

PROCEDURE

PUBLIC INTEREST DISCLOSURES

AN IMPORTANT NOTE ABOUT THIS PROCEDURE

This procedure does not apply to those who want to make a complaint or report about a public officer or public authority under the *Independent Commission Against Corruption Act 2012 (SA)*. Those complaints or reports must be made to the Office for Public Integrity. Information on how to do so can be found on the Office's website at www.publicintegrity.sa.gov.au

This procedure provides guidance for those who make “appropriate disclosures of public interest information” within the meaning of the PID Act which:

- relate to an officer of the Commission; and
- are made to a Commission officer.

It also applies to the Commission officers who receive such disclosures.

Public officers and, in some limited circumstances, members of the public, can make appropriate disclosures to the Commission. However, it is likely that most disclosures to the Commission will be made by public officers (including Commission employees).

Although the Commission can receive appropriate disclosures of public interest information which relate to its officers, potential disclosers should be aware that there are bodies which specifically receive such complaints and reports. These are the Inspector and the Office for Public Integrity.

The Inspector of the Commission can receive complaints about the conduct of any person exercising or purporting to exercise functions or powers under the *Independent Commission Against Corruption Act 2012 (SA)*. This includes the Commissioner or Commission employees.

Information about making a complaint to the Inspector can be found on the Inspector's website at www.inspector.sa.gov.au

The Inspector is not currently a “relevant authority” within the meaning of the PID Act. This means a disclosure made directly to the Inspector will not be an “appropriate disclosure of public interest information” within the meaning of the PID Act.

The Office for Public Integrity is also able to receive complaints or reports about the conduct of officers of the Commission. The Office for Public Integrity is a “relevant authority” within the meaning of the PID Act. This means a disclosure to the Office can be an “appropriate disclosure of public interest information” within the meaning of the PID Act.

Information about making a complaint to the Office for Public Integrity can be found at its website www.publicintegrity.sa.gov.au or by calling 1300 782 489.

STATEMENT FROM THE COMMISSIONER

The integrity of public administration depends on those who see or suspect wrongdoing speaking up.

Whistleblowers or informants – as people in this situation are sometimes known – play a critical role in detecting corruption, misconduct or maladministration in public administration. Often, it is only because an informant has shared what he or she has seen or heard that improper conduct is able to be identified and dealt with.

Individuals who speak up about improper conduct often feel at risk for doing so. It is therefore essential that there is a safe and supportive environment for those making disclosures and, so far as is possible, those that speak up are protected from harm.

It is with this purpose in mind that parliament enacted the PID Act.

The PID Act provides important protections for those who make appropriate disclosures of public interest information and imposes obligations on those that receive them.

The Commission is committed to creating a safe and supportive environment for those who want to make disclosures about suspected wrongdoing by its officers. This document provides guidance for those who want to make an appropriate disclosure of public interest information about a Commission officer to the Commission. It also contains procedures for what Commission officers who receive such disclosures must do.

The Commission and I are committed to protecting informants, giving genuine and efficient consideration to the disclosures they make, taking appropriate action to deal with the information they disclose, and keeping informants up to date about the action the Commission has taken.

It is with these objectives in mind that this procedure has been published. All Commission officers are expected to comply with it.



Emma Townsend
COMMISSIONER

SCOPE

The obligations created by this procedure apply to all Commission officers.

DEFINITIONS

appropriate disclosure has the same meaning as in the PID Act. A disclosure will be an “appropriate disclosure of public interest information” if it meets the requirements of sections 5(3), 5(4) or 6 of the Act.

Code of Ethics means the Code of Ethics for the South Australian Public Sector as published from time-to-time by the Commission for Public Sector Employment as the Code of Conduct under section 15 of the *Public Sector Act 2009* (SA).

Commission refers to the Independent Commission Against Corruption. The Commission is headed by the Commissioner.

complaint includes any disclosure of information to a Commission officer or the Commissioner about the conduct of a public officer of the Commission. In order to receive the protections of the PID Act, a complaint must meet the definition of “appropriate disclosure of public interest information” in the Act.

corruption in public administration has the same meaning as in the ICAC Act, namely:

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*
- (ba) *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.*

disclosure can include any disclosure of information whether verbal or oral. However, a disclosure must meet the definition of “appropriate disclosure of public interest information” in the PID Act in order to receive its protections.

