



# Public Interest Disclosure Procedure

## Purpose

This procedure assists in the protection of integrity in the Department for Environment and Water (DEW) and public sector by ensuring compliance with the [Public Interest Disclosure Act 2018](#) (PID Act).

In accordance with the requirements of the PID Act, this procedure sets out the process:

- for any person who wants to make an *appropriate disclosure of public interest information* concerning a DEW employee or DEW; and
- for any employee of DEW in dealing with any such *appropriate disclosure*.

The Independent Commissioner Against Corruption (ICAC) has published [Public Interest Disclosure Guidelines](#) (the ICAC Guidelines) which provide additional requirements. This procedure has been prepared in compliance with the ICAC Guidelines.

## Scope

This procedure applies to:

- any person, including DEW employees, who have *public interest information* relevant to DEW's sphere of responsibility; and
- all DEW employees who receive a disclosure of *public interest information*.

## Overview

The PID Act establishes a scheme that encourages and facilitates the *appropriate disclosure of public interest information* (a public interest disclosure) and provides protections for persons who make *appropriate disclosures*.

There are two types of *public interest information*: *environmental and health information*, and *public administration information*. See the definition section of this procedure for an explanation of these terms.

A person only receives protection under the PID Act for making an *appropriate disclosure*. A disclosure is an *appropriate disclosure* if it is made to certain persons or authorities as prescribed in the PID Act and meets certain other prescribed criteria.

The protections provided to *informants* under the PID Act include protection of the *informant's* identity, protection against victimisation, and immunity from liability in relation to the disclosure.

DEW has Responsible Officers appointed under the PID Act who can receive *appropriate disclosures of public interest information* and provide advice to DEW employees in relation to the PID Act.

### **Disclosure of environmental and health information**

Any person can receive protection under the PID Act for *appropriate disclosure of environmental and health information*.

To make an *appropriate disclosure of environmental and health information* a person must disclose the information to a *relevant authority* (see definition section of this procedure) and:

- must believe on reasonable grounds that the information is true; or
- not being in a position to form such a belief, believes 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.

### **Disclosure of public administration information**

Only *public officers* (see definition section) are eligible to receive protection under the PID Act for *appropriate disclosure of public administration information*.

- To make an *appropriate disclosure of public administration information* a *public officer* must disclose the information to a *relevant authority* (see definition section) and:
- must reasonably suspect that the information raises a potential issue of corruption, misconduct or maladministration in public administration.

## **Responsibilities**

### **Chief Executive**

The Chief Executive, as DEW's Principal Officer under the PID Act, is committed to the protection of *informants* and to the genuine and efficient consideration and action in relation to information provided in a public interest disclosure. The Chief Executive will:

- designate one or more persons to perform the roles of DEW Responsible Officers;
- ensure the name and contact details of the Responsible Officers are made available to DEW employees;
- ensure procedures are made available, setting out the following:

- the manner in which DEW receives disclosures of *public interest information*, including:
  - specifying the precise way in which a disclosure can be securely received, including URL links, particular telephone numbers, email
  - addresses and postal addresses;
  - the steps that will be in place to ensure *public interest information* will be securely received and stored;
  - the person (either by reference to positions or individuals) who will have responsibility for ensuring compliance with those steps;
- the criteria that will be applied in the assessment of a public interest disclosure;
- the manner in which details of the assessment will be securely stored and the person in DEW who will be advised of the assessment;
- the manner in which an *informant* will be kept informed as to action taken in respect of a disclosure;
- the person in DEW who can be contacted if an *informant* believes that his or her disclosure is not being dealt with appropriately;
- clear obligations on DEW and its employees to take action to protect *informants*; and
- risk management steps for assessing and minimising detrimental action against people because of public interest disclosures and detriment to people against whom allegations are made in a disclosure.

### **Responsible Officers**

The DEW Responsible Officers will:

- receive *appropriate disclosures of public interest information* relating to DEW and DEW employees, and ensure compliance with the PID Act in relation to such disclosures;
- make appropriate recommendations to the Chief Executive in relation to dealing with such disclosures; and
- provide advice to DEW employees in relation to administration of the PID Act.

### **DEW employees**

DEW employees are *public officers* and must comply with the PID Act. Where employees are considering a disclosure of *public interest information* under the PID Act, they should also consider if they have reporting obligations under the [Directions and Guidelines](#) issued by the ICAC.

