



Written Submission of the Office for Public Integrity: Whistleblower Project

Glossary:

Commission: Independent Commission Against Corruption

ICAC Act: *Independent Commission Against Corruption Act 2012*

PID Act: *Public Interest Disclosure Act 2018*

OPI: Office for Public Integrity

Who should be able to make disclosures?

1. Corruption, misconduct and maladministration in public administration often occurs in circumstances in which the conduct is known only to public officers; however, that is not always the case.
2. Any member of the public can commit a corruption offence, for example by offering a bribe¹ or threatening a public officer². Any member of the public might witness a corruption offence or receive information that is relevant to the detection of a corruption offence.
3. Corruption in public administration can involve organised crime, domestic abuse and other serious behaviours that expose informants to risks of physical harm or victimisation.
4. It is important for a whistleblower protection scheme to encourage the reporting of serious criminal conduct such as corruption and to protect those who are courageous enough to do so.
5. In my submission, there is no reason to limit protections available to those who expose potential corruption to a category of person who is a public officer as defined in the ICAC Act. Such a scheme does not protect public officers who leave their employment before making a report. The OPI has observed that some public officers

¹ Section 249(1) *Criminal Law Consolidation Act 1935*

² Section 250 *Criminal Law Consolidation Act 1935*



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feel more confident in raising a potentially serious issue once they have moved on to a new role and are less fearful of victimisation. If that new role is outside of Schedule 1 of the ICAC Act, they will not be afforded protection under the PID Act. Such a scheme does not provide protection to others, for example the friends and relatives of a person of interest or impacted public officer; or the unsuccessful tenderer who observed corruption in a procurement. A prisoner who reported to the OPI that a prison officer was introducing contraband to the prison would not receive the same protections as a prison officer who made the same report; however, the prisoner is potentially more vulnerable if they are identified as the informant to the person of interest. Just because these persons are not public officers does not mean that they could not be the subject of an act of victimisation such that they would wish for their identity to be protected.

6. As the OPI is the only agency that can assess and refer allegations of potential corruption, this may be able achieved by amendment to the ICAC Act.
7. It is observed that there is potentially a disconnect between the Directions and Guidelines for Public Officers, Public Authorities and Inquiry Agencies issued by the Director of the OPI³ and the PID Act. The former obligates public officers to report a reasonable suspicion of corruption to the OPI and the latter suggests that there are a variety of different agencies to which such a report can be made. This may lead to confusion on the part of a person wishing to obtain protections for making a report of potential corruption.
8. Section 57 of the ICAC Act criminalises an act of victimisation and creates a remedy in tort or under the *Equal Opportunity Act 1984*; however, the maximum penalty for the criminal offence is \$10,000 as compared with \$20,000 or imprisonment for 2 years under the PID Act.
9. The OPI encourages all public officers to make their report to the OPI so that an assessment of all relevant information can occur. The OPI has the necessary expertise to recognise a potential issue of corruption that other agencies may identify only as raising a potential issue of misconduct or maladministration. The OPI now holds data in relation to 4 years' worth of complaints and reports about public administration. Each day our intelligence officer scans newly registered matters to identify patterns and trends. An allegation that raises a potential issue of corruption as defined in the ICAC Act may be obvious from a few lines in an online form from a reliable source. Alternatively, a potential issue of corruption warranting a referral to the Commission can be hidden in voluminous documents and require research of publicly available information and detailed analysis of the available facts and

³ Section 18B *Independent Commission Against Corruption Act 2012*



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applicable law. Sometimes a potential issue of corruption is identified by the OPI when the reporter has contacted us with what they characterise as a suspicion of misconduct or maladministration. This may occur because of the expertise that the OPI staff have developed in recognising corrupt conduct or because of connections drawn by our intelligence officer and legal officers about other information we have received. Each report can represent a small piece of a much larger puzzle with a picture of corruption revealing itself over time.

10. The Ombudsman's Directions and Guidelines encourage public officers to report a reasonable suspicion of misconduct or maladministration to the Ombudsman or to the OPI. It may be helpful for a whistleblower protection scheme that is designed to promote the reporting of a reasonable suspicion of corruption, misconduct or maladministration to be consistent with the reporting obligations and options available to public officers.
11. Allegations of misconduct or maladministration are necessarily less serious than allegations of corruption. Nevertheless, as there may be adverse consequences following a finding of misconduct or maladministration, informants remain potentially vulnerable to victimisation. However, the informants most at risk of victimisation are likely to be those who are still employed or otherwise dealing with the agency about which the report is made (that is, public officers). In the event of disclosures that deal with a potential issue of misconduct or maladministration, it may be unnecessary to extend the protections of the PID Act beyond public officers, except perhaps to encompass former public officers.
12. As to whether a time limit for making a report should apply, I would submit that any time limit should allow for the exercise of discretion. Public officers are obliged under the OPI's Directions and Guidelines to report a reasonable suspicion of corruption as soon as reasonably practicable after forming that suspicion. A delay in reporting may prejudice any investigation that ultimately takes place. Nevertheless, where a potentially serious issue is raised, it is important that it is reported, even after the lapse of time. I submit that any whistleblower protection scheme should encourage prompt reporting but allow for the discretionary application of protections where appropriate.

