



DEMPRO.058 – Public Interest Disclosure Procedure

Purpose

The objective of this procedure is to assist in the protection of integrity in the Department for Energy and Mining (DEM) and public sector by seeking to ensure compliance with the *Public Interest Disclosure Act 2018* (PID Act) and informing employees as to the impact and operation of the Act.

The PID Act establishes a scheme that encourages and facilitates the appropriate disclosure of public interest information (which comprises both public administration information and environmental and health information) to certain persons or authorities (a public interest disclosure).

It provides protections for public officers who make an appropriate disclosure of public administration information and sets out processes for dealing with such disclosures. It also provides protections for all persons who make an appropriate disclosure of environmental and health information.

Overview

In accordance with the requirements of the [PID Act](#), this DEM Public Interest Disclosure Procedure (the Procedure) sets out the process:

- For any person who wants to make an appropriate disclosure of public interest information concerning an DEM employee or DEM (see Appendix 1 for details), and
- For any employee of DEM in dealing with any such appropriate disclosure (see Appendix 2 for details).

The Independent Commissioner Against Corruption (the ICAC) has published four sets of guidelines under section 14 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.

Obligations on public sector agencies

In accordance with section 12 (5) of the PID Act and [ICAC Guideline Four](#) these Procedures set out the following:

- The manner in which DEM receives disclosures of *public interest information*, including:
 - The way in which a disclosure can be securely received (see Appendix 3 for details)
 - What steps DEM has put in place to ensure the *public interest information* is securely received and stored, and
 - Who is responsible for ensuring compliance with these steps
- The criteria that will be applied in the assessment of a *public interest disclosure*
- The manner in which details of the assessment will be securely stored and the person in DEM 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 DEM who can be contacted if an informant believes that his or her disclosure is not being dealt with appropriately



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- Obligations on DEM and its officers and employees to take action to protect informants, and
- Risk management steps for assessing and minimising detrimental action against people because of public interest disclosures and detriment to people against whom allegations are made in a disclosure.

These Procedures set out how you can ensure you are complying with the PID Act and the ICAC Guidelines.

DEM Statement of Principles

The Chief Executive of the Department for Energy and Mining is committed to:

- Accountability and transparency across the department
- Protecting informants who disclose public interest information appropriately
- Having sound procedures for receiving public interest information
- Genuine and efficient consideration and investigation of any public interest disclosure matters relating to the department
- Keeping persons who disclose information informed about the action taken or the outcome of any investigation
- Addressing matters of serious or systemic maladministration and misconduct in public administration
- Ensuring all DEM staff are informed about their rights and the correct process for disclosing and receiving public interest information.

Responsibilities

All employees will comply with the PID Act. Where employees are considering a disclosure of public interest information under the PID Act, they should also consider if they have obligations under the Directions and Guidelines issued by the Independent Commissioner Against Corruption.

Definitions

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

Public officer - The term *public officer* is defined in Schedule 1 of the ICAC Act. The most common categories of *public officer* can be found in the appendices to the [ICAC Guidelines](#). Public sector employees are *public officers*.

Relevant authority - The PID Act designates certain persons or organisations who can receive an appropriate disclosure of public interest information, depending on who or what the information relates to.

Responsible Officer - Under section 12(1) of the PID Act, as *principal officer* of DEM the Chief Executive has appointed three people to be *responsible officers* for DEM.

In accordance with section 13 of the PID Act, the *responsible officer* must:



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- Receive *appropriate disclosures of public interest information* relating to DEM and ensure compliance with the PID Act in relation to such disclosures, and
- Make appropriate recommendations to the DEM Chief Executive in relation to dealing with such disclosures, and
- Provide advice to officers and employees of the DEM in relation to the administration of the PID Act.

Anyone wanting to disclose *public interest information* related to DEM can therefore seek the advice of the DEM *responsible officer*. In addition, information is also available on the on the ICAC / [Office for Public Integrity \(OPI\)](http://www.icac.sa.gov.au) website (www.icac.sa.gov.au).

Making an appropriate disclosure of public interest information

Section 5 of the PID Act sets out what is an appropriate disclosure of public interest information.

In order to make an appropriate disclosure of public interest information you need to determine whether the information you have is public interest information and what type of public interest information it is. All persons can receive protections under the PID Act for disclosing environmental and health information but only public officers receive protections for disclosing public administration information. These terms are explained in more detail below.

You then need to determine who you should disclose the information to (i.e. who the *relevant authority* is).

Advice can be provided to you by the [DEM responsible officer](#). Further information about the PID Act can also be found on the ICAC / [OPI](#) website (www.icac.sa.gov.au).

Receiving an appropriate disclosure of public interest information

In order to determine whether an informant has made an appropriate disclosure of public interest information to you, you need to assess the information given to you, determine whether it is public interest information and consider whether you are a relevant authority for that type of information.

