




Public Interest Disclosure (SA)

Guideline

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Printing	The current electronic copy is considered the true version of any controlled document. Uncontrolled hard copies (e.g. print outs) are to be considered a point in time reference only.
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1 Introduction

The NHVR is committed to an ethical, transparent culture. In pursuit of this, the NHVR values the disclosure of information about suspected wrongdoing within the NHVR, including corrupt conduct and maladministration. It also recognises the value in NHVR officers identifying such wrongdoing.

Disclosure of information allows wrongdoing to be properly assessed and, if necessary, appropriately investigated.

This guideline applies to wrongdoing and its disclosure within South Australia. However, given the NHVR's operations across various jurisdictions, if necessary, the PID Coordinator will determine the relevant jurisdiction under which the disclosure will be actioned.

The NHVR's *Fraud and Corrupt Conduct Policy* outlines the reporting obligations for fraud and corrupt conduct upon NHVR staff and CEO. Please refer to that policy to ascertain *when* to report such conduct.

This guideline outlines *how* such conduct (and other relevant conduct) is to be reported so as to comply with the *Public Interest Disclosure Act 2018 (SA)* (PID Act (SA)). The NHVR will provide support to an employee or others who make disclosures about matters in the public interest. This guideline demonstrates this commitment and ensures that practical and effective procedures are implemented that comply with the PID Act (SA).

2 Purpose

This guideline sets out the processes for making and dealing with a public interest disclosure (PID) that is an appropriate disclosure of public administration information under the PID Act (SA).

By complying with the PID Act (SA), the NHVR will:

- promote the public interest by facilitating PIDs of wrongdoing
- ensure that PIDs are properly assessed and, where appropriate, properly investigated and dealt with
- directly ensure protection from reprisal is afforded to persons making PIDs in respect of conduct by NHVR employees or officers.

NHVR's *Public Interest Disclosure – Policy* is available on the NHVR website at nhvr.gov.au. The policy and these guidelines will be reviewed annually and updated as required.

3 What can a disclosure be made about?

A disclosure under the PID Act (SA) can be made about two types of public interest information:

- environmental and health information
- public administration information.

This guideline relates only to the making of a disclosure about NHVR public administration information, or to an employee or officer of the NHVR.

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 (SA)).

Public administration has the meaning in the *Independent Commission Against Corruption Act 2012 (SA)* (ICAC Act).

4 Who can make a disclosure?

Any person may make a public interest disclosure. However, only public officers who make an appropriate disclosure are eligible for the protections provided under the PID Act (SA). For more information about these protections, see [7 Protections for disclosers](#).

To constitute an appropriate disclosure, the disclosure must be made to the relevant authority prescribed under the PID Act (SA).

The NHVR is the relevant authority for a disclosure about public administration information that relates to the NHVR, or to an employee or officer of the NHVR.

The NHVR is only able to receive and investigate disclosures about public administration information that relates to its own employees and officers. For relevant authorities for other disclosures, including disclosures about environmental and health information, see [Appendix A – Relevant authorities](#) in this guideline.

5 How is a disclosure made and who can it be made to?

5.1 Disclosure relating to NHVR employee or officer

If the disclosure is about public administration information that relates to an employee or officer of the NHVR, the disclosure must be made to either the:

- supervisor or manager of the employee or officer
- NHVR's PID Coordinator.

5.2 Disclosure relating to the NHVR

If the disclosure is about public administration information that relates to the NHVR, the disclosure must be made to either:

- the NHVR's PID Coordinator
- the Commissioner for Public Sector Employment
- the Ombudsman (SA)
- the Office of Public Integrity (OPI)
- a Minister.

5.3 Who is the PID Coordinator?

The NHVR's PID Coordinator is the officer authorised by the NHVR's CEO for the purposes of managing PIDs made to the NHVR under the PID Act (SA).

5.4 Method for making a disclosure

A disclosure to the NHVR's PID Coordinator may be made by one of the following methods:

Email:	PID@nhvr.gov.au
Post:	PID Coordinator National Heavy Vehicle Regulator GPO Box 492 Fortitude Valley Qld 4006
By phone	The Whistle-Blower's Hotline: (07) 3309 8889
In person	A private conversation with the NHVR's PID Coordinator.

6 What happens after a disclosure is made?

If a disclosure is made to a supervisor or manager of an NHVR employee or officer, the disclosure must (unless the complaint is about the PID Coordinator) be referred to the NHVR's PID Coordinator for assessment, investigation (if required) and management of the disclosure.