What should disclosures be about?

13. The type of disclosures that should be protected depends upon the nature of the protections that are available and to whom they are available.



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14. Corruption, misconduct and maladministration have been identified by the legislature as the most serious examples of conduct by a public officer that should be dealt with by an inquiry agency. Allegations of criminal conduct engaged in by a public officer in their capacity as a public officer are equally serious and should attract some protections. It is arguable that they already do; allegations of such criminal conduct by a public officer are likely either to meet the definition of corruption in public administration in section 5 of the ICAC Act or misconduct in public administration in section 4 of the *Ombudsman Act 1972*. While allegations of victimisation could meet the definition of misconduct in public administration, it may be preferable to expressly include reporting such conduct as attracting whistleblower protection.
15. In circumstances in which there is an obligation on public officers to make a public interest disclosure or where it is encouraged that a public interest disclosure is to be made to the OPI or the Ombudsman, it is appropriate that public officers are afforded protections for doing so.
16. Legislated protections may be less necessary for public officers (or indeed anyone else) who is reporting a less serious issue, such as a workplace grievance, simple breach of a Code of Conduct or bullying and harassment that does not meet the definition of misconduct in public administration. It may be preferable for a whistleblower scheme to require public authorities to implement internal policies to deal with protecting those public officers who appropriately raise such issues. The scheme could impose minimum standards, for example, with respect to how agencies must deal with confidentiality and allegations of victimisation.
17. The more complicated issue is what protections should be afforded to a public officer who, in good faith, makes a disclosure of information they genuinely believe raises a potential issue of corruption, misconduct or maladministration, when it is assessed that it does not. The OPI's Directions and Guidelines obligate public officers to report a reasonable suspicion of corruption. A person may form a reasonable suspicion of corruption based on the facts available to them. However, the OPI may have, or be able to obtain, other information that refutes the allegation. It would likely deter informants from making a public interest disclosure if they believed they would only be protected if another agency agreed with their assessment of the information. To operate effectively, the whistleblower protection scheme must provide public officers with confidence that if they appropriately raise concerns about potentially serious issues in the workplace then they will be protected.
18. The OPI rarely receives disclosures of environment and health information and therefore has limited submissions in relation to the protections that should be available for such disclosures. I would recommend that such disclosures should be



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made to an agency that is equipped with the skill or knowledge to assess the risk to the environment or health of the public.

Who should be able to receive a public interest disclosure?

19. As set out above, it may be helpful for a whistleblower protection scheme that is designed to promote the reporting of a reasonable suspicion of corruption, misconduct or maladministration to be consistent with the reporting obligations and options available to public officers. This is consistent with Recommendation 10 of “A Review of the *Whistleblowers Protection Act 1993*” by Commissioner Lander KC, that the OPI be the primary recipient for public interest disclosures by public officers concerning unacceptable conduct in public administration.
20. Within the Commission’s Public Interest Disclosure Guidelines⁴ under the heading “How do I make a disclosure of public administration information?” the Commission states, “Each relevant authority will have its own procedures for receiving public administration information. You should check with the relevant authority directly to understand how to make your disclosure.” The number of different options available to a person wishing to make a disclosure of public interest information may serve to confuse those wishing to make a report.
21. I suspect there are also persons who unknowingly receiving a public interest disclosure and are unaware of their obligations under the PID Act.
22. Section 7 of the PID Act requires a person to whom an appropriate disclosure of public interest information is made to notify the OPI of the disclosure. As set out in our Annual Report, during the 2024-25 financial year, the OPI received 100 such notifications.
23. To put that number into context, during the 2024-25 financial year:
 - a. The OPI made 120 referrals to the Commission of matters that were assessed as raising a potential issue of corruption in public administration, the majority of which were reported to the OPI by a public officer
 - b. The OPI receives many reports from public authorities that raise a potential issue of misconduct or maladministration where the OPI determines not to

⁴ Issued pursuant to section 14 of the PID Act



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take any further action on the basis of the actions already taken by the agency.

