

ADELAIDE — CEMETERIES

Policy Name: Public Interest Disclosure

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Authorised By: Adelaide Cemeteries Authority Board

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Responsible Manager: Chief Executive Officer

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Policy Version	Date	Author	Action
3.0	Jan 2024	GEM	Revisions to policy to facilitate consistency with the <i>PID Act</i>
2.0	December 2020	Chief Executive Officer	Minor edits and inclusions.
1.2	Oct 19	CEO	Amendments following Board Meeting
1.1	Sep 19	CEO	Amendments following FARM Meeting
1.0	Aug 19	CEO	Draft of initial Policy

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DEFINITIONS

Act	<i>Adelaide Cemeteries Authority Act 2001</i>
Appropriate Disclosure	as defined section 4 of the <i>Public Interest Disclosure Act 2018</i>
Assessor	the person designated by the Responsible Officer as being responsible for investigating a disclosure made to the Authority
Authority	Adelaide Cemeteries Authority as defined by the Act
Board	the Board of Directors of the Authority as appointed under the Act
CEO	Chief Executive Officer of the Authority as appointed by the Board and for the purposes of the <i>PID Act</i> , the Principal Officer and also a public officer
Corruption	<p>As per the <i>Independent Commission Against Corruption Act 2012 (SA)</i> s 5(1), ‘<i>Corruption in public administration means conduct that constitutes—</i></p> <ul style="list-style-type: none"> (a) <i>an offence against Part 7 Division 4 (Offences relating to public officers) of the Criminal Law Consolidation Act 1935, which includes the following offences:</i> <ul style="list-style-type: none"> (i) <i>bribery or corruption of public officers;</i> (ii) <i>threats or reprisals against public officers;</i> (iii) <i>abuse of public office;</i> (iv) <i>demanding or requiring benefit on basis of public office;</i>

- (v) *offences relating to appointment to public office; or*
- (b) *an offence against the Public Sector (Honesty and Accountability) Act 1995 or the Public Corporations Act 1993, or an attempt to commit such an offence; or*
- (c) *an offence against the Lobbyists Act 2015, or an attempt to commit such an offence; or*
- (d) *any of the following in relation to an offence referred to in a preceding paragraph:*
 - (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.'*

Directions and Guidelines	Directions and Guidelines issued pursuant to section 18B of the <i>ICAC Act</i> and/or section 14 of the <i>PID Act</i>
Director	Member of the Board of Directors of the Authority as appointed under the Act
Employee	employees of the Authority who are 'public officers' as defined by section 4 and Schedule 1 of the <i>ICAC Act</i> , and which definition extends to Directors and the CEO
ICAC Act	<i>Independent Commission Against Corruption Act 2012 (SA)</i>
Informant	a person who makes an appropriate disclosure of public interest information to a relevant authority.
Maladministration	As per the <i>Ombudsman Act 1972 (SA)</i> s 4 (2), 'Maladministration in public administration (a) means – <ul style="list-style-type: none">(i) <i>conduct of a public officer, or a practice, policy, or procedure of a public authority, that results in an irregular and un-authorised use of public money or substantial mismanagement of public resources; or</i>(ii) <i>conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and</i>(iii) <i>includes conduct resulting from impropriety, incompetence or negligence; and</i>

(iv) is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.

AND, without limiting or extending the conduct that may comprise misconduct or maladministration in public administration the *Ombudsman Act 1972* applies to conduct that:

- occurred before the *Ombudsman Act 1972* (as amended) came into force; or
- occurs outside this State; or
- comprises a failure to act; or
- is conduct of a person who was a public officer at the time of its occurrence, but who has since ceased to be a public officer; or

is conduct of a person who was not a public officer at the time of its occurrence but who has since become a public officer.'

Misconduct

As per the *Ombudsman Act 1972* (SA) s 4 (1),

Misconduct in public administration means an intentional and serious contravention of a code of conduct by a public officer while acting in their capacity as a public officer that constitutes a ground for disciplinary action against the officer.