If the complaint is about the PID Coordinator, the matter should be referred to the NHVR's CEO for consideration of whether to authorise a new PID Coordinator for the purpose of that matter.

Following receipt of a disclosure, the person who receives the disclosure or the PID Coordinator must consider the following:

- 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, information should be immediately communicated to the most appropriate agency (e.g. SA Police) to mitigate that risk.

Note: In a high-risk situation, the person who receives the disclosure must immediately communicate the risk to the appropriate agency. If that person is not the PID Coordinator, they must then immediately notify the PID Coordinator.

- If the person to whom the disclosure is made, or the PID Coordinator, forms a reasonable suspicion that the nature of the disclosure involves corruption in public administration¹, or serious or systemic misconduct or maladministration in public administration conduct, the matter must be reported under the ICAC Act.

Note: If a person receiving a disclosure indicating corruption, is not the PID Coordinator, they must immediately report it to the PID Coordinator. The PID Coordinator is then responsible for reporting the conduct to the ICAC.

6.1 Assessing whether the disclosure is a PID

In handling a PID, the PID Coordinator is required to comply with requirements of the PID Act (SA) and these guidelines.

Following receipt of a disclosure, the PID Coordinator must assess the disclosure and notify the discloser (if the discloser's identity is known or contact details have been provided), within 30 days of a disclosure being made, that an assessment of the information has been made and advise the discloser as discussed below:

6.2 Advice to the discloser

6.2.1 Is assessed as a PID

If the matter is assessed as a PID, the PID Coordinator will advise the discloser:

- that their information has been received and assessed as a PID
- the name and contact details of the NHVR's PID Coordinator
- of their obligations regarding confidentiality
- of protections under the PID Act (SA)
- if the discloser is an NHVR employee, contact details for the NHVR's Employee Assistance Program
- if action is to be taken:
 - the action to be taken by NHVR in relation to the disclosure, which could include referring the matter to an external agency
 - how updates regarding intended actions and outcomes will be provided.

6.2.2 No action

If no action is being taken in relation to the information:

- the reasons why no action is being taken in relation to the information
- the review rights available
- any other options the discloser has in relation to the matter.

The NHVR may take no action only if the information disclosed either:

- does not justify the taking of further action
- 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.

6.2.3 Not a PID

Where a discloser states they are making a PID, but it is assessed that the matter is not a PID, the NHVR will advise the discloser:

- that their information has been received but was not assessed as a PID
- the reasons for the decision

¹ For the meaning of **corruption in public administration**, see the [Definitions](#) section in these guidelines.

- the review rights available
- any action the NHVR proposes to take in relation to the matter
- any other options the discloser has in relation to the matter.

6.3 Anonymous disclosure

If the PID has been made anonymously and the discloser has not provided any contact details, the NHVR will not be able to acknowledge the PID or provide any updates to the discloser.

6.4 Doubts about disclosure

If there is any doubt as to whether a matter is a PID, further information may be obtained to inform the decision. If doubt still remains, the matter will be considered and managed as a PID.

The PID Coordinator must also provide the OPI with information relating to the disclosure. Notification is to be made using the dedicated notification form on the [ICAC website](#) and must include the information required as specified in [Appendix B – Information that must be provide to OPI](#) in this guideline. The PID Coordinator must retain the unique reference number issued by the OPI after the making of a notification and must ensure that the unique reference number is provided to any other person or authority to whom the disclosure is referred.

6.5 Completing a risk assessment

Although not an explicit requirement under the PID Act (SA), the PID Coordinator will, as soon as possible after receipt of the disclosure, conduct a risk assessment to:

- assess the likelihood of the discloser suffering a detriment as a result of having made the disclosure
- as far as is reasonably practicable, manage any alleged or suspected detriment.

A risk management plan may be developed, depending on the level of risk, in consultation with the discloser (where their identity is known), the NHVR's Manager People and Culture (HR), and any other individual as identified by the PID Coordinator. The risk management plan will be reviewed and amended if required until such time as the PID is finalised.

Whether or not a management plan has been developed, the PID Coordinator must, in consultation with the Manager People and Culture (HR), so far as is reasonably practicable, manage any allegations of detrimental action or suspected detrimental action taken against the discloser.

When conducting the risk assessment and considering appropriate measures to manage the risk of detrimental action being taken against the discloser, the PID Coordinator will have regard to the principles in the [Public Interest Disclosure Risk Assessment and Risk Management Guide](#) published by the Queensland Ombudsman.