EDRMS means the e Electronic Document Records Management System used by the Commission to electronically store its documents.

environmental and health information has the same meaning as in the PID Act (see below):

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 Act);

ICAC Act means the *Independent Commission Against Corruption Act 2012* (SA).

informant means a person who has made an appropriate disclosure of public interest information.

Manager means a Commission employee who is responsible for the management or supervision of an employee in relation to which a suspected appropriate disclosure of public interest information has been made.

maladministration in public administration has the same meaning as in the *Ombudsman Act 1972* (SA)(see below):

maladministration in public administration—

- (a) means—
 - (i) 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
 - (ii) conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and
- (b) includes conduct resulting from impropriety, incompetence or negligence; and
- (c) is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.
- (5) Without limiting or extending the conduct that may comprise corruption, misconduct or maladministration in public administration, this Act applies to conduct that—
 - (a) occurred before the commencement of this Act; or
 - (b) occurs outside this State; or
 - (c) comprises a failure to act; or
 - (d) is conduct of a person who was a public officer at the time of its occurrence but who has since ceased to be a public officer; or
 - (e) is conduct of a person who was not a public officer at the time of its occurrence but who has since become a public officer.
- (6) A reference in subsection (3) to a code of conduct does not include any statement of principles applicable in relation to the conduct of members of Parliament.

misconduct in public administration has the same meaning as in the *Ombudsman Act 1972* (SA) (see below):

misconduct in public administration means an intentional and serious contravention of a code of conduct by a public officer while acting in his or her capacity as a public officer that constitutes a ground for disciplinary action against the officer.

PID Act means the *Public Interest Disclosure Act 2018 (SA)*.

PID Guidelines means the Guidelines issued by the Commission under section 14 of the PID Act. A copy of those guidelines can be found on the Commission's website (www.icac.sa.gov.au)

public administration information has the same meaning as in the PID Act (see below):

public administration information means information that raises a potential issue of corruption, misconduct or maladministration in public administration.

public interest information has the same meaning as in the PID Act (see below):

public interest information means—

- (a) *environmental and health information; or*
- (b) *public administration information;*

public officer has the same meaning as in the ICAC Act. Schedule 1 of that Act sets out the categories of persons who are “public officers”. They include a person employed by or performing contract work for the Commission. The Commissioner is also a public officer.

relevant authority has the same meaning in the PID Act and includes a Responsible Officer of the Commission.

Responsible Officer means a person designated by the Commissioner as a Responsible Officer under section 12 of the PID Act.

victimisation and **detriment** and **threat** have the same meaning as in the PID Act (see below):

9—Victimisation

- (1) *A person who causes detriment to another on the ground, or substantially on the ground, that the other person or a third person has made or intends to make an appropriate disclosure of public interest information commits an act of victimisation.*

...

- (7) *In this section—*

detriment includes—

- (a) *loss or damage (including damage to reputation); or*
 - (b) *injury or harm (including psychological harm); or*
 - (c) *intimidation or harassment; or*
 - (d) *discrimination, disadvantage or adverse treatment in relation to a person's employment; or*
 - (e) *threats of reprisal.*
- (8) *For the purposes of this section, a threat of reprisal may be—*
 - (a) *express or implied; or*
 - (b) *conditional or unconditional, and in any proceedings dealing with an act of victimisation (including proceedings for an offence against subsection (5)) it is not necessary to prove that the person threatened actually feared that the threat would be carried out.*

BACKGROUND

WHAT IS AN “APPROPRIATE DISCLOSURE” UNDER THE PID ACT?

A person makes an “appropriate disclosure” of public interest information if their disclosure meets requirements set out in section 5 or section 6 of the PID Act.

Disclosures about environmental and health information

Section 5(3) sets out the requirements for an “appropriate disclosure” of environmental and health information and is in the following terms:

A person makes an **appropriate disclosure** of environmental and health information for the purposes of this Act if the disclosure is made to a relevant authority and the person—

- (a) believes on reasonable grounds that the information is true; or
- (b) is not in a position to form a belief on reasonable grounds about the truth of the information but 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.

“Environmental and health information” is defined in the PID Act in the following way:

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 Act)

Any person can make an appropriate disclosure of environmental and health information. However, to be an appropriate disclosure the disclosure must be made to a “relevant authority” within the meaning of the Act (see further below).

This is the only category of appropriate disclosure that can be made by a member of the public who is not a public officer.

