



- POLICY -

Public Interest Disclosure

Policy Statement

This policy and the accompanying procedures will assist in the protection of integrity in TAFE SA by seeking to ensure compliance with the *Public Interest Disclosure Act 2018* (the Act) and informing employees as to the impact and operation of the Act.

This policy and the accompanying procedures set out the process:

- for any person who wants to make an *appropriate disclosure of public interest information* concerning TAFE SA or a TAFE SA employee, and
- for any employee of TAFE SA in dealing with any such *appropriate disclosure*.

Scope

This policy applies to all TAFE SA employees (including contractors, volunteers, HPIs and casuals), the TAFE SA Board of Directors and contractors engaged by TAFE SA.

It also applies to members of the public, including TAFE SA students, who are also able to make *appropriate disclosures of public interest information*.

Policy

The 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*.

This Policy and the accompanying procedures provides TAFE SA employees and members of the public (including TAFE SA students) with the process to disclose corruption, misconduct or maladministration in public administration in order to improve transparency and accountability in public administration and to disclose environmental and health information where there is a substantial risk to the environment or to public health and safety.

The Act replaced the *Whistleblowers Protection Act 1993*, which was repealed on 1 July 2019.

This policy and the accompanying procedures replace the TAFE SA Whistleblowers Protection Policy and Procedures.

Roles and Responsibilities

Position	Responsibility
Independent Commissioner Against Corruption (ICAC)	<p>The Office of the Independent Commissioner Against Corruption (ICAC Act) is established under the <u><i>Independent Commissioner Against Corruption Act 2012</i></u> (the <i>ICAC Act</i>).</p> <p>The ICAC is a law enforcement body whose functions include:</p> <ul style="list-style-type: none"> • identifying corruption in public administration, investigating potential issues of corruption or referring potential issues of corruption to another agency for investigation • assisting inquiry agencies and public authorities to identify and deal with misconduct and maladministration in public administration • conducting or facilitating education programs designed to prevent or minimise corruption, misconduct and maladministration.
Office for Public Integrity (OPI)	<p>The Office for Public Integrity (OPI) is the point of contact for anyone wishing to make a complaint or report about public administration in South Australia and it is responsible for receiving, assessing and referring complaints and reports.</p> <p>The OPI is also responsible for overseeing the assessment and investigation of matters involving the South Australia Police.</p>
Chief Executive	<p>The Chief Executive, TAFE SA, is the Principal Officer under the Act and is ultimately responsible for the Public Interest Disclosure procedures for TAFE SA.</p> <p>The Chief Executive is required under the Act to ensure that procedures exist to inform any person who wishes to make an appropriate disclosure of public interest information about TAFE SA or a TAFE SA officer or employee and for officers and employees to deal with such disclosures.</p> <p>The Chief Executive is also responsible for designating TAFE SA officers and employees as Responsible Officers for the purpose of the Act.</p>

Responsible Officers	<p>Specific TAFE SA employees have been designated as Responsible Officers for the purposes of the Act by the Chief Executive.</p> <p>Responsible Officers must:</p> <ul style="list-style-type: none"> - receive appropriate disclosures of public interest information relating to TAFE SA and ensure compliance with the Act in relation to such disclosures; - ensure compliance with the Act in relation to a public interest disclosure; - make appropriate recommendations to the Chief Executive in relation to dealing with such disclosures; - encourage informants to raise any concerns held about detrimental outcomes that may arise from a disclosure or attempt to make a disclosure; - ensure, insofar as possible, that an informant is kept informed of the progress of an investigation, taking into account the sensitivity and confidentiality of the matter; and - provide advice to TAFE SA employees in relation to the administration of the Act.
Executives and Managers/Supervisors	Executives and Managers/Supervisors are relevant authorities able to receive public interest information disclosures.

