

THE BAROSSA COUNCIL

PUBLIC INTEREST DISCLOSURE PROCESS



Policy Link:	Public Interest Disclosure Policy		
Process Owner:	Chief Executive Officer	Previous Approval Date(s):	New Process
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HPE Content Manager Ref:	18/35500*	Next Review Date:	15/10/2021

1. Chief Executive Officer's Statement of Intent

This Process has been prepared in accordance with the requirements of sections 12(4) of the *Public Interest Disclosure Act 2018* (the "Act"). As Chief Executive Officer of The Barossa Council, and the Principal Officer for the purposes of the Act, I expect that the implementation and operation of the Act will support:

- transparency and accountability in Council's administrative and management practices; and
- 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.

This Process and Council's *Public Interest Disclosure Policy* are designed to enable that to occur by ensuring that proper procedures are in place for the making and managing of a Disclosure, and by providing appropriate protections for those who make a Disclosure.

The Barossa Council, its Members, Employees and officers support the intent of the Act and the protection of Informants who make Disclosures in accordance with the objectives of the Act, and the genuine and efficient consideration and action in relation to information provided in a Disclosures.

Any questions about this Process or Council's *Public Interest Disclosure Policy* should be directed in the first instance to the Responsible Officer/s, whose details are contained in clause 6.5 of this Process.

Marin McCarthy
Chief Executive Officer

2. Overview

This Process provides guidance for:

- Informants seeking to make an appropriate Disclosure of Public Interest Information in accordance with the Act and Council's *Public Interest Disclosure Policy*; and
- The Barossa Council's ("Council's") Responsible Officers, Elected Members, Employees and officers who receive and action appropriate Disclosures in accordance with the requirements of the Act and the Independent Commissioner Against Corruption's *Public Interest Disclosure Guidelines* (the "Guidelines").

	<p>(b) an offence against the <i>Public Sector (Honesty and accountability) Act 1995</i> or the <i>Public Corporations Act 1993</i>, or an attempt to commit such an offence; or</p> <p>(ba) an offence against the <i>Lobbyists Act 2015</i>, or an attempt to commit such an offence; or</p> <p>(c) any other offence (including an offence against Part 5 (Offences of dishonesty) of the <i>Criminal Law Consolidation Act 1935</i>) committed by a Public Officer while acting in his or her capacity as a Public Officer or by a former Public Officer and related to his or her former capacity as a Public Officer, or by a person before becoming a Public Officer and related to his or her capacity as a Public Officer, or an attempt to commit such an offence; or</p> <p>(d) Any of the following in relation to an offence referred to in a preceding paragraph:</p> <ul style="list-style-type: none"> (i) aiding, abetting, counselling or procuring the commission of the offence; (ii) inducing, whether by threats or promises or otherwise, the commission of the offence; (iii) being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence; (iv) conspiring with others to effect the commission of the offence.
Council	The Barossa Council
Detriment	Includes – <ul style="list-style-type: none"> (a) injury, harm (including psychological harm), damage (including damage to reputation) or loss; (b) intimidation or harassment; or (c) discrimination, disadvantage or adverse treatment in relation to a person's employment; or (d) threats of reprisal (which may be expressed or implied, and/or conditional or unconditional)
Disclosure	<p>Means an appropriate disclosure of public interest information made by an Informant to a Relevant Authority.</p> <p><u>For Environmental and Health Information -</u> A person makes an appropriate Disclosure of Environmental and Health Information if the disclosure is made to a Relevant Authority and the person -</p> <ul style="list-style-type: none"> (i) believes on reasonable grounds that the information is true; or (ii) 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 <p><u>For Public Administration Information –</u> A person makes an appropriate Disclosure of Public Administration Information if:</p> <ul style="list-style-type: none"> (i) they are a Public Officer; and (ii) the disclosure is made to a Relevant Authority; and (iii) the public officer reasonably suspects that the information raises a potential issue of corruption, misconduct or maladministration in public administration.
Elected Member	A person who has been elected to The Barossa Council. This includes the Mayor (unless specifically stated)