Disclosures about public administration information

Section 5(4) sets out the requirements for making an appropriate disclosure of public administration information:

A public officer makes an **appropriate disclosure** of public administration information for the purposes of this Act if the disclosure is made to a relevant authority and the public officer reasonably suspects that the information raises a potential issue of corruption, misconduct or maladministration in public administration.

The definitions of corruption, misconduct and maladministration in public administration are set out in the preceding “definitions” section of this procedure.

Only a public officer can make an appropriate disclosure of public administration information. However, to be an appropriate disclosure the disclosure must be made to a “relevant authority”.

Who is a “relevant authority”?

An appropriate disclosure must be made to a “relevant authority”. A list of relevant authorities can be found in section 5(5) of the PID Act and includes:

- the Office for Public Integrity.
- where the information disclosed relates to an officer of the Commission –
 - a Responsible Officer of the Commission; or
 - a person who is responsible for the management or supervision of the officer of the Commission.
- where the information relates to the commission, or suspected commission, of any offence—a member of the police force.
- where the information relates to a public sector agency or public sector employee – the Commissioner for Public Sector Employment (the Commission is a public sector agency and its employees are public sector employees).
- a Minister of the Crown.

As can be seen from the above, a disclosure made to a Responsible Officer or Manager of the Commission will only be made to a “relevant authority” if the disclosure relates to an officer of the Commission.

The Office for Public Integrity is also a “relevant authority” for such disclosures and, accordingly, a person who wishes to make such a disclosure may want to consider making it to the Office.

Disclosures to journalists or members of parliament (other than Ministers of the Crown).

In certain circumstances a disclosure to a journalist or member of parliament (other than a Minister of the Crown) will also be an appropriate disclosure of public interest information. This will occur if:

- a person has already made an appropriate disclosure of substantially the same information in accordance with section 5 of the PID Act (that is, to a **relevant authority**); and
- when doing so the person made his or her identity known to the person to whom the person to whom the disclosure was made; and either
 - the person has not received notification within 30 days of making the disclosure as required under section 7(1)(b) of the PID Act; or
 - the person has not received notification within 90 days after making the disclosure as required under section 7(3)(a) of the PID Act, or such longer period as specified by written notice given within the period of 90 days, by the person required to give such notice; and
- the person believes on reasonable grounds the information disclosed is true.

For further information, see section 6 of the PID Act.

WHO DETERMINES WHETHER A DISCLOSURE IS AN “APPROPRIATE DISCLOSURE”?

Whether a disclosure is an “appropriate disclosure” will depend on whether the requirements in the PID Act are satisfied. It does not depend on the decision of any person or authority (other than a Court called upon to decide that question).

A person making the disclosure does not need to declare they are making an appropriate disclosure under the PID Act to receive its protections. If the disclosure meets the requirements set out by the PID Act, the protections are automatically conferred.

WHAT HAPPENS WHEN A PERSON MAKES AN APPROPRIATE DISCLOSURE OF PUBLIC INTEREST INFORMATION?

A person who makes an appropriate disclosure of public interest information becomes an “informant” within the meaning of the PID Act.

This means they are entitled to certain protections that Act provides, namely:

- an immunity from civil or criminal liability as a result of that disclosure, including any liability to disciplinary action – see sections 5(1) and (2)
- a right to their identity being kept confidential except in certain limited circumstances – see section 8
- protections against victimisation - see section 9

HOW TO MAKE AN APPROPRIATE DISCLOSURE TO THE COMMISSION

Before making a disclosure to the Commission a person may wish to consider whether they would prefer to make their disclosure to the Office for Public Integrity or the Inspector (see p.1 above).

If the person wishes to make a disclosure which relates to the Commissioner or other officer of the Commission they can do so by making the disclosure to a Responsible Officer of the Commission or a person who is responsible for the management or supervision of the employee (the Manager).

A person can make a disclosure to a Responsible Officer of the Commission by:

- in the case of an employee of the Commission – using the contact details of a Responsible Officer published on the Commission’s intranet.
- in the case of a person who is not an employee of the Commission:
 - calling (08) 8463 5191 and asking to be put in touch with a Responsible Officer.
 - sending your disclosure by correspondence marked as confidential and for the attention of a Responsible Officer to GPO Box 11066, Adelaide, South Australia, 5001.

Where possible, disclosures should be marked “CONFIDENTIAL” or “OFFICIAL: Sensitive” and marked for the attention of the Responsible Officer.

