

PUBLIC INTEREST DISCLOSURE PROCEDURE

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1. INTRODUCTION

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and must be read in conjunction with the PID Act, relevant legislation and associated documents.

- 1.2. This process applies for:
 - 1.2.1. any person who wants to make an *appropriate disclosure of public interest information* concerning an SAFC employee or the SAFC, or
 - 1.2.2. any employee of the SAFC in dealing with any such appropriate disclosure.
- 1.3. Specific obligations for SAFC Personnel
 - 1.3.1. All SAFC Personnel must comply with the PID Act. Where SAFC Personnel 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 Office for Public Integrity (OPI) and the ▶ Directions and Guidelines issued by the Ombudsman SA.
 - 1.3.2. 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.

2. SAFC STATEMENT OF PRINCIPLES

- 2.1. The Chief Executive Officer of the SAFC is committed to:
 - accountability and transparency across the SAFC
 - 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 SAFC
 - 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 SAFC staff are informed about their rights and the correct process for disclosing and receiving public interest information.

3. SAFC RESPONSIBLE OFFICER

3.1. The SAFC Responsible Officer is:

Kate Croser

Chief Executive Officer

Email: Kate.Croser@safilm.com.au

Telephone: (08) 8394 2002

Post: Private and Confidential

Attn: Kate Croser

Public Interest Disclosure SA Film Corporation 1 Mulberry Road Glenside SA 5065

- 3.2. The Responsible Officer will:
 - Receive appropriate disclosures of public interest information relating to the SAFC and ensure compliance with the PID Act in relation to the disclosure
 - Make appropriate recommendations to the CEO in relation to dealing with disclosures
 - Provide advice to SAFC Personnel in relation to the administration of the PID Act

A. BEFORE MAKING A DISCLOSURE

To make an appropriate disclosure of public interest information it is necessary to determine whether the information is public interest information and, if it is, who the information should be disclosed to (i.e., who the relevant authority is). Appendix 1 provides details of relevant authorities under the PID Act.

Whether protection is available under the PID Act will depend in part on who is making the disclosure and the subject matter of the disclosure:

- anyone can receive the protection of the PID Act if an *appropriate disclosure* is made of *environmental* and health information in accordance with the PID Act.
- Only *public officers* are eligible for the protections under the PID Act if making an *appropriate disclosure* of public administration information.

PUBLIC INTEREST INFORMATION

There are two types of *public interest information*:

- Environmental and health information
- Public administration 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.

About environmental and health information disclosures

- Anyone can make an environmental and health information disclosure.
- To gain the protections under the PID Act, a person making an environmental and health information disclosure:
 - Must believe on reasonable grounds that the information is true, or
 - Not being in a position to form such a belief, believe 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 must be made to a relevant authority:
 - Where information relates to a risk to the environment, consider making a disclosure to the
 Environment Protection Authority.
 - The **Coffice for Public Integrity** is a relevant authority for any appropriate disclosure of environmental and health information.
 - If the environmental and health information relates to an SAFC employee, both the SAFC
 Responsible Officer or the person responsible for the supervision or management of the SAFC
 employee the environmental and health information relates to are relevant authorities.
 - Section 5(5) of the Public Interest Disclosure Act 2018 specifies the relevant authorities that can receive a disclosure of public interest information.

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

The definition of corruption in public administration is the same as that found in section 5(1) of the Independent Commission Against Corruption Act 2012 (ICAC Act).

The definitions of maladministration in public administration and misconduct in public administration have the same meaning as in Section 4 of the Combudsman Act 1972. It is important to note that the definition of misconduct in the Ombudsman Act is limited to a contravention of a relevant Code by a public officer that is *intentional and serious*.

