

Public Interest Disclosure Procedure

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**Teachers
Registration Board**
OF SOUTH AUSTRALIA

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Public Interest Disclosure Procedure

Confidentiality Classification Table:

☐	UNOFFICIAL	UNOFFICIAL can be used for non-work-related information (including emails). Use of the protective marking is optional.
☒	OFFICIAL	OFFICIAL describes routine information created or processed by the South Australian public sector with a low business impact. Use of the protective marking is optional but recommended .
☐	OFFICIAL: Sensitive	OFFICIAL: Sensitive identifies sensitive but not security classified information. It is a single dissemination limiting marker (DLM) which indicates that compromise of the information may result in limited damage to an individual, organisation or government generally. Use of the protective marking is mandatory .
☐	PROTECTED	PROTECTED is a security classification which indicates that compromise of the information may result in damage to the state or national interests, organisations or individuals. Use of the protective marking is mandatory .
☐	SECRET	SECRET is a security classification which indicates compromise of the information may result in serious damage to the state or national interests, organisations or individuals. Use of the protective marking is mandatory .
☐	TOP SECRET	TOP SECRET is a security classification which indicates compromise of the information may result in exceptionally grave damage to the state or national interests, organisations or individuals. Use of the protective marking is mandatory .

Contents

1	Objective	1
2	Scope	1
3	Statement of Principles	2
4	Making an appropriate disclosure of public interest information	2
5	Assessment and notification	4
6	Protection afforded to Informants	6
7	Relevant and related legislation and guidelines	8
8	Defined Terms	8
9	Concerns about the action taken	9
10	Compliance, monitoring and evaluation	9
11	Appendix 1	10

1 Objective

The *Public Interest Disclosure Act 2018* (PID Act) commenced on 1 July 2019, replacing the *Whistleblowers Protection Act 1993* (WP Act). The objects of the PID Act are –

- a) to encourage and facilitate the disclosure, in the public interest, of information about substantial risks to public health or safety, or to the environment, and about corruption, misconduct and maladministration in public administration –
 - i. by ensuring that proper procedures are in place for the making of such disclosures and for dealing with such disclosures; and
 - ii. by providing appropriate protections for those who make such disclosures; and
- b) to ensure that there is appropriate oversight of public interest disclosures about corruption, misconduct and maladministration in public administration.

The PID Act establishes a scheme that encourages and facilitates the appropriate disclosure of public interest information to certain persons or authorities.

It provides protections for public officers who make an appropriate disclosure of public interest information in accordance with the PID Act and sets out processes for dealing with such disclosures.

In accordance with the requirements of the PID Act, this Public Interest Disclosure Procedure (the Procedure) of the Teachers Registration and Standards Board of South Australia (the Board) sets out the process:

- for any person who wants to make an appropriate disclosure of public interest information concerning a Board employee or the Board (see Sections 4 and 6), and
- for any employee of the Board in dealing with any such appropriate disclosure (see Section 5)

The Independent Commission Against Corruption (the ICAC) has published guidelines under s14 of the PID Act (the ICAC Guidelines) to provide additional requirements. The ICAC Guidelines also provide general information about the PID Act. This Procedure has been prepared to comply, and be consistent, with the ICAC Guidelines. This Procedure should be utilised in conjunction with the ICAC Guidelines.

2 Scope

In accordance with s12(5) of the PID Act and ICAC Guideline four, this Procedure sets out the following:

- the manner in which the Board receives disclosures of public interest information, including:
 - the way in which a disclosure can be securely received; and
 - what steps the Board has put in place to ensure the public interest information is securely received and stored.
- 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 the Board 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 the Board who can be contacted if an informant believes that his or her disclosure is not being dealt with appropriately.

- obligations on the Board and its officers and employees to take action to protect informants,
- 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.

All Board members and employees will comply with the PID Act. Where Board members or employees are considering a disclosure of public interest information under the PID Act, they should also consider if they have obligations under the Directions and Guidelines issued by the ICAC and the Office of Public Integrity (OPI). The Ombudsman also expects public officers and public authorities will report to the Ombudsman any matter that they reasonably suspect involves misconduct in public administration.

3 Statement of Principles

The Board is committed to the prevention, detection and control of fraud, corruption and other criminal conduct, misconduct and maladministration in connection with the activities of the Board.

The Board's approach to public interest disclosures is underpinned by the following principles:

- Accountability and transparency across the operations of the Board.
- Genuine and efficient consideration and action in relation to information provided in a public interest disclosure.
- Addressing matters of corruption, maladministration and misconduct in public administration.
- Ensuring all Board members and staff are informed about their rights and the correct process for disclosing and receiving public interest information.
- Protecting informants from victimisation.

