

ICAC Whistleblower Project

Submissions from the South Australian Housing Trust

Complexity of regime

The reporting regime set out by the *Public Interest Disclosure Act 2018 (SA)* (**PID Act**) is complex and difficult to navigate, even for those within the Trust who have expertise in this area.

There are many hurdles and complexities that a person who wishes to make a disclosure must navigate in order to receive the protections. These include:

- The disclosure must fall within the definition of either “corruption in public administration” or “environmental and health information”. “Corruption in public administration” requires that the person making the disclosure has an understanding of the definitions of corruption, misconduct and maladministration, each of which is a relatively complex concept.
- The disclosure must be made to a specific person or organisation, the identity of which will change depending on what category of conduct the specific disclosure relates to.
- The PID Act refers to and relies on a variety of other Acts to supplement its definitions and processes, including the *Independent Commission Against Corruption Act 2012* and the *Ombudsman Act 1972*. Both disclosers and persons receiving the disclosure are therefore required to refer to multiple Acts in order to understand their rights and responsibilities under the PID Act.

Uncertainty of coverage

The PID Act in its current form presents a potential discloser with a risk that they will make the disclosure in way that will result in them being excluded from the protections of the PID Act.

This risk is contributed to by the complexity of the regime, as already discussed above. By way of specific example, if a person raises a legitimate concern in relation to corruption but fails to report it to the correct person, they may not be covered by the PID Act protections. An example would be an employee who raises an issue with the human resources team or the finance team in order for that team to take appropriate action. That person would potentially not receive the protections of the PID Act, unless the receiver of the disclosure was also either a responsible officer or responsible for the management of the relevant public officer. This seems to be a counter-intuitive outcome.

It is not clear to the Trust why a person who raises a legitimate concern in relation to corruption or other matters covered by the PID Act, but does not do so in accordance with the strict obligations of the PID Act, should not also be afforded the protections contained in that Act.

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Persons who can receive disclosures – breadth

The PID Act currently prescribes a range of people to whom a disclosure may be made.

The Trust notes that one category of persons to whom a disclosure may be made includes “a person who is, in fact, responsible for the management or supervision of the public officer” (PID Act s 5(5)(a)(ii)).

This category of persons is exceptionally broad, and may include relatively junior staff (e.g. team leader level or lower management) who may not have the relevant knowledge or skills to be able to recognise and appropriately deal with a public interest disclosure. This reflection is not intended to be made with any criticism of those staff, but reflects the different sophistication, training and experience of the range of employees with supervisory responsibilities across the Trust’s operations.

The Trust considers that, given the range of persons to whom disclosures are made, that there is a real risk that a person receiving a disclosure may not recognise it as being a public interest disclosure. This is particularly the case where the person making the disclosure does not themselves recognise it as being a public interest disclosure or does not actively bring this to the recipient’s attention.

The complexity of the regime (as already discussed above) further increases the risk that public interest disclosure protections may not be properly implemented. While the Trust recognises its obligation to implement appropriate training for staff to mitigate these risks, and has put in place a Public Interest Disclosure Policy and Procedure to assist, the Trust considers that these measures do not mitigate the risk entirely. As the Commission is aware, a failure to properly implement public interest disclosure protections can potentially have significant consequences for both the discloser and the relevant authority.

Training requirements

The breadth of persons to whom disclosures may be made also places a significant burden on the Trust to implement training across multiple levels of management.

While the Trust already implements training for all employees in relation to public interest disclosure, there is an increased level of training that is required to properly equip employees to receive public interest disclosures and action them appropriately. Given the negligible number of legitimate public interest disclosures historically received, the Trust considers that the burden of training is not commensurate to the number of disclosures that are made.

South Australian Housing Trust