About public administration information disclosures

- While anyone can make a public administration information disclosure, only public officers are eligible for the protections provided by the PID Act. The term public officer is defined in
 Schedule 1 of the ICAC Act (SAFC employees are public officers).
- To gain the protections under the PID Act, a person making a public administration information disclosure must reasonably suspect that the information raises a potential issue of corruption, misconduct or maladministration in public administration.
- A disclosure must be made to a relevant authority:
 - The Coffice for Public Integrity is a relevant authority for any appropriate disclosure of public administration information.
 - The Ombudsman SA is the relevant authority where the information relates to an agency to which the *Ombudsman Act 1972* applies.
 - If the public administration information relates to a public sector employee in the SAFC, or relates to the SAFC, both the SAFC Responsible Officer or the Commissioner for Public Sector Employment are relevant authorities.
 - If the public administration information relates to an SAFC employee, both the SAFC
 Responsible Officer or the person responsible for the supervision or management of the SAFC
 Personnel the public administration information relates to are relevant authorities.

B. MAKING A DISCLOSURE

To make an appropriate disclosure of public interest information related to the SA Film Corporation (SAFC) or an SAFC public officer, there are a number of options including:

1. The **▼** Office for Public Integrity (OPI)

The OPI is a relevant authority to receive disclosures of public administration information or environmental and health information regarding the SAFC, SAFC public officers and SAFC employees.

2. The SAFC Responsible Officer

The SAFC Responsible Officer can provide advice and assistance. The SAFC Responsible Officer is a relevant authority to receive disclosures of public administration information or environmental and health information regarding the SAFC and SAFC employees.

3. The person's manager or supervisor

If the disclosure of *public administration information* or *environmental and health information* relates to an SAFC public officer, the person responsible for the management or supervision of that person is also a relevant authority and a disclosure can be made to them.

4. The Soffice of the Commissioner for Public Sector Employment

The Commissioner for Public Sector Employment is a relevant authority to receive disclosures of public administration information or environmental and health information regarding the SAFC and SAFC employees.

When making the disclosure of information, an individual has rights about being kept informed. Speak to the relevant authority about preferred methods of contact. It is important that providing information and updates in relation to any disclosure is done in a way that maintains strict confidentiality.

It is better to keep informed in writing, although this is not a requirement.

The SAFC has an obligation to protect informants. The SAFC Responsible Officer is required to ensure matters are kept strictly confidential, for example, all printed materials are kept in a locked cupboard or drawer that only the SAFC Responsible Officer can access and any conversations with an informant are to be held in private. In addition, the emails sent to and from the SAFC Responsible Officer are to be kept secure and are not to be accessed by other staff members.

The SAFC is committed to minimising any risk that an informant might be victimised as a consequence of making, or intending to make, a public interest disclosure.

The SAFC Responsible Officer will provide support and information about the PID Act protections to informants and encourage informants to raise any concerns they have about potential detrimental outcomes that may be caused from the disclosure.

C. RECEIPT AND ASSESSMENT OF DISCLOSURE

Once an appropriate disclosure of public interest information is made, the person who receives the disclosure must take certain steps as set out in section 7 of the PID Act.

This includes (amongst other things) taking reasonable steps to notify the informant (provided the identity of the informant is known) that an assessment of the information has been made and to advise of either:

- The action being taken in relation to the information (section 7(1)(b)(ii), PID Act); or
- If no action is being taken in relation to the information, of the reasons why no action is being taken (section 7(1)(b)(ii), PID Act).

The action being taken in relation to the information can include referring it to another person. If referral to another person occurs, then the informant's identity may be disclosed as part of that referral, provided divulging the informant's identity is necessary for the purpose of investigating the disclosure.

If any action is being taken in relation to the information, then the person who received the disclosure (or the person it has been referred to) must take reasonable steps to notify the informant (if the informant's identity is known) of the outcome of that action (section 7(3)(a), PID Act).