Public Administration	The administration of government policy (Macquarie dictionary). Defined at section 4 of the <i>ICAC Act 2012</i> means: without limiting the acts that may comprise public administration, an administrative act within the meaning of the <i>Ombudsman Act 1972</i> will be taken to be carried out in the course of public administration.
Public Administration Information	Information that raises a potential issue of corruption, misconduct or maladministration in public administration (whether occurring before or after the commencement of the Act).
Public Interest information	There are two types of Public Interest Information: (a) Environmental and Health Information; and (b) Public Administration Information
Public Officer [See section 4 and Schedule 1 of the <i>ICAC Act</i>]	Includes: <ul style="list-style-type: none"> • a Member of Council, including the Mayor; and • an Employee or officer of Council; • a person performing contract work for Council; • a Volunteer of Council where they hold a delegation from Council or the Chief Executive Officer or in accordance with an Act, assist a Public Officer in the enforcement of the Act (it will be rare for a Volunteer to be a Public Officer) Volunteer is defined as: A person who is acting on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses) [As defined in the <i>Work Health Safety Act 2012</i>]
Regulations	<i>Public Interest Disclosure Regulations 2019</i>
Relevant Authority	A person or entity that receives an appropriate Disclosure of Public Interest Information in accordance with the Act, as set out in Appendix A to the Policy.
Responsible Officer	A person(s) designated by the Chief Executive Officer pursuant to Section 12 of the Act who is (are) authorised to receive and act upon Appropriate Disclosures of Public Interest Information, and who has completed the relevant training course approved by the Commissioner for the purposes of the <i>Public Interest Disclosure Regulations 2019</i> .
Supervisor	The person who is responsible for the management or supervision of the public officer who is the subject of a Disclosure of public administration information.
Victimisation	Occurs when a person causes Detriment to another on the ground, or substantially on the ground that the other person (or a third person) has made or intends to make an appropriate Disclosure of Public Interest information.

5. Responsibilities

The Chief Executive Officer

- 5.1 The Chief Executive Officer is responsible for:
- 5.1.1 Ensuring that one or more appropriately qualified Employees are designated as Responsible Officers of Council for the purposes of the Act and undertake any training required by the Regulations; and
 - 5.1.2 Ensuring the name and contact details of each Responsible Officer of Council are made available to Employees, officers and Elected Members, by including these details in this Process; and
 - 5.1.3 Ensuring that this Process is prepared and maintained in accordance with the Act and Guidelines.

The Responsible Officers

- 5.2 A person designated as a Responsible Officer must:

6.4 If an Informant believes that his/her Disclosure is not being dealt with appropriately or in accordance with the Policy or Process, they should contact the Responsible Officer in the first instance.

6.5 Council's designated Responsible Officers are:

Name: Joanne Thomas

Position: Director, Corporate and Community Services

Email: jthomas@barossa.sa.gov.au

Phone: 8563 8450

Name: Wayne Hampel

Position: Coordinator, Customer Support

Email: whampel@barossa.sa.gov.au

Phone: 8563 8425

Name: Rugiyya Martin

Position: Governance Advisor

Email: rmartin@barossa.sa.gov.au

Phone: 8563 8408

7. Confidentiality

7.1 The identity of an Informant must be maintained as confidential in accordance with the Act. The obligation to maintain confidentiality applies despite any other statutory provision, or a common law rule, to the contrary.

A recipient of an appropriate Disclosure may only divulge the identity of an Informant where:

- 7.1.1 The recipient believes on reasonable grounds that it is necessary to divulge the identity of the Informant in order to prevent or minimise an imminent risk of serious physical injury or death to any person, and the identity of the Informant is then divulged to a person or authority that the recipient believes on reasonable grounds is the most appropriate authority or person to be able to take action to prevent or minimise the imminent risk of serious physical injury or death to any person (eg. SAPOL, SafeWork SA, SA Ambulance, Environment Protection Agency); or
- 7.1.2 The recipient has been issued with a notice from the OPI advising that the identity of the Informant is required by the OPI, in which case the recipient must disclose the identity of the Informant to the OPI; or
- 7.1.3 Doing so is necessary for the matter to be properly investigated (but only to the extent necessary to ensure proper investigation); or
- 7.1.4 The Informant consents to his/her identity being disclosed. This should be in writing where reasonably practicable.

