offence with a maximum penalty of \$20,000 or imprisonment for two years.

11 Informant's other rights

- 11.1 Section 6 of the PID Act authorises informants to make disclosures to a journalist or a member of Parliament (who is not a Minister of the Crown), if the informant has already made an appropriate disclosure of substantially the same information in accordance with section 5 of the PID Act and made their identity known to the person that the disclosure was made, if both of the following requirements are met:
- 11.1.1 the informant has not been advised within 30 days after making a disclosure of the action being taken (or the reasons for no action being taken), or has not received a notification of the action actually taken in response to the appropriate disclosure within 90 days after making the disclosure, and
 - 11.1.2 the informant believes on reasonable grounds that the information is true.
- 11.2 If informants want to make appropriate disclosures to a journalist or a member of Parliament (who is not a Minister of the Crown), they should consult the PID Act or obtain advice.
- 11.3 A public officer who makes a report to the OPI under the ICAC Act, may also be protected under the PID Act, given that the OPI is identified as a relevant authority under the PID Act.

12 Policy review

- 12.1 This policy will be reviewed every three years, or earlier if there are any relevant amendments to the PID Act and/or the ICAC Guidelines.

Approved



Adam Wilson
Chief Executive Officer

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