However, if appropriate disclosure of public interest information is made to a Minister of the Crown, the requirements set out above from section 7 do not apply. The following provisions apply instead:

- The Minister must, as soon as practicable, refer the disclosure to a relevant authority, and
- The relevant authority must:
 - Deal with the information in accordance with section 7 (as if the disclosure had been made to the relevant authority in the first place) and
 - Ensure that the Minister is notified of the action taken under section 7 in relation to the information and the outcome of such action.

ASSESSMENT

The person in receipt of the disclosure must assess the information and consider whether they are a relevant authority for the particular information. Advice can be provided by the SAFC Responsible Officer and also by the OPI.

When seeking advice, the person in receipt of the disclosure must not disclose the identity of the informant, nor disclose any information that could reveal the identity of the informant, unless the informant consents.

The Public Interest Disclosure Guideline One: Receipt, assessment and notification of appropriate disclosures (section 7), issued by the ICAC, provides details of requirements following receipt of an appropriate disclosure of public interest information.

- Assess for imminent risk

Immediately assess the disclosure to ascertain whether the 'imminent risk' provision of ICAC Guideline 1 applies.

- Assess to decide whether, on its face, it is a disclosure of public interest information
 - Does the information disclosed raise a potential issue of:
 - i) Corruption in public administrations
 - ii) Misconduct in public administration
 - iii) Maladministration in public administration

• Does the information disclosed raise 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?

If the assessed disclosure has the character of public interest information you have an obligation to report that matter to the OPI, applying the criteria in the ICAC Act and in accordance with Guideline One.

- Assess for no further action

If the obligation to report under the ICAC Act does not arise, assess whether no action need be taken. No action need be taken in relation to an appropriate disclosure of public interest information if:

- The information disclosed does not justify the taking of further action; or
- 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 (see section 7(2), PID Act).

If no action required: Notification to Informant

If no action is being taken, the person to whom the appropriate disclosure of public interest information was made must still comply with section 7(1)(b) of the PID Act.

The SAFC Responsible Officer can assist, but the person must take reasonable steps to notify the informant (if the informant's identity is known):

- i) That an assessment of the information has been made
- ii) That no action is being taken in relation to the information, and
- iii) The reasons why no action is being taken in relation to the information

This notification must be made within 30 days of receiving the appropriate disclosure of public interest information.

If the notification takes longer than 30 days and the informant believes on reasonable grounds that the information is true, the informant is entitled to disclose the public interest information to a journalist or a member of Parliament.

Assess for further action required

If the information does not give rise to a potential issue of corruption, but warrants further action, it is necessary to determine who best should take action in relation to it, having regard to the following criteria:

- If investigation of the information may be warranted, who has the skills, resources and powers to investigate the matter?
- If the information is substantiated following an investigation, what action would be appropriate? Who has the skills, resources and powers to take appropriate action in relation to the matter arising from the information, if the information is substantiated?

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

It is recommended that any appropriate disclosure of public interest information be referred to the SAFC Responsible Officer.

D. ACTION TO BE TAKEN

Notification of the action being taken (or the reasons for no action being taken) should be received within 30 days after making a disclosure. This notification can be either verbal or in writing.

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 the OPI in accordance with ICAC Guidelines.

DISCLOSURE TO A JOURNALIST OR MEMBER OF PARLIAMENT

A person has certain rights if they have made an appropriate disclosure of public interest information in accordance with section 5 of the PID Act and:

- They believe on reasonable grounds that the information is true; and
- They have made their identity known to the person to whom that appropriate disclosure of public interest information was made (that is, they can be contacted by the person).

If after 30 days or 90 days (or such other longer period specified in writing) notification has not been received, 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, as Ministers of the Crown are already relevant authorities under the PID Act).

Under the PID Act a journalist means a person engaged in the profession or occupation of journalism in connection with the publication of information in a news medium.

CONCERNS ABOUT THE ACTIONS TAKEN

If an informant is concerned or believes that their appropriate disclosure made to the SAFC Responsible Officer is not being dealt with appropriately they should contact other relevant authorities such as the OPI, the Ombudsman SA 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 to a relevant authority.