- c. The 2024 Office for the Commissioner of Public Sector Employment's State of the Sector Report reveals that there were 118,036 persons employed in the public sector in that year. The number of public officers will be much larger as it includes other categories of employees and contractors. Agencies reported 744 investigations of suspected Code of Ethics breaches, which included 64 investigations into "criminal offenses [sic]" and 65 investigations in relation to the handling of confidential information. 146 investigations were reported to have resulted in a formal disciplinary outcome and 32 employees were terminated. The Commissioner for Public Sector Employment received two public interest disclosures.
24. I consider it unlikely that there were in fact only 100 public interest disclosures made to a relevant authority other than the OPI (which received 504 reports from public officers) during the last financial year.
 25. It is also likely that a number of relevant authorities who receive a public interest disclosure under the PID Act deal with the matter by making their own report to the OPI under the ICAC Act, instead of notifying the OPI pursuant to section 7 of the PID Act.
 26. A number of reports made to the OPI under the ICAC Act that resulted in an assessment of potential corruption, misconduct or maladministration were reported to the OPI by internal integrity units of larger public sector agencies. I suspect that the genesis of many of these reports are a public officer reporting a reasonable suspicion of corruption, misconduct or maladministration to the person responsible for the management or supervision of the public officer the subject of the report, who follows the internal procedures for reporting matters to an integrity unit or senior manager. The person responsible for the management or supervision of the public officer has likely received a public interest disclosure. I consider it highly unlikely that all persons responsible for the management or supervision of public officers are aware of their obligations under the PID Act, in particular, the obligations to keep the informant's identity confidential and to notify the OPI of the disclosure.
 27. The PID Act is "an Act to encourage and facilitate disclosures of certain information in the public interest by ensuring that proper procedures are in place for making and dealing with such disclosures and by providing protection for persons making such disclosures; and for other purposes". Those who receive a public interest disclosure are required by section 7 to assess the disclosure that has been made. If a Minister



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receives a public interest disclosure, they must refer the information to a “relevant authority” to assess.

28. As it is the role of the OPI under section 17 of the ICAC Act to receive, assess and refer complaints about public administration and reports of potential corruption, misconduct or maladministration, it may not be necessary to have such a variety of reporting options for public officers. Particularly for those allegations of potential corruption which must be reported to the OPI (which is not obvious from a reading of the PID Act in isolation).
29. It may be appropriate to simplify the application of a whistleblower protection scheme and require a person to “opt-in” to the scheme by identifying that they wish to make a public interest disclosure and obtain the protections of the scheme by contacting an agency that is designed to receive, assess and refer their disclosure, such as the OPI. I observe that some public officers who contact the OPI make that express statement in their report. The Ombudsman and the Commission are equally suited to receiving public interest disclosures, being the agencies responsible for investigating allegations of corruption, misconduct and maladministration.
30. A scheme which limited the options to whom a public interest disclosure could be made could be complemented by a requirement that agencies implement a procedure that includes minimum standards for encouraging and facilitating employees raising issues appropriately within their agency.
31. I observe that it may be appropriate for the Office of the Inspector to be a relevant authority to receive public interest disclosures of a reasonable suspicion of corruption, misconduct or maladministration in the OPI, Ombudsman SA or Commission.

Conferring Whistleblower Status

32. I agree that it would be preferable to provide an informant with certainty that their disclosure will be protected. Under the current scheme, the OPI is not able to provide any guarantee to an informant that their identity will be protected by an agency to which a matter is referred or that the informant is immune from liability. However, the ICAC Act does provide anyone making a report with protections from victimisation.
33. The OPI treats all reports by a public officer as if it is a public interest disclosure and complies with section 8 of the PID Act, even in circumstances in which it is unlikely to apply; for example, when a public officer reports to the OPI a reasonable suspicion of corruption, misconduct or maladministration that they formed outside of their role in public office.



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34. Whether an agency could confer whistleblower status to a person would depend on the threshold for conferring that status. Currently, the OPI assesses reports made to it in accordance with the ICAC Act. Because the OPI is not the agency that investigates the report, the OPI limits the enquiries that are made of the informant and other agencies to those that are necessary to assess whether there is raised a *potential* issue of corruption, misconduct or maladministration. Having regard to the current whistleblower scheme, it would be difficult for the OPI to confer whistleblower status at the assessment stage. For example, a false report made to the OPI may appear to genuinely raise a potential issue of corruption, misconduct or maladministration. The falsity of the report may only become known once an agency to which the matter is referred commences an investigation. In those circumstances, it would be inappropriate to have guaranteed whistleblower protections to the informant. A scheme could allow for the revocation of whistleblower status if evidence reveals that the report is false. However, the possibility of the revocation of whistleblower status will inevitably undermine confidence of even those truthful informants who hold significant fears of repercussions