## Procedures

### Making a disclosure

Prior to making a disclosure, you need to determine whether the information you have is *public interest information* and you need determine who you should disclose the information to (i.e. who the *relevant authority* is).

Whether you receive protection under the PID Act will depend on whether:

- you have made an *appropriate disclosure*;
- you are a *public officer* or not;
- the *public interest information* is *public administration information* or *environmental and health information*.

If you would like to make an *appropriate disclosure* of *public interest information* relating to DEW or a DEW *public officer*, there are a number of options:

- **Contact the [Office for Public Integrity \(OPI\)](#)**
  - The OPI is a *relevant authority* to receive disclosures of *public interest information* regarding DEW, DEW *public officers* and DEW public sector employees.
- **Contact a DEW Responsible Officer**
  - A DEW Responsible Officer can provide you with advice and assistance. A DEW Responsible Officer is a *relevant authority* to receive disclosures of *public interest information* regarding DEW and DEW public sector employees.
  - Information on how to contact DEW Responsible Officers can be found in Appendix 1 of this procedure.
- **Contact the person's manager or supervisor**
  - If your disclosure of *public interest information* relates to a DEW *public officer*, the person responsible for the management or supervision of that DEW *public officer* is also a *relevant authority*.
- **Contact the [Office of the Commissioner for Public Sector Employment](#)**
  - The Commissioner for Public Sector Employment is a *relevant authority* to receive disclosures of *public interest information* regarding DEW and DEW public sector employees.

When making a disclosure, if you are revealing your identity, you have rights to be kept informed. Therefore, you should advise how you wish to be contacted. It is important that keeping you informed is done in a way that maintains strict confidentiality.

Further information on the PID Act is available on the ICAC website: [www.icac.sa.gov.au](http://www.icac.sa.gov.au).

### Receiving a disclosure

A person receiving an *appropriate disclosure of public interest information* is required to comply with requirements set out under the PID Act and these procedures.

To ensure you are complying with the PID Act, it is recommended that you seek the advice and assistance of a DEW Responsible Officer.

The process for assessing and dealing with a disclosure is set out below.

## **1. Determine whether the information is an *appropriate disclosure of public interest information***

Assess the information provided and consider whether:

- the information is *public interest information*:
  - raises a potential issue of a substantial risk to the environment or to the health and safety of the public generally or a significant section of the public;
  - raises a potential issue of corruption, misconduct or maladministration in public administration;
- you are a *relevant authority*.

Advice can be provided by the DEW Responsible Officers and by the OPI.

Note: when seeking any advice, you must not disclose the identity of the *informant*, nor disclose any information that could reveal the identity of the *informant*, unless the *informant* consents.

Once you have determined that you are a *relevant authority* who has received an *appropriate disclosure of public interest information* you must comply with the PID Act and ICAC Guidelines. You must assess the information, as set out below, as soon as reasonably practical after the disclosure is made (section 7(1) of the PID Act).

Ask the *informant* how they wish to be contacted by you and ensure that they are kept informed in a way that maintains strict confidentiality.

If you are not a *relevant authority* under the PID Act, you still have obligations:

- you should advise the *informant* to report the information to a *relevant authority*; and
- you must keep details of the *informant* and the disclosure confidential.

## **2. Assess for imminent risk**

If the content of the disclosure suggests that there is an imminent risk of serious physical injury or death to any person or the public generally, you should immediately communicate such information as may be necessary to mitigate that risk

to the most appropriate agency (e.g. South Australia Police, SafeWork SA, SA Ambulance, Environment Protection Authority) as per the ICAC Guidelines.

### **3. Assess whether there are reporting obligations under the ICAC Act.**

If you form a reasonable suspicion that the disclosure involves corruption in public administration or serious or systemic misconduct or maladministration in public administration, you must comply with the reporting obligations under the ICAC Act. See the ICAC [Directions and Guidelines](#) for more information.

A *public officer* who makes a report to the OPI (under the ICAC Act) may also be protected under the PID Act. Where a *public officer* makes a report to the OPI about a matter the public officer reasonably suspects involves a potential issue of corruption, misconduct or maladministration in public administration, that report will also be an *appropriate disclosure of public administration information*. The OPI will deal with the report in accordance with the ICAC Act but will also act consistently with the requirements of the PID Act.

If there is no obligation to report under the ICAC Act, assess whether further action is required (see below).