Board responsible officers have the responsibility to ensure compliance with the PID Act. They will:

- receive appropriate disclosures of public interest information relating to the Board and ensure compliance with the PID Act in relation to such disclosures;
- make appropriate recommendations to the Registrar in relation to dealing with such disclosures; and
- provide advice to officers and employees of the Board in relation to the administration of the PID Act.

4 Making an appropriate disclosure of public interest information

All Board members and employees are public officers for the purposes of the PID Act. Public officers must report suspected corruption and are expected to report suspected misconduct and maladministration in public administration.

In order to make an appropriate disclosure of public interest information related to the Board, a Board public officer or a Board employee, and be afforded the protection to informants (see Section 6), the informant will need to:

- determine whether the information they have is public interest information;
- what type of public interest information it is (corruption, misconduct or maladministration in public administration); and

Public Interest Disclosure Procedure

- determine who they should disclose the information to (i.e. who the relevant authorities are).

To make an appropriate disclosure of public interest information related to the Board, a Board public officer or a Board employee, an informant must follow one of the following pathways and advise that the disclosure is a Public Interest Disclosure:

- a) Contact the OPI – The OPI is a relevant authority to receive disclosures of public administration information regarding the Board and Board public officers and Board public sector employees.
- b) Contact the relevant Board Responsible Officer -The Board's Responsible Officers are listed in Appendix A.
- c) Contact the person's manager or supervisor – The person responsible for the management or supervision of that Board public officer is also a relevant authority for disclosure of public administration information.
- d) 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 administration information regarding the Board, Board officers and Board public sector employees.

Each relevant authority has its own procedure in relation to disclosing and receiving public administration information.

This procedure sets out how public officers in the Board can make, and what to do if they receive, an appropriate disclosure of public interest information.

A disclosure may be made to either a Board Responsible Officer or the person responsible for the management or supervision of a Board public officer the subject of the disclosure.

There are a number of ways an appropriate disclosure of public interest information may be made, including:

- verbally, either in person or telephone (8253 9700).
- email (responsible.officers@trb.sa.edu.au) with the subject line: Public Interest Disclosure – PRIVATE AND CONFIDENTIAL.
- Post (PO Box 3649, RUNDLE MALL SA 5000) with the envelope addressed to the Responsible Officer and marked: Public Interest Disclosure – PRIVATE AND CONFIDENTIAL.

If an informant reveals their identity, they have rights about being kept informed. The person receiving the disclosure should with the informant about how they wish to be contacted. It is important that keeping the informant informed is done in a way that maintains strict confidentiality. Decide together how the informant will be kept informed. Although this is not a requirement, it is preferable to keep the informant informed in writing.

Any person who has received an appropriate disclosure of public interest information must keep that information confidential. Disclosures made will be stored in Confidential TRM file number TRB25/100 on the folder entitled "Public Interest Disclosures – Responsible Officers".

5 Assessment and notification

The person receiving the appropriate disclosure of public interest information is required to comply with a number of requirements set out under the PID Act and this Procedure.

These include:

- a) Assessing the information as soon as practicable after the disclosure is made.
- b) Following an assessment, take reasonable steps to notify the informant (if the informant's identity is known) that an assessment of the information has been made and to advise the informant of either:
 - (i) the action being taken in relation to the information; or
 - (ii) if no action is being taken, of the reasons why no action is being taken.
- c) Providing the OPI with information relating to the disclosure.

Assessment

The legal obligations on a relevant authority who receives an appropriate disclosure of public interest information is numerous and complicated. They should seek advice and guidance from Board responsible officers if necessary.

Upon receipt of a notification, the person who receives the notification should:

- Determine whether the notification is an appropriate disclosure of public interest information; and
- Whether they are a relevant authority to receive the notification.

If the answers to the above two questions are "yes," the person who receives an appropriate disclosure of public interest information must:

- a) Assess the disclosure to ascertain whether the "imminent risk" provision of ICAC Guideline one applies

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 recipient of the disclosure 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).

- b) Assess to decide whether, on its face, it is a disclosure that raises a potential issue of corruption or maladministration in public administration

If the recipient of the disclosure forms a reasonable suspicion that the matter disclosed involves corruption in public administration the recipient of the disclosure must comply with their reporting obligations under the ICAC Act.