If the discloser 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, a public interest disclosure, they are encouraged to report that suspicion by either:

- raising the concern or suspicion with the NHVR's PID Coordinator
- contacting another relevant authority, such as OPI or the Ombudsman (for instance, if the concern or suspicion relates to the NHVR's PID Coordinator).

6.6 Referring PID to another relevant authority

If the PID is a matter that the NHVR cannot investigate, and with the consent of the discloser, the NHVR's PID Coordinator may refer the matter to another agency which is the relevant authority. For a list of other relevant authorities see [Appendix A – Relevant authorities](#) in these guidelines.

The NHVR will keep the identity of the person making the disclosure confidential, except where it is necessary to ensure that any disclosure is properly investigated or where the person making the disclosure provides the PID Coordinator with permission for their identity to be disclosed.

6.7 Investigating the PID

If a decision is made to investigate a PID, the NHVR may appoint an investigator (who may be internal or external to the NHVR) to conduct the investigation.

The investigation will be undertaken with consideration of the:

- principles of natural justice
- obligation under the PID Act (SA) to protect confidential information
- obligation under the PID Act (SA) to protect officers from reprisal
- interests of the person the subject of the disclosure.

If the information about wrongdoing provided in the PID is substantiated, the NHVR will decide what appropriate action should be taken (which may include, via the appropriate delegate, action in accordance with the NHVR's disciplinary and/or other processes).

If information about the PID is substantiated, the PID Coordinator must:

- within 90 days after receiving the disclosure, inform the discloser of outcome of the investigation
- if action is taken, provide OPI with information relating to the outcome of that action.

If the PID Coordinator requires more time to conduct the assessment and investigation, a written notice will be provided to the discloser before the expiry of the 90-day period.

Where the investigation does not substantiate any wrongdoing, the PID Coordinator may recommend that the NHVR review its systems, policies and procedures to identify whether there are improvements that can be made and consider if staff training is required.

7 Protections for disclosers

The PID Act (SA) provides disclosers with appropriate protections including:

- immunity from liability
- confidentiality
- protection from detrimental action.

7.1 Immunity from liability

A person who has made an appropriate disclosure will not be subject to any liability as a result of that disclosure.

7.2 Confidentiality

The identity of the discloser must be kept confidential unless the discloser has consented to their identity being disclosed, even when seeking advice from the PID Coordinator or any other relevant authority.

There are some exceptions to maintaining confidentiality in cases where it may be necessary to reveal the identity of a discloser to prevent or minimise an imminent risk of serious physical injury or death to any person.

To ensure the discloser's confidentiality is protected, the NHVR will:

- apply internal procedures that require compliance with section 8(1) of the PID Act (SA) in relation to confidentiality
- store information about appropriate disclosures securely and will handle such information with reasonable care.

7.3 Detrimental action

A person who causes detriment to a discloser on the ground, or substantially on the ground, that the person has made or intends to make an appropriate disclosure of public interest information, commits an act of victimisation.

A discloser may commence proceedings in a court seeking a remedy for victimisation.

A person who personally commits an act of victimisation commits an offence under the PID Act (SA).

Note: NHVR will implement appropriate procedures to reasonably protect a discloser from detrimental action. See [10 Welfare management](#).

If the discloser 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 by either:

- raising the concerns or suspicions with the NHVR's PID Coordinator

- raising the concerns with their supervisor or manager or another appropriate NHVR officer (if the concerns relate to the way in which the NHVR's PID Coordinator is handling the matter)
- contacting other relevant authorities such as OPI or the Office of the Commissioner for Public Sector Employment.

8 Disclosure to a journalist or a member of Parliament

If the PID Coordinator does not provide the discloser with notification of the assessment and advice about the action being taken within 30 days of receipt of the disclosure, or does not provide notification of the outcome of the investigation within 90 days of the receipt of the disclosure (or such other longer period specified in writing), the discloser will receive the protections under the PID Act (SA) if he or she chooses to make the same disclosure to a journalist or member of Parliament.

9 Protections for the subject of the complaint

An NHVR officer who is the subject of a PID is entitled to confidentiality.

The NHVR will handle and investigate PIDs impartially, fairly and reasonably, in accordance with the principles of natural justice.

10 Welfare management

The NHVR recognises that providing appropriate support to a discloser is an important feature of effective PID management.

An assessment will be undertaken to identify the support needs of the discloser. Where appropriate, a PID support officer will be assigned to the discloser. The PID support officer will assist the discloser to access information about PIDs, protections available under the PID Act (SA) and the PID management process.

Information and support will be provided to the discloser until the matter is finalised.