Support for Whistleblowers

35. I agree that it is appropriate that public officers are supported during the process of “blowing the whistle”. Under the current scheme, they are often left on their own to manage their workplace relationships or pursue a remedy for victimisation.
36. The OPI is currently able to provide public officers with only generic information about the protections available under the PID Act. Without the ability to confer whistleblower status, the OPI cannot offer a public officer any assurance that they will in fact be protected.
37. The OPI is not resourced to provide legal advice or representation to whistleblowers or potential whistleblowers. I consider that there may be risks in the OPI taking on such a task. The OPI independently and impartially assesses complaints and reports. We do not advocate for a particular outcome. It is our role to determine whether a matter should be investigated and, if so, by whom. Legal professional privilege may impact the OPI’s ability to assess a matter if the OPI is also responsible for obtaining information from public officers for the purposes of providing legal advice. It may be appropriate for a legal provider to be funded to independently provide such advice.
38. As set out above, I agree that the OPI should be the primary agency for receiving, assessing and referring public interest disclosures. The ICAC Act provides the framework for how matters should be referred. Those raising a potential issue of corruption will be referred to the Commission for investigation. It is observed that no other person or agency can refer a matter to the Commission for investigation.



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Potential issues of misconduct or maladministration will either be referred to an inquiry agency (Ombudsman SA or the Judicial Conduct Commissioner) or a public officer or public authority. The potential seriousness of an allegation assessed as raising a potential issue of corruption, misconduct or maladministration can vary significantly and section 18E of the ICAC Act provides for appropriate options for the investigation of those issues without requiring the agency that receives the public interest disclosure to also investigate it.

39. I have previously submitted to the Crime and Public Integrity Policy Committee that the OPI should be able to refer allegations of offences contrary to the ICAC Act to the Commission. This would include allegations of victimisation contrary to section 57 of the ICAC Act. I also agree that allegations of victimisation under a whistleblower scheme could also be appropriately referred to the Commission for investigation.

Confidentiality Obligations

40. The requirement to keep an informant's identity confidential may be unnecessarily onerous and a requirement with which it is difficult to comply. For example, an employee of a public sector agency who works within an agency's integrity unit may have no desire for anonymity. On the other hand, a person who raises a potentially serious issue with the person responsible for supervision of a person of interest may strongly desire that their identity be kept confidential. This imposes a difficult restriction for the supervisor in dealing with the issue that has been raised. Can they practically take any action without revealing the identity of the informant to anyone? How do they, alone, assess whether disclosure of the informant's identity is necessary to properly investigate that matter? How do they comply with records management requirements for documenting the disclosure they have received and any decision they have made to secure the informant's identity?
41. Should an informant expect that they will be identified as the informant when they are likely one of a small group of persons who could have made the report? Often the nature of the matter being investigated will reveal the likely identity of the informant. This is particularly so for allegations of bullying and harassment; but also, allegations of corruption, which are unlikely to be known by a large group of people.
42. While confidentiality is important, what may be more effective is the proactive prevention and early detection of potential issues of victimisation. The risk of victimisation is most often the reason why informants tell the OPI that they do not wish to be identified as the informant, particularly before an investigation has determined the guilt or otherwise of the person informed about.
43. If an informant genuinely wishes to avail themselves of informant anonymity, they are



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likely best placed to make their report to an independent agency such as the OPI. If the OPI assesses that the matter does not in fact raise a potential issue of corruption, misconduct or maladministration then no referral will be made, and the informant's identity will not be known outside of the OPI⁵⁵.

44. While anonymous reporting to the OPI is available, it often limits the action that the OPI can take. For example, if the OPI is not able to communicate with the anonymous reporter, we may simply have insufficient information to assess whether there is raised a potential issue of corruption, misconduct or maladministration. An online portal where persons could communicate with the OPI anonymously may be of benefit (but has not been costed or budgeted for).
45. What is important is that public authorities create a culture of transparency and accountability such that staff are supported to report unethical behaviour both internally and externally. Legislation could require the implementation of minimum standards and regular staff training about the whistleblower scheme.