- c) Assess for No Further Action

If the obligation to report under the ICAC Act does not arise, the person who receives a notification must assess whether this is information for which no further action needs to be taken, and seek advice from a relevant Responsible Officer. No action need be taken in relation to an appropriate disclosure of public interest information if:

- (i) The information disclosed does not justify taking further action, or

Public Interest Disclosure Procedure

- (ii) 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.

d) Assess for Further Action Required

If the information does not give rise to a potential issue of corruption, but warrants further action, it must be determined who best should take action, having regard to the following criteria:

- (i) If investigation of the information is warranted, who has the skills, resources, and powers to investigate the matter?
- (ii) If the information is substantiated following an investigation, what action would be appropriate?

Having identified the appropriate person or authority to take action in relation to the matter raised by the information, the information must be further assessed to determine what information should be communicated to that person or authority to enable the information to be properly addressed.

e) Action Required

If action needs to be taken, unless good reasons exist for not doing so, the person to whom the disclosure was made should refer the appropriate disclosure of public interest information to a Board responsible officer (but not if the information relates to them.).

Following assessment, when referring the appropriate disclosure of public interest information to an AGD responsible officer, the person to whom the disclosure was made can only disclose the identity of the informant if they have:

- assessed the disclosure; and
- based on that assessment, they are referring the appropriate disclosure of public interest information to the Board responsible officer for investigation; and
- based on that assessment, they conclude that the matter cannot be fully investigated in the absence of the identity of the informant being disclosed. If you do not have enough information to draw that conclusion, please omit the informant's identity from your referral. If the AGD responsible officer considers that they need the informant's identity to properly investigate, they will tell you.

Notification of action

Section 7 of the PID Act requires the person to whom an appropriate disclosure of public interest information is made to take certain actions and notify OPI in accordance with the ICAC Guidelines.

Informants should receive notification of the action being taken (or the reasons for no action being taken) within 30 days after making that disclosure. If the recipient of the disclosure takes longer than 30 days, and the informant believes on reasonable grounds that the information is true, they are entitled to disclose the public interest information to a journalist or a Member of Parliament other than a Minister of the Crown (as Ministers of the crown are already relevant authorities under the PID Act), and the disclosure will be considered an appropriate disclosure of public interest information

Informants should also receive notification of the outcome of the action within 90 days after making that disclosure. If the recipient of the disclosure or the DCP responsible officer form the view that it will take longer than 90 days for an outcome, they must notify the informant in writing of this and the expected revised timeframe. The recipient of the disclosure must ensure that the informant is notified of the outcomes by the revised date. Again, if the recipient if the disclosure takes longer than 90 days (or such

other longer period specified in writing), the informant is entitled to receive the protections under the PID Act if they make an appropriate disclosure of the public interest information to a journalist or member of Parliament (other than a Minister of the Crown).

These notifications can be either verbal or in writing. This procedure directs the relevant authority to provide the notification in writing but under the PID Act, this is not a requirement.

If no action is required

If no action is considered appropriate following an assessment, the recipient of the disclosure must take reasonable steps to notify the informant (if the informant's 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.

Notification of outcome of action taken

If an action is taken following the assessment of disclosure of public interest information, the recipient of the disclosure or a person to whom they have referred the disclosure to, must notify the informant of the outcomes of the action.

In addition, the recipient of the disclosure or a person to whom they have referred the disclosure must notify the OPI as soon as reasonably practicable via the online notification form the following:

- the unique identification number issued by the OPI upon notification of the original disclosure;
- their name and contact details;
- 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.

6 Protection afforded to Informants

A Public Officer is eligible for the protection provided by the PID Act when they make an appropriate disclosure of public administration information.

Confidentiality

The PID Act creates an obligation to maintain the confidentiality of all people who make an appropriate disclosure of public interest information. The identity of the informant must not, without their consent be divulged except so far as may be necessary to ensure that the matters to which the information relates are properly investigated.

ICAC Guideline three sets out some exceptions to maintaining confidentiality including 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.

Public Interest Disclosure Procedure

A person who receives an appropriate disclosure of public interest information, when seeking any advice (for example from the OPI or from the Board responsible officers) must not disclose the identity of the informant unless the informant has consented.

Under the PID Act it is a criminal offence (carrying a maximum penalty of \$20,000 or imprisonment for 2 years) to divulge the identity of an informant except in the limited circumstances where that is permitted.

Board responsible officers will have access to a secure positional mailbox through their email account. The mailbox will only be accessed by the responsible officers and has appropriate ICT security measures in place.