Making a PID does not prevent reasonable management action undertaken in a reasonable way as part of the ordinary course of an individual's employment. That means that the discloser will continue to be managed in accordance with normal, fair and reasonable management practices during and after the handling of the PID.

The NHVR may also provide appropriate support to the subject of the complaint.

11 Offences

It is a criminal offence under the PID Act (SA) for a person to:

- make a false and misleading disclosure
- prevent or hinder another person from making a disclosure
- commit an act of victimisation against a discloser.

12 The NHVR's reporting obligations

There are no such obligations under the PID Act (SA). However, in line with its obligations in other jurisdictions, the NHVR may publish information in its annual report about PIDs received under the PID Act (SA).

13 Discloser's right of review

If a discloser is concerned or believes that the disclosure is not being dealt with appropriately by the NHVR, the discloser may either:

- contact other relevant authorities, such as the OPI or SA Ombudsman
- raise the matter with the NHVR's CEO for review and consideration of authorising another PID Coordinator for the PID.

14 Roles and responsibilities

The following roles are responsible for the activities in this guideline.

Role	Responsibilities
Chief Executive Officer/Principal Officer	<ul style="list-style-type: none"> • appoints one or more officers as the PID Coordinator • ensures the name and contact details of the NHVR's PID Coordinator is made available to all NHVR employees and officers • ensures procedures are made available for a person who wants to make an appropriate disclosure of public interest information to the NHVR in accordance with these guidelines • ensures NHVR staff are aware of the contents of the policy and the protections under this Act for a person who makes a public interest disclosure.
PID Coordinator Director, Legal Services	<ul style="list-style-type: none"> • designated by the NHVR's CEO to: <ul style="list-style-type: none"> ○ receive appropriate disclosures of public administration information relating to NHVR public officers ○ encourage the discloser to raise any concerns they have about potential detrimental outcomes that may be caused from the disclosure ○ assess the PID and if appropriate appoint an investigator ○ ensure that the person making the disclosure is kept informed of progress in the investigation into the PID ○ ensure compliance with the PID Act (SA) and these guidelines ○ make appropriate recommendations to the NHVR's CEO for dealing with PIDs ○ provide advice to NHVR staff in relation to their obligations, protections and offences under PID Act (SA) and about this guideline.
Chiefs/Executive Directors/Directors/Managers/Supervisors	<ul style="list-style-type: none"> • maintains a workplace culture that values professionalism, integrity and diligence • demonstrates positive ethical standards through their own conduct and communications at work and values all employees • creates a supportive reporting environment that encourages employees to report any concerns about wrongdoing • provides appropriate confidential support to employees who report suspected wrongdoing and provide assurance to them by making clear statements of support • liaises with the PID Coordinator and Manager People and Culture (HR) to ensure appropriate protective measures are in place for the discloser • monitors the workplace and taking all reasonable steps to minimise the risk of reprisal action towards the discloser • implements appropriate controls to prevent harm to the NHVR's assets and resources.
Manager, People and Culture (HR)	<ul style="list-style-type: none"> • appoints a PID support officer for the discloser if required • decides on appropriate action—consults with senior management (i.e. Chief/ED/CEO).
PID Support Officer	<ul style="list-style-type: none"> • provides advice and information to the discloser on the NHVR's PID procedure • provides personal support and referral to other sources of advice or support as required • facilitates updates on progress of investigation • proactively contacts the discloser throughout PID management process.
Employee	<ul style="list-style-type: none"> • conducts their duties to a high professional and ethical standard • seeks appropriate guidance if they have an ethical issue • immediately reports a matter, to a relevant authority, if they honestly believe that some wrongdoing has occurred • maintains confidentiality about the fact that a PID has been made, the information

Role	Responsibilities
	<p>disclosed and the identity of those referred to in the PID</p> <ul style="list-style-type: none"> • be prepared to assist in an investigation of the PID if requested by an investigator to provide information • reports any reprisal action to their workplace manager or appropriate NHVR officer.

15 Definitions

The following terms are specific to this guideline.