NOTIFICATION TO THE OPI

The person in receipt of the disclosure must also notify the OPI as soon as reasonably practicable following receipt of the disclosure by making an electronic notification via **Notifications** Office for Public Integrity and must include in that notification:

- The date the disclosure was received
- name and contact details of the person in receipt of the disclosure
- A summary of the content of the disclosure
- The assessment made of the disclosure
- The action taken by the person in receipt of the disclosure, including:
 - Whether the disclosure was referred to another relevant authority, public authority, public officer or another person, and
 - If the disclosure was referred:
 - i) The date of the referral
 - ii) The identity of that relevant authority, public authority or public officer or another person to whom the disclosure was referred

- iii) The manner of referral, and
- iv) The action to be taken by that relevant authority, public authority or public officer or another person (if known)
- If no action was taken by the person in receipt of the disclosure, the reason why no action was taken
- Whether the identity of the informant is known only to the person in receipt of the disclosure or if the identity of the informant has been communicated to a relevant authority, public authority, public officer or another person (and if so, the reasons why such communication was made).

E. OUTCOMES OF ACTION

Notification of the outcome of the action should be provided to the informant within 90 days after making the disclosure. However, the person in receipt of the disclosure can provide written notice saying that this period of time will be longer. These notifications can be either verbal or in writing.

NOTIFICATION TO INFORMANT

If the person in receipt of disclosure has referred the matter to the SAFC Responsible Officer, or to another person, the Responsible Officer or other person must take reasonable steps to notify the informant (if the informant's identity is known) of the outcome of any action taken (section 7(3)(a), PID Act).

Before emailing an informant, the person making the notification must ensure they have agreed to an appropriate email address to be used.

NOTIFICATION TO OPI

The person in receipt of a disclosure, or the SAFC Responsible Officer or other person to whom the matter was referred, must provide the OPI with information relating to the outcome of any action taken in accordance with Republic Interest Disclosure Guideline Two.

This notification must include:

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

F. OTHER INFORMATION

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.

PROTECTING INFORMANTS

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.

The obligation to maintain confidentiality imposed by section 8 of the PID Act applies despite any other statutory provision, or a common law rule, to the contrary. The exceptions to maintaining confidentiality are set out in **Public Interest Disclosure Guideline Three**, issued by the ICAC and in section 8 of the PID Act.





Where the information relates to:	The relevant authority is:	
A public officer*	(i) a person who is, in accordance with any guidelines prepared under section 14, designated as a person who is taken to be responsible for the management or supervision of the public officer or to the relevant responsible officer; or	
* Schedule 1 of the Name Independent Commission Against Corruption Act 2012 lists all public officers	(ii) a person who is, in fact, responsible for the management or supervision of the public officer or to the relevant responsible officer	
A public sector agency or public sector employee	(i) the Commissioner for Public Sector Employment; or	
	(ii) the responsible officer for the relevant public sector agency	
an agency to which the <i>Ombudsman Act 1972</i> applies	the Ombudsman	
a location within the area of a particular council established under the Local Government Act 1999	a member, officer or employee of that Council	
a risk to the environment	the Environment Protection Authority	
an irregular and unauthorised use of public money or substantial mismanagement of public resources	the Auditor-General	
the commission, or suspected commission, of any offence	a member of the police force	
a judicial officer	the Judicial Conduct Commissioner	
a member of Parliament	the Presiding Officer of the House of Parliament to which the member belongs	
a person or a matter of a prescribed class	an authority declared by the regulations to be a relevant authority in relation to such information	
public interest information - being:	- the Office for Public Integrity	
- environmental and health information	- a Minister of the Crown, or	
(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); or	- any other prescribed person or person of a prescribed class	
 public administration information (information that raises a potential issue of corruption, misconduct or maladministration in public administration) 		