Disclosures can be made anonymously, although a person who makes a disclosure anonymously will not be able to be updated about any action taken in respect of it.

It is preferable that disclosures be made in writing, although this is not required.

When making a disclosure it is helpful if the following information is included:

1. Relevant dates, times, and the identity of any person involved.
2. How the informant became aware of the disclosure.
3. How the informant wishes to be kept informed of the action taken in respect of their disclosure (including their preferred contact details).
4. Any evidential material that would support the disclosure, for example notes of relevant conversations recounting, so far as is possible, the exact words used.

A person making a disclosure may wish to consider whether any other reporting obligations may arise, such as under the Directions and Guidelines issued by the Director of the Office for Public Integrity under the ICAC Act. A copy of the Directions and Guidelines is available on the Office’s website (www.publicintegrity.sa.gov.au).

WHAT SHOULD A COMMISSION RESPONSIBLE OFFICER OR MANAGER DO ON RECEIPT OF A DISCLOSURE?

A Responsible Officer or Manager who receives a disclosure should do the following:

1. If the disclosure has not been made in writing, ask the person if they would be willing to make the disclosure to the officer in writing and provide them a confidential means of doing so. If the informant is not willing to make the disclosure in writing the Commission officer should make written note of their conversation with the informant as soon as possible after the disclosure is received.
2. Advise the discloser how they can obtain more information about the PID Act, including where they can find a copy of the Act, the PID guidelines and this document.
3. Advise the discloser that whether their disclosure will be an “appropriate disclosure” depends on whether it meets the requirements of the PID Act, and draw their attention to those requirements.
 - 3.1. If the Responsible Officer or Manager forms the view it is unlikely to meet those requirements, they should advise the informant of this and explain why they hold that view. Notwithstanding this the officer should continue to treat the disclosure in accordance with this procedure.
 - 3.2. If the Responsible Officer or Manager forms the view that it is obvious that the disclosure does not meet the requirements of the PID Act they should not treat the disclosure as an “appropriate disclosure” of public interest information and advise the discloser of their view, why they have formed it and that they are not intending to treat the disclosure as an “appropriate disclosure”. A written record of the Responsible Officer’s or Manager’s reasons

for this conclusion should be made and retained in the relevant container in the Commission's EDRMS. If the recipient of the information is a Manager, he or she should consult with a Responsible Officer before concluding that the disclosure is not an "appropriate disclosure". The Responsible Officer or Manager should nevertheless consider whether there is any action they should take in relation to the information that has been disclosed to them.

4. Draw the discloser's attention to the protections in the PID Act against victimisation and advise them that if they have any fears that they are going to be victimised, or there is a threat of that kind, they should raise the matter with the Responsible Officer or Manager.
5. Take steps to ensure the information provided by the informant and their identity are confidentially stored. Responsible Officers will be provided a secure place in the Commission EDRMS to retain information relating to disclosures. Managers should approach the Deputy Commissioner Officer or Director Investigations to ask for access to the confidential container relating to disclosures on the Commission's EDRMS. The Deputy Commissioner or Director Investigations can also be approached by the Manager or Responsible Officer to provide additional methods for securely storing information relating to disclosures, including access to a secure tambor. When making these requests, the recipient of the disclosure is not required to (and should not) disclose the identity of the discloser.
6. Take such further action as is required by this procedure or the PID Act.

If the person who received the disclosure is a Manager they may wish to seek advice from a Responsible Officer of the Commission about how they should deal with the disclosure. In so doing, the Manager should not disclose the identity of the discloser unless the exceptions in section 8 apply or consent is given.

A Responsible Officer or Manager who receives a disclosure must ensure the disclosure is kept securely and is handled with appropriate confidentiality.

TAKING ACTION IN RELATION TO THE DISCLOSURE

On the receipt of an appropriate disclosure, the Responsible Officer or Manager, in their capacity as a relevant authority, must, as soon as is practicable after the disclosure is received, assess the information in accordance with sections 7(1) and (2) of the PID Act and the PID Guidelines.

The Responsible Officer or Manager should apply the following when assessing the disclosure:

1. 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, the Responsible Officer or Manager must 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).
2. If the Responsible Officer or Manager form a reasonable suspicion that the matter disclosed involves corruption in public administration, they must comply with their reporting obligations under the ICAC Act.