Term	Definition
Corruption in public administration	<p>(a) an offence against Part 7 Division 4 (Offences relating to public officers) of the <i>Criminal Law Consolidation Act 1935</i>, which includes the following offences:</p> <ul style="list-style-type: none"> (i) bribery or corruption of public officers (ii) threats or reprisals against public officers (iii) abuse of public office (iv) demanding or requiring benefit on basis of public office (v) offences relating to appointment to public office <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</p> <p>(c) an offence against the <i>Lobbyists Act 2015</i>, or an attempt to commit such an offence</p> <p>(d) 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</p> <p>(e) 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
Chiefs	The NHVR's Chief Corporate Officer, Chief Operations Officer, and Chief Regulatory Policy & Standards Officer.
Detrimental	<p>Includes any of the following:</p> <ul style="list-style-type: none"> • loss or damage (including damage to reputation) • injury or harm (including psychological harm) • intimidation or harassment • discrimination, disadvantage or adverse treatment in relation to a person's employment • threats of reprisal (whether express, or implied, or conditional or unconditional).
Discloser	A person (referred to as an informant under the PID Act (SA)) who makes an appropriate disclosure of public interest information.
ICAC Act	<i>Independent Commission Against Corruption Act 2012 (SA)</i>

Term	Definition
Journalist	A person engaged in the occupation of writing or editing material intended for publication in the print or electronic news media.
Maladministration in public administration	<p>(a) conduct of a public officer, or a practice, policy or procedure of a public authority, that results in an irregular and unauthorised use of public money or substantial mismanagement of public resources</p> <p>(b) conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions</p> <p>(i) includes conduct resulting from impropriety, incompetence or negligence</p> <p>(ii) is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.</p>
Misconduct in public administration	<p>(a) contravention of a code of conduct by a public officer while acting in his or her capacity as a public officer that constitutes a ground for disciplinary action against the officer; or</p> <p>(b) other misconduct of a public officer while acting in his or her capacity as a public officer.</p>
Office for Public Integrity (OPI)	<p>The office established under the ICAC Act that has the function to:</p> <ul style="list-style-type: none"> • receive and assess complaints about public administration from members of the public • receive and assess reports about corruption, misconduct and maladministration in public administration from the Ombudsman, the Council and public officers • refer complaints and reports to inquiry agencies, public authorities and public officers in circumstances approved by the Commissioner or make recommendations as to whether and by whom complaints and reports should be investigated • give directions or guidance to public authorities in circumstances approved by the Commissioner • perform other functions assigned to the Office by the Commissioner.
Principal Officer	The NHVR's Chief Executive Officer.
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. For the purposes of this procedure the term 'NHVR Public Officer' includes NHVR employees and more broadly public officers performing work or functions for or on behalf of the NHVR.
Relevant authority	The persons or organisations designated under the PID Act (SA) as the entity who can receive an appropriate disclosure of public interest information, depending on who or what the information relates to.
PID Coordinator	Any other officer authorised by the NHVR's Chief Executive Officer for the purposes of administering the PID Act (SA)
Support Officer	The person nominated or appointed by the NHVR to support the discloser.

16 References

16.1 Other policies and procedures

- *Public Interest Disclosure Policy*
- *Code of Conduct Policy*
- *Conflict of Interest Policy*
- *Employee Complaints Management Policy*
- *Customer Complaints Management Policy*
- *Fraud and Corrupt Conduct Policy*
- *Whistle Blower Hotline Quick Guide*

16.2 Legislation

- *Independent Commission Against Corruption Act 2012 (SA)*
- *Public Interest Disclosures Act 2018 (SA)*
- *Public Interest Disclosures Regulation 2019 (SA)*

Appendix A – Relevant authorities

The PID Act (SA) (section 5(5)) states that a disclosure of public interest information is made to a relevant authority if it is made to—

- (a) where the information relates to 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
 - (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—
 - (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 *Ombudsman Act 1972* applies—the Ombudsman; or
- (d) where the information relates to a location within the area of a particular council established under the *Local Government Act 1999*—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
- (i) where the information relates to a member of Parliament—the Presiding Officer of the House of Parliament to which the member belongs; or
- (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
- (k) a Minister of the Crown; or
- (l) OPI; or
- (m) any other prescribed person or person of a prescribed class.

Appendix B – Information that must be provided to OPI

The notification to OPI must include the following details:

- (a) the date the disclosure was received;
- (b) the recipient's name and contact details;
- (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 another person; and
 - (ii) if the disclosure was referred to another relevant authority, public authority or public officer or other person, the date of the referral; the identity of that relevant authority, public authority or public officer or another person to whom the disclosure was referred;
 - the manner of referral; and
 - the action to be taken by that relevant authority, public authority or public officer or another person (if known).
- (f) if no action was taken (by the NHVR) the reason why no action was taken; and
- (g) whether the identity of the discloser is known only to the recipient of the disclosure or if the identity of the discloser has been communicated to a relevant authority, public authority or public officer or another person (and if so, the reasons why such communication was made).

Appendix C – Public Interest Disclosure (SA) process