Divulging Information related to the Disclosure

7.2 The Act does not expressly require any other information relating to a Disclosure (including, for example, the nature of the allegations) be maintained as confidential, but before making a decision to release or divulge any information provided as part of an appropriate Disclosure, consideration must be given to whether divulging the information would result in, or be construed as an act of Victimisation (refer to clause 16 of this Process).

- 8.4.5 Any Disclosure relating to Maladministration or Misconduct that does not meet the threshold for obligated reporting by a public officer, may be reported to OPI in accordance with the Act and/or ICAC Act;
- 8.4.6 If a Disclosure contains allegations of Fraud or Corruption, the Informant should report the matter in accordance with Council's *Fraud and Corruption Policy*, which provides that:
 - If the Disclosure relates to Corruption in public administration it will be reported to the OPI; and
 - If the Disclosure relates to Fraud, it may be reported to the Responsible Officer or directly to SAPOL.

Secure Receipt of Disclosures

- 8.5 The following steps will be taken to ensure that a Disclosure is received securely:
 - 8.5.1 Records Management Employees and Customer Support Employees receiving any postal items marked 'Confidential – PID Responsible Officer' or 'Confidential – Public Interest Disclosure' must refer the item to one of Council's Responsible Officers without opening the item;
 - 8.5.2 Any correspondence, notes, supporting documents or any other information relating to the Disclosure must be stored securely in accordance with clause 15 of this Process;
 - 8.5.3 Any information that is stored in Council's Customer Request Management System must be stored with strict access controls, as a confidential Customer Request entry; and
 - 8.5.4 Employees, officers, Elected Members and Responsible Officers must ensure that any discussions or communication regarding a Disclosure, where these are necessary, are conducted in such a way as not to breach any of the confidentiality requirements of the Act, which are outlined in the Policy and Process.

Referrals to Council from external Relevant Authorities

- 8.6 Where a matter is referred to the Council by an external Relevant Authority as a result of a Disclosure received by that external Relevant Authority, the matter will be dealt with in accordance with the Act and Guidelines.
- 8.7 The Responsible Officer will be the primary point of contact for liaising with any external Relevant Authority making the referral. The Policy and Procedure should be followed as closely as possible when dealing with such referrals, subject to necessary modifications at the Responsible Officer's discretion.

9.	Receipt of a Disclosure by an Employee, Elected Member or Officer of Council
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- 9.1 A flowchart outlining the Disclosure Process is at **Appendix 1** to this Process.
- 9.2 If an Elected Member, Employee or officer receives a Disclosure of public interest information relating to a location within the Council area, the recipient of the Disclosure must:
 - 9.2.1 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, immediately communicate such information as may be necessary to mitigate that risk to the most appropriate agency (eg. SAPOL, SafeWork SA, SA Ambulance, Environment Protection Authority). The Responsible Officer must be notified in the event that this measure is taken and kept apprised of any developments. However, in doing so, the Elected Member, Employee or officer must also have regard to clause 7 of this Process;
 - 9.2.2 If the Elected Member, Employee or officer forms a reasonable suspicion that the matter involves Corruption, or serious or systemic misconduct or maladministration, comply with his or her reporting obligations as a Public Officer under the ICAC Act, by reporting the matter to the OPI;

- 10.3 Upon receipt of a Disclosure, the Responsible Officer (or Supervisor where relevant) will undertake a preliminary assessment to determine if the information disclosed justifies further action, including a decision as to whether the Disclosure:
- 10.3.1 Is frivolous, vexatious or trivial (in which case, no further action will be taken in relation to the Disclosure);
 - 10.3.2 Involves a matter which 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 (in which case, no further action will be taken in relation to the Disclosure);
 - 10.3.3 Requires referral to another Relevant Authority external to the Council; or
 - 10.3.4 Warrants investigation or further action in accordance with Council's policies and processes and/or referral to an Assessor or Investigator for a formal investigation and report to Council or the Chief Executive Officer for further action as required.