Definitions

Term	Definition
Appropriate disclosure – Environmental and health information	<p>Disclosure made to a relevant authority for which the person making the disclosure:</p> <ul style="list-style-type: none"> - believes on reasonable grounds that the information disclosed is true; or - is not in a position to form a belief on reasonable grounds about the truth of the information but believes on reasonable grounds that the information may be true and is of sufficient significance to justify its disclosure so that its truth may be investigated.
Appropriate disclosure – Public administration information	Disclosure made to a relevant authority for which the public officer making the disclosure reasonably suspects that the information raises a potential issue of corruption, misconduct or maladministration in public administration.

Confidentiality	The <u>ICAC Act</u> prevents you from disclosing or publishing certain information connected with a complaint, report, assessment, investigation or referral.
Corruption	Corruption is the term used within the <u>ICAC Act</u> to describe a number of offences. Corruption generally involves criminal behaviour by a public officer while acting in their capacity as a public officer and may include theft, bribery, assault or abuse of public office.
Detriment	Includes any of the following: <ul style="list-style-type: none"> • Loss or damage (including damage to reputation); or • Injury or harm (including psychological harm); or • Intimidation or harassment; or • Discrimination, disadvantage or adverse treatment in relation to a person's employment; or • Threat or reprisal (whether express, implied, conditional or unconditional).
Independent Commissioner Against Corruption (ICAC)	The Office of the Independent Commissioner Against Corruption is established under the <u>ICAC Act</u> . The ICAC is a law enforcement body whose functions include: <ul style="list-style-type: none"> • identifying corruption in public administration, investigating potential issues of corruption or referring potential issues of corruption to another agency for investigation; • assisting inquiry agencies and public authorities to identify and deal with misconduct and maladministration in public administration; • conducting or facilitating education programs designed to prevent or minimise corruption, misconduct and maladministration.
Informant	A person who makes an appropriate disclosure of public interest information is referred to as an informant.
Investigation	Any matter assessed as raising a potential issue of corruption in public administration must be investigated by the ICAC Commissioner or referred to the South Australia Police or another law enforcement agency for investigation. Those matters involve alleged criminal offending. Misconduct or maladministration investigations are ordinarily undertaken by a public authority or an inquiry agency following a referral by the ICAC or the OPI.

	<p>At times, the ICAC Commissioner will investigate allegations of misconduct or maladministration in public administration if the ICAC Commissioner thinks those matters are serious or systemic and considers that it is in the public interest for the ICAC Commissioner to undertake the investigation.</p>
Maladministration	<p>Maladministration involves the conduct of a public officer or the practice, policy and procedure of a public authority that results in an irregular or unauthorised use of public money, the substantial mismanagement of public resources, or the substantial mismanagement of official functions.</p> <p>Maladministration is often associated with poor governance.</p>
Misconduct	<p>Misconduct involves the conduct of a public officer which contravenes a code of conduct and constitutes a ground for disciplinary action, or other misconduct.</p> <p>The conduct must involve the public officer acting in their capacity as a public officer.</p>
Office for Public Integrity	<p>The Office for Public Integrity (OPI) is the point of contact for anyone wishing to make a complaint or report about public administration in South Australia and it is responsible for receiving, assessing and referring complaints and reports.</p> <p>The OPI is also responsible for overseeing the assessment and investigation of matters involving the South Australia Police.</p>
Public administration	<p>Public administration is not defined by the ICAC Act but includes the delivery of public services and public infrastructure and the spending of public money.</p>
Public interest information	<p>Under the <i>Public Interest Disclosure Act 2018</i>, there are two types of public interest information. The first is environmental and health information and the second is public administration information.</p>
Public officers	<p>Public officers have obligations to report certain conduct to the OPI. Public officers can also be the subject of a complaint or report to the OPI and can be investigated by the Commissioner.</p> <p>Public officers in TAFE SA include:</p> <ul style="list-style-type: none"> • TAFE SA Board Directors (a person who is a member of the governing body of a statutory authority) • public sector employees (i.e. all permanent, part-time or casual executive, non-executive and educational employees appointed under the <i>TAFE SA Act 2012</i> including employees subject to <i>Public Sector Act 2009</i> conditions) • persons contracted to perform work for TAFE SA.