3. If the Responsible Officer or Manager forms the view that the matter gives rise to a potential issue of misconduct or maladministration in public administration they should bring the matter to the attention of the Deputy Commissioner or Commissioner. The Deputy Commissioner or Commissioner will then determine how the matter should be dealt with, including whether it should be dealt with under the Commission's *People and Culture Policy*. Care should be taken not to disclose the informant's identity unless consent is given or the exceptions in section 8 of the PID Act apply.
4. If the Responsible Officer or Manager assess the disclosure as requiring other appropriate action then, unless the matter is reported to the Office for Public Integrity as a potential issue of corruption, they must:
 - 4.1. take such action as is appropriate in the circumstances to ensure the subject matter of the disclosure is properly addressed; or
 - 4.2. ensure such information as is necessary to enable action to be taken is communicated to the most appropriate person or authority (including the Inspector). If the Responsible Officer or Manager communicates the information to another person or authority (including the Inspector) the officer should advise the recipient that the information could be an "appropriate disclosure" within the meaning of the PID Act and draw their attention to the requirements of the Act, including the requirement to update the informant about any action taken as set out in section 7(3).
5. If the Responsible Officer or Manager assess the content of the disclosure as requiring no further action in accordance with section 7(2) of the PID Act they should advise the informant of this assessment and the reasons why they have come to this view. If the recipient of the information is a Manager, he or she should consult with a Responsible Officer before finalising their view that no further action is required.

The Responsible Officer or Manager should make a note of their assessment and the reasons for it. That note should be retained in the secure container on the Commission's EDRMS.

Care should always be taken to ensure the requirements of section 8 of the PID Act relating to the confidentiality of an informant's identity are met. Responsible Officers or Managers are encouraged to consult each other or the Commission's Legal Services team about how to deal with disclosures made to them. However, in having such discussions, care should be taken not to disclose the informant's identity unless consent is given or another exception applies.

When dealing with an appropriate disclosure, the Responsible Officer or Manager must assess and manage the risk of detrimental action against those that make an appropriate disclosure. For example, when assessing the information and determining next steps, the Responsible Officer or Manager should ensure they do not unnecessarily disclose the informant's identity. The Responsible Officer or Manager may need to seek assistance to ensure the matter can be properly considered or investigated. However, the Responsible Officer or Manager will need to consider what information might disclose the identity of the informant and whether disclosing that information is necessary to ensure the matters to which the information relates are properly investigated.

KEEPING THE INFORMANT AND THE OPI UPDATED

The Responsible Officer or Manager should keep the informant regularly updated about the progress of their disclosure.

Notification about the initial assessment

The Responsible Officer or Manager must take reasonable steps to notify the informant, if their identity is known, that an assessment of the information has been made and the outcome of that assessment within 30 days of the disclosure being made.

Notification to the Office for Public Integrity

The Responsible Officer or Manager must also notify the Office for Public Integrity of an appropriate disclosure within 30 days of the disclosure being made. The notification should include all relevant details, including:

1. The date the disclosure was received.
2. The Responsible Officer's or Manager's name and contact details.
3. A summary of the content of the disclosure.
4. The assessment made of the disclosure.
5. Any action taken, including referrals or date of referral, whether the identity of the informant is known to you (as the recipient of the disclosure) and whether the identity of the informant has been communicated to another relevant authority.

As noted above, if the Responsible Officer or Manager takes longer than 30 days to notify the informant that an assessment of the information has been made and the outcome of that assessment, and the informant believes on reasonable grounds the information is true, the informant is entitled to disclose the public interest information to a journalist or Member of Parliament, and the disclosure will be considered to be an appropriate disclosure of public interest information.

Further notifications

Notification to the discloser

If the Responsible Officer or Manager determines to take action they must take reasonable steps to notify the informant, if their identity is known, of the outcome of that action.

The advice should be provided within 90 days unless written notice of a longer period has been provided to the discloser as described in section 6(b)(iii)(B) of the PID Act. If such notice has been given, the advice must be provided at the end of the longer period specified in the notice.

As noted above, if the Responsible Officer or Manager takes longer than 90 days (or, if written notice of a longer period has been given, longer than the period specified) to notify the informant of the outcome of the action, and the informant believes on reasonable grounds the information is true, the informant is entitled to disclose the public interest information to a journalist or Member of Parliament, and the disclosure will be considered to be an appropriate disclosure of public interest information.