### **4. Assess whether further action is required**

*No action required*

No action need be taken in relation to an *appropriate disclosure of public interest information* if:

- the information disclosed does not justify the taking of further action; or
- 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 (see section 7(2) of the PID Act).

If your assessment is that no action is required, you must comply with section 7(1)(b) of the PID Act and take reasonable steps to notify the *informant* (if their identity is known):

- that an assessment of the information has been made;
- that no action is being taken in relation to the information; and
- the reasons why no action is being taken in relation to the information.

Notify the informant within 30 days of receiving the *appropriate disclosure of public interest information*.

If you take longer than 30 days and the *informant* believes on reasonable grounds that the information is true, the *informant* is entitled to disclose the *public interest information* to a journalist or a member of Parliament other than a Minister of the Crown, and the disclosure will be considered to be an *appropriate disclosure of public interest information*.

You will also need to notify the OPI of the disclosure – see step 5.

#### *Further action required*

If your assessment is that the disclosure requires further action, you must, unless the matter is reported to the OPI as a potential issue of corruption in public administration, ensure that:

- such action as may be appropriate in the circumstances is taken by you to ensure the matter the subject of the disclosure is properly addressed; or
- 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.

See Guideline 1 of the ICAC Guidelines.

In determining who best should take action in relation to a disclosure, consider:

- Who has the skills, resources and powers to investigate the matter?
- If the information is substantiated following an investigation, what action would be appropriate? Who has the skills, resources and powers to take appropriate action?

If action needs to be taken, please refer the *appropriate disclosure of public interest information* to a DEW Responsible Officer, unless good reasons exist for not doing so (e.g if the information relates to them).

When referring the *appropriate disclosure of public interest information* to a DEW Responsible Officer, you can only disclose the identity of the *informant* if you have:

- assessed the disclosure;
- based on that assessment, you are referring the *appropriate disclosure of public interest information* to a DEW Responsible Officer for investigation; and
- the matter cannot be fully investigated in the absence of the identity of the *informant* being disclosed.

Even if the disclosure is referred to a DEW Responsible Officer, you still have obligations under the PID Act. You must take reasonable steps to notify the *informant* (if the *informant's* identity is known) that an assessment of the information has been made and the action being taken in relation to the information. Notify the

informant within 30 days of receiving the *appropriate disclosure of public interest information*.

If you take longer than 30 days and the *informant* believes on reasonable grounds that the information is true, the *informant* is entitled to disclose the *public interest information* to a journalist or a member of Parliament other than a Minister of the Crown, and the disclosure will be considered to be an *appropriate disclosure of public interest information*.

In addition, if you form the view that it will take longer than 90 days from the *appropriate disclosure of public interest information* for an outcome, you must notify the *informant* in writing of the alternative longer period of time in which you will report to them on the outcomes of the actions.

## **5. Notify the OPI of the disclosure**

Even if you refer the *appropriate disclosure of public interest information* to a DEW Responsible Officer you must still notify the OPI of the *appropriate disclosure* as soon as reasonably practicable after the receipt of the *appropriate disclosure* by making an electronic notification via the dedicated [notification form](#) on the ICAC website. The notification must include:

- the date the disclosure was received;
- your name and contact details;
- a summary of the content of the disclosure;
- the assessment made of the disclosure;
- the action taken by you (as the recipient of the disclosure) including:
  - whether the disclosure was referred to another *relevant authority*, public authority, *public officer* or another person;
  - if the disclosure was referred to another *relevant authority*, public authority or *public officer* or other person:
    - the date of the referral;
    - the identity of that *relevant authority*, public authority or *public officer* or another person to whom the disclosure was referred;
    - the manner of referral;
    - the action to be taken by that *relevant authority*, public authority or *public officer* or another person (if known);
- if no action was taken by you (as the recipient of the disclosure) the reason why no action was taken;
- whether the identity of the *informant* is known only to you (as the recipient of the disclosure) or if the identity of the *informant* has been communicated to a *relevant authority*, public authority or *public officer* or another person (and if so, the reasons why such communication was made).

As the recipient of the disclosure you must retain the unique reference number issued by the OPI after the making of a notification and must ensure that that unique reference number is provided to any other person or authority to whom the disclosure is referred.

## 6. Notification of action taken

The recipient of an *appropriate disclosure*, or the person to whom an *appropriate disclosure* is referred (e.g. a DEW Responsible Officer), who takes action must:

- take reasonable steps to notify the *informant* (if the *informant's* identity is known) of the outcome of that action;
- provide the OPI with information relating to the outcome of that action.