Reporting by the Responsible Officer and Supervisor

- 10.4 Where the Disclosure relates to public administration information about a Public Officer who is an Elected Member, Employee or officer of Council and it is made to the Supervisor, the Supervisor will conduct the Preliminary Assessment instead of the Responsible Officer. The Supervisor will report the outcome of his/her determination following the Preliminary Assessment to the Responsible Officer to action, using the Supervisor's Preliminary Assessment Report.
- 10.5 Where the Disclosure is made to the Supervisor, as soon as possible after conducting the preliminary assessment and notifying the applicant in accordance with clause 10.2 of this Process, the Supervisor will notify the OPI of the Disclosure in accordance with Guideline 1(4) of the Guidelines, (refer to **Appendix 2**). If the Disclosure was referred to another agency the unique reference number provided by the OPI should be provided to that agency. The unique reference number provided by the OPI should also be provided to the Responsible Officer.
- 10.6 Following the Preliminary Assessment, or receipt of the Supervisor's Preliminary Assessment Report (as the case may be), the Responsible Officer must report the outcome of his/her (or the Supervisor's) determination using the Preliminary Assessment and Determination Report, to the Chief Executive Officer, unless the Disclosure relates to the Chief Executive Officer, then the report should be made to the Mayor.
- 10.6.1 Any report prepared in accordance with this Clause will not disclose particulars that will or are likely to lead to the identification of the Informant, unless the circumstances in clause 7 of this Process apply.
- 10.7 Where the Responsible Officer determines the Disclosure warrants referral to an external body or another Relevant Authority, the Responsible Officer will undertake the referral, including ensuring that such information as is necessary to enable action to be taken is communicated to the most appropriate person or Relevant Authority to take that action.
- 10.7.1 Where the Preliminary Assessment is being undertaken by the Supervisor, the Supervisor will include this recommendation to his/her Supervisor's Preliminary Assessment Report to the Responsible Officer for the Responsible Officer to action.
- 10.8 Where the Responsible Officer determines the Disclosure requires any other action to ensure the matter that is the subject of the Disclosure is properly addressed, the Responsible Officer will include in his/her Preliminary Assessment and Determination Report, the details of that other recommended action.
- 10.8.1 Where the Preliminary Assessment is undertaken by the Supervisor, the Supervisor will include this recommendation in his/her Supervisor's Preliminary Assessment Report to the Responsible Officer for the Responsible Officer to action.

practices based on legislative requirements that best address the subject matter of the Disclosure, and relevant authorisations required to undertake investigation.

- 12.4 In most cases, for environmental and health matters, the Assessor will be the Manager Health Services for investigation. However, where there is another senior officer who has the necessary delegations and authorisations to investigate the Disclosure, then the Disclosure may be referred to that senior officer.

Referral to an Independent Investigator

- 12.5 Alternatively, where the Responsible Officer determines it necessary and appropriate, the Responsible Officer may refer the Disclosure to an Independent Investigator who is external to Council, for investigation. If no other Council policies or processes apply, the Independent Investigator may be appointed in the same way as an external reviewer under Council's Internal Review of Council Decisions Policy and Process. In conducting their investigation, the Independent Investigator must consider the factors in this Process.