Advice can be provided to you by a [DEM responsible officer](#). Further information about the PID Act can also be found on the ICAC / [OPI](#) website (www.icac.sa.gov.au).

What is Public Interest Information?

There are two types of public interest information. The first is environmental and health information. The second is public administration information.

Disclosures of environmental and health information

What is environmental and health information?

- Environmental and health information means information that raises a potential issue of a substantial risk to the environment or to the health and safety of the public generally or a significant section of the public (whether occurring before or after the commencement of the PID Act - see section 4).



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Who can make a disclosure of environmental and health information?

- Anyone can make a disclosure of environmental and health information.
- However, to gain the protections provided under the PID Act, a person who makes a disclosure of environmental and health information:
 - Must believe on reasonable grounds that the information is true; or
 - Not being in a position to form such a belief, believes on reasonable grounds that the information may be true and is of sufficient significance to justify its disclosure so that its truth may be investigated.
- A disclosure of environmental and health information that is accompanied by either of these beliefs is referred to as an appropriate disclosure of environmental and health information for the purposes of the PID Act.

Who can receive a disclosure of environmental and health information?

- For a disclosure to be considered an appropriate disclosure of environmental and health information it must be made to a relevant authority.
- Whether a disclosure of public interest information is made to a relevant authority depends on the type of information being disclosed and what or who the information relates to.
- Section 5(5) of the PID Act specifies the relevant authorities that can receive disclosure of public interest information.
- This list of relevant authorities is included in the appendices to the ICAC Guidelines.
- Where information relates to a risk to the environment you should consider making a disclosure to the Environment Protection Authority (see the [ICAC Guidelines](#)).
- Where the information relates to a location within the area of a particular local council, you should consider making a disclosure to a member, officer or employee of that council (see the [ICAC Guidelines](#)).
- There are other relevant authorities that can receive disclosures relating to environmental and health information.
- If the environmental and health information relates to a public officer in DEM, both the DEM responsible officer or the person responsible for the supervision or management of the public officer the environmental and health information relates to are relevant authorities.
- If the environmental and health information relates to a public sector employee in DEM or relates to DEM, both the DEM responsible officer or the Commissioner for Public Sector Employment are relevant authorities.
- [OPI](#) is also a relevant authority for any appropriate disclosure of environmental and health information.



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Disclosures of public administration information

What is public administration information?

- Public administration information means information that raises a potential issue of corruption, misconduct or maladministration in public administration (whether occurring before or after the commencement of the PID Act).
- The definitions of corruption, misconduct and maladministration in public administration are the same as those found in the ICAC Act and can be found in the appendices to ICAC Guidelines (see the ICAC Guidelines).

Who can make a disclosure of public administration information?

- While anyone can make a disclosure of public administration information, only public officers who make such a disclosure are eligible for the protections provided by the PID Act.
- The term public officer is defined in Schedule 1 of the ICAC Act.
- The most common categories of public officer can be found in the appendices to the ICAC Guidelines (see the [ICAC Guidelines](#)).
- Public sector employees are public officers.

Who can receive a disclosure of public administration information?

- To gain the protections provided by the PID Act a public officer must make a disclosure of public administration information to a relevant authority in circumstances where the public officer reasonably suspects that the information raises a potential issue of corruption, misconduct or maladministration in public administration.
- A disclosure of public administration information that is accompanied by such a suspicion is referred to as an appropriate disclosure of public administration information for the purposes of the PID Act.
- There are a number of relevant authorities that can receive disclosures relating to public administration information.
- Whether a disclosure of public interest information is made to a relevant authority depends on the type of information being disclosed and what or who the information relates to.
- Section 5(5) of the PID Act specifies the relevant authorities that can receive disclosure of public interest information.
- The list of relevant authorities is included in the appendices to the ICAC Guidelines (see the [ICAC Guidelines](#)).
- If the public administration information relates to a public officer in DEM, both the DEM responsible officer or the person responsible for the supervision or management of the public officer the public administration information relates to are relevant authorities.
- If the public administration information relates to a public sector employee in DEM or relates to DEM, both the DEM responsible officer or the Commissioner for Public Sector Employment are relevant authorities.
- The OPI is also a relevant authority for any appropriate disclosure of public administration information.

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How do I make a disclosure of public administration information?

- Each relevant authority has its own procedures in relation to disclosing and receiving public administration information.
- These Procedures set out how public officers in DEM can make, and what to do if they receive, an appropriate disclosure of public interest information.

See Appendix 1-3 for further details.

False or Misleading Disclosures

A public officer should consult the responsible officer if they suspect a disclosure to be false or misleading.

It is an offence against the PID Act, with a maximum penalty of \$20,000 or imprisonment for 2 years, to make a disclosure of public interest information knowing that it is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular).