Reasonable suspicion	<p>A suspicion is something short of knowledge or belief. You may not know something has occurred, but merely suspect it. For a suspicion to be reasonable there needs to be a rational basis for the suspicion.</p> <p>A reasonable suspicion provides a threshold for reporting certain conduct to the OPI.</p>
Relevant authority	<p>The <u>Public Interest Disclosure Act 2018</u> defines a relevant authority as:</p> <ul style="list-style-type: none"> (a) where the information relates to a public officer – <ul style="list-style-type: none"> (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 (ii) a person who is, in fact, responsible for the management or supervision of the public officer or to the relevant responsible officer; or (b) where the information relates to a public sector agency or public sector employee – <ul style="list-style-type: none"> (i) the Commissioner for Public Sector Employment; or (ii) the responsible officer for the relevant public sector agency; or (c) where the information relates to an agency to which the <u>Ombudsman Act 1972</u> applies—the Ombudsman; or (d) where the information relates to a location within the area of a particular council established under the <u>Local Government Act 1999</u> – a member, officer or employee of that council; or (e) where the information relates to a risk to the environment—the Environment Protection Authority; or (f) where the information relates to an irregular and unauthorised use of public money or substantial mismanagement of public resources—the Auditor-General; or (g) where the information relates to the commission, or suspected commission, of any offence—a member of the police force; or (h) where the information relates to a judicial officer – the Judicial Conduct Commissioner; or

	<p>(i) where the information relates to a member of Parliament – the Presiding Officer of the House of Parliament to which the member belongs; or</p> <p>(j) where the information relates to 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; or</p> <p>(k) a Minister of the Crown; or</p> <p>(l) OPI; or</p> <p>(m) any other prescribed person or person of a prescribed class.</p>
Report	A notification made to the OPI by a public officer, public authority or inquiry agency about conduct which is suspected to involve corruption, misconduct or maladministration in public administration.
Reporting obligations	Public officers, public authorities and inquiry agencies are required to report to the OPI any conduct they reasonably suspect involves corruption in public administration or serious or systemic misconduct or maladministration in public administration.
Serious or systemic conduct	<p>Public officers, public authorities and inquiry agencies are only obliged to report suspicions of misconduct and maladministration to the OPI if the conduct is serious or systemic.</p> <p>The Commissioner also has the power to investigate misconduct or maladministration if they consider the conduct or be serious or systemic.</p> <p>A matter may be considered serious if it:</p> <ul style="list-style-type: none"> • involves a senior public officer • involves conduct that has resulted in a substantial loss or damage to assets • involves allegations that would, if proved, bring an agency into disrepute or diminish public confidence in public administration • is otherwise of particular prominence or importance <p>A matter may be considered systemic if it:</p> <ul style="list-style-type: none"> • causes widespread disruption to services or programs • affects a number of persons • is spread throughout an agency or authority, or is otherwise accepted or condoned • involves a large sum of public money

Associated Documents and References

Document/Reference Title
<u>TAFE SA Public Interest Disclosure Procedure – Members of the Public (including TAFE SA students)</u>
<u>TAFE SA Public Interest Disclosure Procedure – TAFE SA Employees)</u>
<u>TAFE SA Fraud and Corruption Policy</u>
<u>TAFE SA Fraud and Corruption Control Plan</u>
<u>TAFE SA Staff Grievance Resolution Procedure</u>
<u>Code of Ethics for the South Australian Public Sector</u>
<u>Independent Commissioner Against Corruption (ICAC) Act 2012</u>
<u>Independent Commissioner Against Corruption Regulations 2013</u>
<u>ICAC Directions and Guidelines for Public Officers</u>
<u>Ombudsman Act 1972</u>
<u>Public Interest Disclosure Act 2018</u>
<u>Public Interest Disclosure Regulations 2019</u>
<u>Public Interest Disclosure Act 2018 Fact Sheet for the South Australian Community</u>
<u>Public Interest Disclosure Act 2018 Fact Sheet for South Australian public officers</u>
<u>Public Interest Disclosure Guidelines</u>

Document Control

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