Notification to the Office for Public Integrity

Unless the matter has been referred to another agency for action, the Responsible Officer or Manager must also notify the Office for Public Integrity of the outcome of any action for an appropriate disclosure. The notification should provide all relevant details, including:

1. The unique identification number issued by the Office for Public Integrity upon notification of the original disclosure.
2. The name and contact details of the notifier.
3. The name and contact details of the person or authority responsible for taking the action.
4. What, if any, findings were made in respect of the disclosure.
5. What, if any, action was taken.
6. The outcome of any action taken.
7. Whether the identity of the informant was disclosed to a person other than the original recipient of the disclosure.
8. Whether the informant was notified of the action taken and, if so, when that notification was made.

If the matter has been referred to another agency

When a matter is referred to another agency for action the obligation to advise the informant of the outcome of the action taken is passed to that agency. Notwithstanding this, the Responsible Officer or Manager should, so far as is possible, keep the informant regularly updated about the action being taken in respect of their disclosure (to the extent that they are aware of and able to share this information).

Updates to the informant generally

This procedure and the PID Act establish a baseline for contact with the informant. The Responsible Officer or Manager can check in with an informant and provide them with updates on a more regular basis. The Commission encourages Responsible Officers and Manager to do this if, in their judgment, this is something the informant would like and benefit from.

INFORMATION SECURITY

A Responsible Officer or Manager, in their capacity as a relevant authority, has a duty to ensure an appropriate disclosure of public interest information is kept confidential.

A restricted container is available in Objective to manage appropriate disclosures of public interest information. Access will be restricted to Responsible Officers. If a Manager receives an appropriate disclosure they will be provided access to a relevant container.

Printed or physical materials will be kept in a secure tambor.

If a Manager or Responsible Officer considers extra measures are needed to protect the identity of an informant they should liaise with the Deputy Commissioner or Director Investigations. In doing so, care should be taken not to disclose the informant's identity unless consent is given or an exception in section 8 applies.

INFORMANT CONFIDENTIALITY AND PROTECTIONS

All employees must comply with the PID Act regarding the protection of informants.

Under section 8 of the PID Act it is a criminal offence to knowingly divulge the identity of an informant, unless consent has been given, except so far as may be necessary to ensure the matters to which the information relates are properly investigated.

A person to whom an appropriate disclosure of public interest information is made, may divulge the identity of an informant without consent where:

1. it is believed, on reasonable grounds that it is necessary, to prevent or minimise an imminent risk of serious physical injury or death to any person; and
2. the identity is divulged to a person or authority that it is believed, on reasonable grounds is the most appropriate authority or person to be able to take action to prevent or minimise the imminent risk of physical injury or death to any person.

A person dealing with an appropriate disclosure should always consider whether they need to use the identity of an informant in communications made or documents created when dealing with the disclosure. The person should also consider whether information other than the informant's name might identify them and consider how they deal with such information when dealing with a disclosure.

To ensure informants are protected, the Commission will;

1. Provide training to educate and inform all employees on the PID Act, the Commission's *People and Culture* Policy and this procedure.
2. Adopt and apply internal policy and procedures that comply with the PID Act.
3. Store information about appropriate disclosures securely.
4. Proactively recognise and address any potential detrimental outcomes that may be caused as a result of a disclosure
5. Provide employee assistance programs that support employee health and wellbeing.

The obligation to maintain the confidentiality of the identity of an informant applies despite any other statutory provision, or common law rule, to the contrary.

VICTIMISATION

The Commission is committed to ensuring that, so far as is reasonably practicable, informants are protected from acts of victimisation or other detrimental action suffered because of their disclosure.

Informants are advised by the Responsible Officer or Manager that they can raise any fears or threats of victimisation with them. If this occurs, the Responsible Officer or Manager should consider the information and take appropriate action. This may include raising the issue with the Deputy Commissioner, Director Investigations or Commissioner and discussing what action the Commission should take to protect the informant.

The Responsible Officer or Manager should nevertheless consider the risk of the informant being subject to victimisation or other detrimental action when dealing with a disclosure. If they form the view that extra measures or protections are required, they should consult with the Commissioner, Deputy Commissioner or Director Investigations.

APPEAL PROCESSES

Where an informant believes their disclosure is not being dealt with appropriately the informant may raise their concerns with the Commissioner or Deputy Commissioner.

ISSUE DATE 29 May 2025

REVIEW DATE 29 May 2028

CONTACT Ben Broyd

ROLE Deputy Commissioner

APPROVED *Ben Broyd*
COMMISSIONER

29, 5, 2025