Investigation procedure

- 12.6 The objectives of the investigation process are:
- 12.6.1 In appropriate circumstances, to investigate the substance of the Disclosure and to determine whether there is evidence in support of the matter/s raised, or, alternatively, to refute the allegations raised in the Disclosure;
 - 12.6.2 To collate information relating to the allegation as quickly as possible. This may involve taking steps to protect or preserve documents, materials and equipment;
 - 12.6.3 To consider the information collected and to draw conclusions objectively and impartially;
 - 12.6.4 To observe procedural fairness in the treatment of any person who is the subject of the Disclosure; and
 - 12.6.5 To make recommendations arising from the conclusions drawn concerning remedial or other appropriate action.
- 12.7 Any investigation must be conducted in confidence. Normally, the Assessor or Independent Investigator will not be provided with the identity of the Informant. However, where the identity of the Informant is divulged to the person conducting the investigation, for example, in order to ensure that the matter is properly investigated (as per clause 7.1.3 of this Process), the Assessor or Independent Investigator must keep the identity of the Informant confidential unless the circumstances in clause 7 apply.
- 12.8 The Assessor or Independent Investigator will keep the Responsible Officer informed of the expected timeframes for completion of the investigation and the provision of his/her investigation report to the Responsible Officer.
- 12.9 Where it is unlikely that the investigation will be completed within 90 days from the receipt of the Disclosure, the Responsible Officer should, within the 90 day period, provide the Informant of written notice of an extension of time, and notify the Informant when the investigation is expected to conclude, and when the Informant to expect to receive notification of any action taken.

Reporting following the conclusion of the investigation

- 12.10 Upon finalising an investigation the Assessor or Independent Investigator must prepare an investigation report to the Responsible Officer that will contain the following details where applicable (refer Investigation Report):
- 12.10.1 The allegation(s);
 - 12.10.2 An account of all relevant information received including any rejected evidence, and the reasons why the rejection occurred;
 - 12.10.3 The conclusions reached and the basis for them; and

notification form at icac.sa.gov.au to notify OPI of the action taken in relation to the Disclosure and in doing so, must ensure that the details required by Guideline 2 of the Guidelines are included in the OPI notification.

This step must also be followed if the matter is referred to Council by another agency or Relevant Authority.

- 13.6 If the Disclosure came to the Council by way of a referral from a Minister, the Responsible Officer must ensure that the Minister is also notified of the action taken in relation to the Disclosure, and the outcome of any such action.

14. Final Report and Recommendation

- 14.1 Upon finalising any action required in relation to a Disclosure, the Responsible Officer must prepare a Final Report that will contain the following details, to the Chief Executive Officer (or Mayor if the Disclosure relates to the CEO) to action as s/he considers appropriate:

14.1.1 The subject of the Disclosure;

14.1.2 An account of the steps taken by the Responsible Officer in accordance with this Process, including, where appropriate, enclosing a copy of any Investigation Report;

14.1.3 Conclusions reached as a result of the steps taken in response to the Disclosure and the basis for them; and

14.1.4 Any recommendations arising from the conclusions, including any remedial action which should be taken by the Council.

- 14.2 The Final Report prepared in accordance with this clause must not disclose particulars that will or are likely to lead to the identification of the Informant, unless the circumstances in clause 7 of this Process apply.

- 14.3 The Chief Executive Officer may, at his/her discretion, inform the Elected Members, on a confidential basis, about a Disclosure in accordance with clause 4.5 of the Policy.

15. Secure Handling and Storage of Information

- 15.1 The Responsible Officer and any person who receives a Disclosure, or conducts an investigation relating to a Disclosure must ensure accurate records of an appropriate Disclosure are securely and confidentially maintained, including notes of all discussions, phone calls and interviews. The files cannot be named or labelled in such a way that identifies the Informant. All correspondence, documents, reports, and other

- 15.2 The Responsible Officer and any person who receives a Disclosure, or conducts an investigation relating to a Disclosure must ensure accurate records of an appropriate Disclosure are securely and confidentially maintained, including notes of all discussions, phone calls and interviews. The files cannot be named or labelled in such a way that identifies the Informant. All correspondence, documents, reports and other information relating to a Disclosure must be stored in Council's EDRMS with restricted access controls.

- 15.3 In performing his/her duties, the Responsible Officer will maintain a confidential container in Council's EDRMS with restricted access controls, of information (including written documents, audio or video files or other information) that relates to a Disclosure and/or is a product of the associated investigation or reporting process. The files cannot be labelled or named in such a way that identifies the Informant.

In the event that a person's appointment as a Responsible Officer is terminated, the person must provide all information to the newly-appointed Responsible Officer or another Responsible Officer and having done so, will continue to be bound by a duty of confidentiality in respect of an Informant's identity and the information received as a result of the Disclosure.