Immunities

46. If a public officer makes their public interest disclosure to the OPI, section 50 of the ICAC Act provides them with some immunity for the disclosure of confidential information outside of their organisation.
47. A more vexed question is whether a public officer should be immune from disciplinary action for unauthorised access to confidential information to support the making of a public interest disclosure. The balance between the public interest in exposing potential corruption, misconduct or maladministration and the public interest in public officers abiding by their codes of conduct or legislative obligations with respect to handling confidential information will be weighted differently depending on a variety of factors, for example: the nature of the confidential information that was accessed and disclosed without authorisation and the seriousness of the alleged conduct reported.
48. When the OPI educates public officers about their reporting obligations, we make clear that a report does not need to be accompanied by evidence. The obligation on a public officer is to report a reasonable suspicion of corruption. The OPI expects that, if indeed there is raised a potential issue of corruption, then the Commission will obtain the evidence of it.

⁵⁵ I acknowledge that the Office of the Inspector's submissions to the Crime and Public Integrity Policy Committee that they should have unrestricted access to information held by the Office for Public Integrity that is protected under the PID Act.



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49. I have no specific experience in dealing with the immunities provided to an informant under the PID Act.

Remedies

50. The OPI receives, assesses and refers allegations of victimisation contrary to section 57 of the ICAC Act. This has included referrals to SA Police and to Ombudsman SA.

51. While the PID Act is often said to provide informants with protection against victimisation, it in fact provides a potential punishment or remedy for victimisation that has already occurred. This might offer little comfort to the informant who suffers victimisation and is required to pursue a remedy through a Court or through Equal Opportunity SA.

52. It may be preferable for a whistleblower scheme to promote the prevention and detection of victimisation or ameliorate the risks of victimisation for a person who has made an appropriate public interest disclosure. This could require appropriately qualified persons to be available to advocate for workplace arrangements that could limit the ability of a person about whom a report has been made to be able to victimise the informant.

Oversight

53. While it is intended that the OPI be notified of the receipt of a public interest disclosure and the resolution of a public interest disclosure, the PID Act is silent on what the OPI should do with the information that it receives.

54. In practice, unless a notification under the PID Act reveals a potential issue of corruption in public administration as defined in the ICAC Act, the OPI does not interrogate the contents of notifications made to it.

55. If information was provided to the OPI in compliance with section 7 of the PID Act, that could prove a useful source of data relevant to the performance of the OPI's functions under the ICAC Act. For example, it may reveal agencies that are commonly the subject of public interest disclosures or agencies that appear to be appropriately addressing public interest disclosures once made. However, as set out above, the OPI only receives approximately 100 PID notifications per year.

56. To promote integrity within public administration, it may be appropriate to require public authorities to report to the OPI additional data relating to internal investigations and the resolution of other grievances and not just those that meet the definition of a public interest disclosure. For example, unless a report is made to the OPI or to the



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Ombudsman about an allegation of potential misconduct that is raised by a member of the public, the integrity agencies will not receive any notification of the circumstances of that alleged misconduct, even if it is proved and even if it results in disciplinary action. Breaches of the criminal law may not be investigated as such if they are mistakenly mischaracterised by the agency that is dealing with their employee without the expertise of the OPI, Ombudsman SA and Commission. Information about internal investigations and other grievances could be shared between the integrity agencies as relevant to their work, particularly in relation to the minimisation and prevention of corruption, misconduct and maladministration. Prevention of those evils is preferable to the prosecution of the offenders and could appropriately be a focus of the integrity agencies. However, this would require additional resources for the OPI.

Accessibility and Clarity

57. I agree that there may be some benefit in returning to the language of “whistleblowing”. I have observed that public officers are more familiar with this term than with “public interest disclosures”. I have also observed that there is a common misconception within the community that all members of the public may avail themselves of whistleblower protections under the PID Act.
58. As set out above, a simplification of the process to be followed to obtain protections for “blowing the whistle” could assist in making the scheme easier to understand by those who engage in it.
59. As set out above, a legislative requirement for regular staff training about how to make a public interest disclosure could also be valuable to reinforce the importance of a good reporting culture.
60. The OPI, Ombudsman SA and Commission have made excellent progress in jointly presenting to public officers about the respective roles of our offices, what amounts to a reasonable suspicion of corruption, misconduct and maladministration and how public officers can report their suspicions. I consider such education programs to be critical to the effective operation of a whistleblower protection scheme.
61. Further research and investment in technology may also assist in encouraging public officers to make appropriate public interest disclosures, for example, the ability to communicate with an integrity agency anonymously via an online portal.

Other Issues

62. Section 14 of the PID Act requires the Commission to publish guidelines for the



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purposes of the Act. As the OPI is a relevant authority for receiving public interest disclosures and is the agency to which notification of receipt of a public interest disclosure should be made, I consider it appropriate that this responsibility be transferred to the OPI.