### *Notify the informant*

The person taking action should notify the *informant* in writing. The notification must be provided within 90 days of receiving the *appropriate disclosure of public interest information*, or within such longer period if a notification was made to the *informant* that it will take longer to report to them on the outcomes.

If it takes longer than 90 days (or the alternative longer period of time notified above) to notify the *informant* of the outcomes of the action, and if the *informant* believes on reasonable grounds that the information is true, then they are entitled to disclose the *public interest information* to a journalist or a member of Parliament other than a Minister of the Crown, and the disclosure will be considered to be an *appropriate disclosure of public interest information*.

### *Notify the OPI*

The person taking action must notify the OPI as soon as reasonably practicable via the [online notification form](#), of the outcome of action taken, including the following:

- the unique identification number issued by the OPI upon notification of the original disclosure;
- the name and contact details of the *informant*;
- the name and contact details of the person or authority responsible for taking the action;
- what (if any) findings were made in respect of the disclosure;
- the nature of the action taken (if any);
- the outcome of any action taken (if applicable);

- whether the identity of the *informant* was disclosed to a person other than the original recipient of the disclosure; and
- whether the *informant* was notified of the action taken and, if so, when and how that notification was made.

See Guideline 2 of the ICAC Guidelines.

### **Disclosure to Minister**

If an *appropriate disclosure of public interest information* is made to a Minister of the Crown, the following provisions apply:

- the Minister must, as soon as practicable, refer the disclosure to a *relevant authority*; and
- the *relevant authority*—
  - must deal with the information as if the disclosure had been made to the *relevant authority*; and
  - must ensure that the Minister is notified of the action taken under this section in relation to the information and the outcome of such action (see section 7(5) of the PID Act).

### **Keeping information safe**

Any person who has received an *appropriate disclosure of public interest information*, must keep that information strictly confidential. For example, keep all printed materials in a locked cupboard or drawer that only you can access and any conversations with an *informant* are to be held in private.

DEW Responsible Officers will have access to a secure positional mailbox through their email account. The mailbox will only be accessed by the DEW Responsible Officers.

### **Protections under the PID Act**

A person only receives protections under the PID Act when making an *appropriate disclosure of public interest information*. This will depend on who you are, the type of information, and who you disclose the information to.

### **Confidentiality**

An *informant's* identity must be kept confidential in accordance with section 8 of the PID Act. The obligation to maintain confidentiality applies despite any other statutory provision or common law rule to the contrary. An offence against section 8 carries a maximum penalty of \$20 000 or imprisonment for two years.

If you receive an *appropriate disclosure of public interest information*, when seeking any advice, for example from the OPI or from a DEW Responsible Officer, you must not disclose the identity of the *informant* unless the *informant* has consented, or unless you are referring the disclosure to OPI or to a DEW Responsible Officer for investigation and the matter cannot be fully investigated without the identity of the *informant* being disclosed.

The ICAC Guidelines (see Guideline 3) set out some exceptions to maintaining confidentiality in cases where it may be necessary to reveal the identity of an *informant* to prevent or minimise an imminent risk of serious physical injury or death to any person, or if the recipient of a disclosure has been issued with a notice from the OPI advising that the identity of the *informant* is required by the OPI.

### **Immunity**

A person who makes an *appropriate disclosure of public interest information* has immunity from liability under section 5(1) of the PID Act.

### **Victimisation**

It is a criminal offence to victimise a person who makes an *appropriate disclosure of public interest information*. The PID Act provides that a person who personally commits an act of victimisation under the PID Act is guilty of an offence. The offence carries a maximum penalty of a \$20 000 fine or imprisonment for two years.

The PID Act also contains provisions dealing with victimisation of a person who suffers a detriment on the ground, or substantially on the ground, that the person has made (or intends to make) an *appropriate disclosure of public interest information*.

See section 9 of the PID Act.

### **Preventing or hindering disclosures**

It is an offence against the PID Act for a person to prevent another person from making an *appropriate disclosure of public interest information* or to hinder or obstruct another person in making such a disclosure. The offence carries a maximum penalty of \$20 000 or imprisonment for two years.

## **DEW public officers who are the subject of a disclosure**

DEW *public officers* who are the subject of a public interest disclosure are entitled to confidentiality. Matters relating to a public interest disclosure are dealt with impartially, fairly and reasonably, in accordance with the principles of natural justice.