Board responsible officers are directed to ensure matters are kept strictly confidential, for example, all printed materials are kept in a locked cupboard or drawer that only the AGD responsible officer can access and any conversations with an informant are to be held in private. In addition, the emails sent to and from AGD responsible officers are kept secure and are not accessed by other staff members.

Immunity

A person who makes an appropriate disclosure of public interest information has the immunity provided for in s5(1) of the PID Act. Specifically, a person who makes an appropriate disclosure of public interest information is not subject to any liability as a result of that disclosure.

Victimisation

Informants must not be victimised as a consequence of making, or intending to make, a public interest disclosure.

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 2 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. An act of victimisation under the PID Act may be dealt with as a tort or as if it were an act of victimisation under the *Equal Opportunity Act 1984*.

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 2 years.

Protection extends to reports made under the ICAC Act and the Ombudsman Act

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 because the OPI is itself a relevant authority.

A public officer must report to the OPI any matter that they reasonably suspect involves corruption in public administration unless the public officer already knows that the conduct has already been reported to the OPI.

While there is no mandatory obligation for a public officer to report information that raises a potential issue of misconduct or maladministration in public administration to the OPI under the ICAC Act, there is an expectation that public officers will report any matter that they reasonably suspect involves misconduct or maladministration in public administration to the Ombudsman unless the public officer knows that it has already been reported to the OPI or the Ombudsman. Accordingly, such a report will ordinarily provide the public officer the protections under the PID Act.

7 Relevant and related legislation and guidelines

- *Directions and Guidelines issued by Ombudsman SA*
- *Equal Opportunity Act 1984*
- *ICAC Public Interest Disclosure Guidelines*
- *Independent Commission Against Corruption Act 2012*
- *Ombudsman Act 1972*
- *OPI Directions and Guidelines for Public Officers*
- *Public Interest Disclosure Act 2018*
- *Public Interest Disclosure Regulations 2019*
- *Public Sector (Honesty and Accountability) Act 1995*
- *Teachers Registration and Standards Act 2004*

8 Defined Terms

Appropriate Disclosure - In relation to public administration information, an appropriate disclosure is a disclosure 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.

Board Responsible officer means a person designated by the Registrar as a responsible officer, who has completed the ICAC Responsible Officer Training (See Appendix 1).

Corruption in public administration – This phrase the same meaning as in s5(1) of the *Independent Commission Against Corruption Act 2012*.

Informant means a person who makes an appropriate disclosure of public interest information, in accordance with this Procedure.

Maladministration in public administration – This phrase has the same meaning as in s4(2) of the *Ombudsman Act 1972*.

Misconduct in public administration – This phrase has the same meaning as in s4(1) of the *Ombudsman Act 1972*.

Public interest information – Includes information that raises a potential issue of corruption, misconduct or maladministration in public administration.

Public officer – Includes Board members and employees.

Relevant authority - In the context of the Board, the relevant authority is:

- (i) a person who is responsible for the management or supervision of the public officer; or
- (ii) a Board responsible officer; or

(iii) the Commissioner for Public Sector Employment.

9 Concerns about the action taken

If an informant is concerned or believes that their appropriate disclosure is not being dealt with by the Board appropriately:

- If the appropriate disclosure of public interest information was made to a relevant authority in the other than a responsible officer, contact one of the Board responsible officers (see Appendix 1).
- If the appropriate disclosure was made to a Board responsible officer, contact other relevant authorities such as the OPI, the Ombudsman or the Office of the Commissioner for Public Sector Employment.

If an informant is concerned or suspects that they may have been or will be the subject of detriment on the grounds of having made, or being about to make, an appropriate disclosure of public interest information, they are encouraged to report that suspicion. In such circumstances, the informant should raise their concerns or suspicions with one of the Board responsible officers.

If the concerns relate to the way in which a Board responsible officer is handling the matter, an informant might want to raise the concerns with a different Board responsible officer. • Alternatively, the informant might prefer to contact other relevant authorities such as the OPI, the Ombudsman or the Office of the Commissioner for Public Sector Employment.

10 Compliance, monitoring and evaluation

An effective monitoring and reporting regime provides the Board a high degree of assurance that public interest disclosures are managed effectively and in accordance with the PID Act and associated guidelines.

The Registrar, as the Principal Officer under the PID Act, monitors the receipt of PID disclosures, and any actions taken in response to such disclosures. An overview of the level and type of public interest disclosures received is reported to the Board on a yearly basis.

11 Appendix 1

Board Responsible Officers

Deputy Registrar

Manager, Corporate services