Such a disclosure of public interest information is not protected by the PID Act.

What protections are given under the PID Act?

There are two types of public interest information:

1. Environmental and health information
2. Public administration information.

Only public officers are eligible for the protections provided by the PID Act when they make an appropriate disclosure of public administration information.

However, anyone is eligible for the protections provided by the PID Act if they make an appropriate disclosure of environmental and health information, provided:

- they believe on reasonable grounds that the information is true; or
- not being in a position to form such a belief, believes on reasonable grounds that the information may be true and is of sufficient significance to justify its disclosure so that its truth may be investigated.

Confidentiality

- A person who makes an appropriate disclosure of public interest information is protected and their identity must be kept confidential in accordance with section 8 of the PID Act.
- [ICAC Guideline three: Informant Confidentiality](#) 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.
- Under the PID Act it is a criminal offence to divulge the identity of an informant except in the limited circumstances where that is permitted.
- If you receive an appropriate disclosure of public interest information, when seeking any advice, for example from OPI or from the DEM responsible officer, you must not disclose the identity of the informant unless the informant has consented.



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- You can only disclose the identity of the informant in accordance with ICAC Guideline three or if you have:
 - Assessed the disclosure; and
 - Based on that assessment, you are referring the appropriate disclosure of public interest information to OPI or to the DEM responsible officer for investigation; and
 - Based on that assessment, you have concluded that the matter cannot be fully investigated in the absence of the identity of the informant being disclosed.

Immunity

- A person who makes an appropriate disclosure of public interest information has the immunity provided for in section 5(1) of the PID Act.

Victimisation

- It is a criminal offence to victimise a person who makes an appropriate disclosure of public interest information.
- The PID Act provides that a person who personally commits an act of victimisation under the PID Act is guilty of an offence. The offence carries a maximum penalty of a \$20, 000 fine or imprisonment for 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. This is also addressed in section 9 of the PID Act.

Preventing or hindering disclosures

- It is an offence against the PID Act for a person to prevent another person from making an appropriate disclosure of public interest information or to hinder or obstruct another person in making such a disclosure.

The offence carries a maximum penalty of \$20, 000 or imprisonment for 2 years.

I have an obligation to make a report to the Office of Public Integrity (OPI). Can I still be protected under the PID 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.
- Accordingly, such a report will ordinarily provide the public officer the protections under the PID Act.
- The OPI will deal with your report in accordance with the ICAC Act but will also act consistently with the requirements of the PID Act.

For more information about how the OPI deals with complaints and reports visit the [ICAC website](#).



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Protecting Informants

DEM is committed to protecting people who make an appropriate disclosure of public interest information. The protections afforded under the PID Act are outlined in the section 'What protections are given under the PID Act' in this Procedures document.

The PID Act creates an obligation to maintain the confidentiality of all people who make an appropriate disclosure of public interest information.

This is reflected in section 8 of the PID Act which states that a person to whom an appropriate disclosure of public interest information is made, or a person to whom such a disclosure is referred or who otherwise knows that such a disclosure has been made, must not, without the consent of the informant, knowingly divulge the identity of the informant except:

- So far as may be necessary to ensure that the matters to which the information relates are properly investigated; or
- In accordance with any applicable ICAC Guidelines.

An offence against this section carries a maximum penalty of \$20 000 or imprisonment for 2 years.

As set out in the Appendices, the identity of the informant must be kept confidential unless the informant has consented to their identity being disclosed, even when seeking advice from the DEM responsible officer.

The obligation to maintain confidentiality imposed by section 8 applies despite any other statutory provision, or a common law rule, to the contrary. The exceptions to maintaining confidentiality are set out in [ICAC Guideline 3 and in section 8\(1\) of the PID Act](#).

How DEM will protect informants

In order to ensure that the informants are protected, DEM will::

1. Provide support and information on the PID Act protections to the informant
2. Adopt and apply internal procedures that require compliance with section 8(1) of the PID Act in relation to confidentiality
3. Store information about appropriate disclosures securely
4. Proactively recognise and address any potential detrimental outcomes that may be caused from the disclosure

Furthermore, public officers are able to refer to the [DEM Employee Grievance Resolution Procedure](#) for any concerns or complaints that need to be addressed.

Remember you can seek the advice of the DEM responsible officer to ensure you are complying with the ICAC Guidelines, as well as with the PID Act.

More information

The Directions and Guidelines issued by the Independent Commissioner Against Corruption can be access through www.icac.sa.gov.au.



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Appendices

Appendix 1 Making an appropriate disclosure of public interest information.

Appendix 2 Receiving and dealing with an appropriate disclosure of public interest information.

Appendix 3 How informants can contact DEM.

Feedback

To provide feedback on this document email to dem:policiesandprocedures@sa.gov.au

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