## **How DEW will protect informants**

In order to ensure that *informants* are protected, DEW will:

- provide support and information on the PID Act protections to *informants*;
- maintain confidentiality throughout the process and ensuring the identity of any *informant* is kept secure as set out in these procedures;
- proactively recognise and address any potential detrimental outcomes that may be caused from the disclosure; and
- remove liability from any actions and outcomes that come from the disclosure.

If at any stage you are concerned that your *appropriate disclosure of public interest information* is not being dealt with appropriately, or that you may suffer detriment because you have disclosed information, you can report that to a DEW Responsible Officer or to the OPI.

## **Risk management**

A DEW Responsible Officer will conduct a risk assessment to:

- assess the likelihood of the *informant* suffering a detriment as a result of having made the disclosure;
- assess the likelihood of DEW *public officers* who are the subject of a public interest disclosure suffering a detriment as a result of allegations made in a disclosure; and
- as far as is reasonably practicable, manage any allegation of an alleged or suspected detriment.

A risk management plan will be developed in response to the risk assessment and will be reviewed and amended if required until management of the public interest disclosure is finalised.

## **False or Misleading Disclosures**

A *public officer* should consult a DEW Responsible Officer if they suspect a disclosure to be false or misleading.

It is an offence against the PID Act, with a maximum penalty of \$20 000 or imprisonment for two years, 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). Such a disclosure is not protected by the PID Act.

## Definitions

**Informant** – a person who makes an *appropriate disclosure of public interest information* is referred to in these procedures and throughout the PID Act as an *informant*.

**Public interest information** – is defined in section 4 of the PID Act as:

- **environmental and health information** (information that raises a potential issue of a substantial risk to the environment or to the health and safety of the public generally or a significant section of the public); or
- **public administration information** (information that raises a potential issue of corruption, misconduct or maladministration in public administration, whether occurring before or after the commencement of the PID Act. The definitions of corruption, misconduct and maladministration in public administration are the same as those found in the *Independent Commissioner Against Corruption Act 2012*, see ICAC Guidelines).

**Public officer** – defined in Schedule 1 of the *Independent Commissioner Against Corruption Act 2012*. See also ICAC Guidelines for common categories of *public officers*. Public sector employees are *public officers*.

**Relevant authority** – section 5(5) of the PID Act designates certain persons or organisations who can receive an *appropriate disclosure of public interest information*, depending on who or what the information relates to.

The table below provides guidance on the *relevant authority* for certain types of *public interest information*.

Issue relates to	Relevant authority
Environmental risk	<a href="#">Environment Protection Authority</a>
A location within a particular council	A member, officer or employee of that council.
<i>Public officer</i>	The <i>public officer's</i> supervisor or manager, or the Responsible Officer for the relevant public sector agency.
Public sector employee or public sector agency	<a href="#">Commissioner for Public Sector Employment</a> or the Responsible Officer for the relevant public sector agency.
<i>Environmental and health information or public administration information</i>	<a href="#">Office for Public Integrity.</a>

**Responsible officer** – Responsible Officers for DEW have been appointed by the Chief Executive pursuant to section 12(1) of the PID Act. Anyone wanting to disclose *public interest information* relating to DEW can seek the advice of the DEW Responsible Officers. Information on how to contact DEW Responsible Officers can be found in Appendix 1 of this procedure.

## Associated Documents and References

[Public Interest Disclosure Act 2018](#)

[Independent Commissioner Against Corruption Act 2012](#)

[ICAC's Public Interest Disclosure Guidelines](#)

[Office of the Commissioner for Public Sector Employment](#)

## Contact

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## Appendix

### Appendix 1 – How informants can contact DEW

There are a number of ways you can contact DEW to make an *appropriate disclosure of public interest information*, including:

- Email: DEW.PID@sa.gov.au
- Post: *\*Mark the envelope private and confidential*  
Public Interest Disclosure  
Department for Environment and Water  
GPO Box 1047  
Adelaide SA 5001

A DEW Responsible Officer is a *relevant authority* to receive disclosures of *public interest information* regarding DEW, and DEW public sector employees.

Upon receiving a disclosure, DEW Responsible Officers will:

- ensure that information received is dealt with in a confidential manner;
- ensure that the *informant* is kept informed; and
- encourage *informants* to raise any concerns they have about potential detrimental outcomes that may be caused from the disclosure.