- 15.4 Elected Members, Employees or officers who may receive Disclosures must ensure that all information, documents and notes are forwarded to the Responsible Officer for secure storage and permanently deleted or removed from the Elected Member, Employee or officer's computer, email systems and files.

- 18.6 Notification of Extension of Timeframe – refer to clause 12.9
- 18.7 Investigation Report – refer to clause 12.10
- 18.8 Notification of Action – refer to clause 13.1
- 18.9 Notification of Action to the Minister (where the Disclosure is a referral from the Minister) – refer to clause 13.6
- 18.10 Responsible Officer's Final Report – refer to clause 14.1
- 18.11 Register of Information and Materials Associated with a Disclosure
- 18.12 Instrument of Appointment as a Responsible Officer

19.	Legislation and References
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Public Interest Disclosure Act 2018
 Public Interest Disclosure Regulations 2019
 Independent Commissioner Against Corruption Act 2012
 Local Government Act 1999
 ICAC Public Interest Disclosure Guidelines

20.	Review
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19.1 This Process will be reviewed by the Document Control Officer in consultation with the relevant stakeholders, within two (2) years or more frequently if legislation or Council's need changes.

SIGNED:

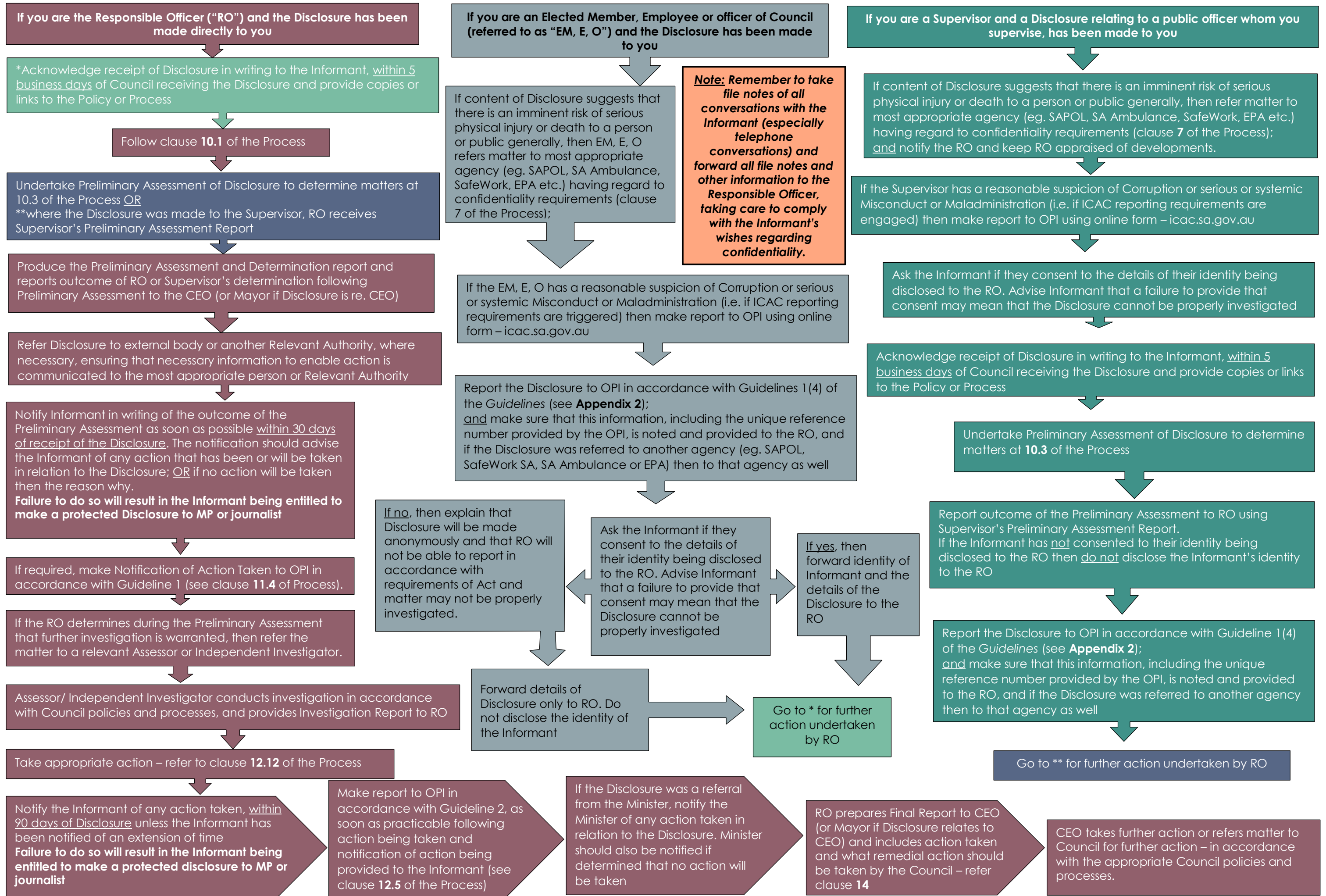
 Chief Executive Officer

DATE:


Appendix 1 - PID Process Flowchart

[See following page]

PUBLIC INTEREST DISCLOSURE PROCESS FLOWCHART



Full Guidelines are available via icac.sa.gov.au

Guideline 1(4) – Receipt, assessment & notification of appropriate disclosures (section 7 of the Act)

[Information to provide to the OPI pursuant to clause 9.2.5 (where Disclosure received by Elected Member, Employee or Officer); clause 10.5 (where Disclosure made to Supervisor); or clause 11.4 (where Disclosure made to Responsible Officer)]

4. The recipient of the disclosure **must** notify the OPI of the **appropriate disclosure** as soon as reasonably practicable after the receipt of the appropriate disclosure by making an electronic notification via the dedicated notification form on the ICAC website (icac.sa.gov.au) and must include in that information:
 - (a) the date the disclosure was received;
 - (b) the name and contact details of the recipient of the disclosure;
 - (c) a summary of the content of the disclosure;
 - (d) the assessment made of the disclosure;
 - (e) the action taken by the recipient of the disclosure including:
 - (i) whether the disclosure was referred to another relevant authority, public authority, public officer or other person; and
 - (ii) if the disclosure was referred to another relevant authority, public authority, public officer or other person:
 - (1) The date of the referral;
 - (2) The identity of the relevant authority, public authority, public officer or other person to whom the disclosure was referred;
 - (3) The manner of referral; and
 - (4) The action to be taken by that relevant authority, public authority, public officer or other person (if known).
 - (f) if no action was taken by the recipient of the disclosure, the reason why no action was taken; and
 - (g) whether the identity of the information is known only to the recipient of the disclosure or if the identity of the informant has been communicated to a relevant authority, public authority, public officer or other person (and if so, the reasons why such communication was made).
5. The recipient of the disclosure must retain the unique reference number issued by the OPI after the making of a notification and must ensure this unique reference number is provided to any other person or authority to whom the disclosure is referred.

Guideline 2 – Notification of Action Taken

[Informant to provide to the OPI pursuant to clause 13.5 of the Process, by the Responsible Officer, once Action has been taken in relation to the Disclosure; or where the Responsible Officer has received a Disclosure referred to Council from another Relevant Authority]

This guideline applies in relation to the notification to the OPI of the outcome of any action taken upon receipt of, or referral of, an appropriate disclosure of public interest information.

The recipient of the disclosure of, if the recipient of the disclosure has referred the disclosure to some other person or authority, then that other person or authority, must notify the OPI as soon as reasonably practicable via the online notification form (icac.sa.gov.au) the following:

- (a) The unique reference number issued by the OPI upon notification of the original disclosure;
- (b) The name and contact details of the notifier;
- (c) The name and contact details of the person or authority responsible for taking the action;
- (d) What (if any) findings were made in respect of the disclosure;
- (e) The nature of the action taken (if any);
- (f) The outcome of any action (if applicable);
- (g) Whether the identity of the informant was disclosed to a person other than the original recipient of the disclosure; and
- (h) Whether the informant was notified of the action taken and, if so, when and how that notification was made.