OPI

the Office for Public Integrity, established under the *ICAC Act*

Public Administration

as defined in section 4 of the *ICAC Act*, '*without limiting the acts that may comprise public administration, an administrative act within the meaning of the Ombudsman Act 1972 will be taken to be carried out in the course of public administration*'

PID Act

Public Interest Disclosure Act 2018 (SA)

Responsible Officer

a person who has completed any training courses approved by the Commissioner for the purposes of the Public Interest Disclosure Regulations 2019 and has been designated by the Authority as responsible officer under section 12 of the *PID Act*.

1 POLICY AIM

The *PID Act* seeks to encourage and facilitate disclosure of certain information in the public interest, and to provide protection for Informants. It is a scheme for 'Whistleblower' protections.

This policy supports the obligations and rights of the Authority, and its Directors, CEO, and Employees under the *PID Act* and encourages disclosures of public interest information consistent with the *PID Act*.

2 POLICY SCOPE

This policy supports the CEO's obligation under the *PID Act* section 12 and the obligation of the Authority's Employees who are 'Public Officers' for the purposes of the *PID Act*.

This policy should be read in conjunction with the *PID Act* and any guidelines published by the Independent Commission Against Corruption – links to these resources are provided at the end of this document.

3 POLICY STATEMENT

The Authority will support its Employees to meet their respective obligations under the *PID Act*, and acknowledges the need to appropriately support Informants, the Responsible Officer and, as appropriate, any Employees affected by a disclosure under the *PID Act*.

The CEO is the Principal Officer of the Authority and must ensure that:

- one or more Employees of the Authority are designated as Responsible Officers of the Authority for the purposes of the *PID Act*, and
- the name and contact details of each Responsible Officer of the Authority are made available to all Employees of the Authority;
- a procedure –
 - is provided for a person (Informant) who wants to make an appropriate disclosure of public interest information to the Authority;
 - is provided for Employees of the Authority dealing with such a disclosure; and
 - is prepared and maintained in accordance with the any applicable guidelines prepared under section 14 of the *PID Act*.

The Responsible Officer/s of the Authority must:

- receive Appropriate Disclosure/s of public interest information relating to the Authority and ensure compliance with the *PID Act* in relation to such disclosure/s; and

- make appropriate recommendations to the CEO in relation to dealing with such disclosures; and
- provide advice to Employees of the Authority in relation to the administration of the *PID Act*,

And may carry out any other functions relating to the *PID Act*.

4 POLICY PRINCIPLES

The *PID Act* encourages and facilitates disclosures of certain information in the public interest.

The *PID Act* helps support the Authority's:

- Fraud, Corruption, Maladministration and Misconduct Prevention Policy
- Board Code of Conduct Policy
- Code of Ethics Policy (incorporating the Code of Ethics for the South Australian Public Sector), and
- Terms and Conditions of Employment

In making any determination or taking any action under this Policy or pursuant to the Public Interest Disclosure Process the Responsible Officer may seek legal advice from the Authority's Lawyers and/or guidance from SAPOL or another appropriate authority in relation to the most appropriate course of action to pursue.

The Responsible Officer is authorised to incur costs in accordance with their approved Delegation for that purpose.

The Responsible Officer will liaise as required with the Informant and any Assessor in relation to any investigation process undertaken in accordance with the Public Interest Disclosure Process and will ensure that the Informant is provided with support and protection as necessary and appropriate in the circumstances of the Disclosure.

The *PID Act* and any guidelines published in accordance with it, will take precedence over this policy and its procedure/s.

5 PROCEDURE

Disclosures are to be handled by the Authority, the CEO, the Responsible Officer/s and Informant/s in accordance with these guidelines, the *PID Act* and any guidelines published in accordance with the *PID Act* by bodies such as the Commissioner for the Independent Commission Against Corruption.

An Informant may make a disclosure to either a Responsible Officer within the Authority or another relevant authority external to the Authority. This is a choice to be made by the Informant at his/her discretion.

An Informant may seek guidance about making a disclosure from:

- A Responsible Officer at the Authority
- the Office for Public Integrity (OPI website)
- SAPOL
- ICAC website
- the Environment Protection Authority (where it relates to a risk to the environment)
- other relevant authorities as prescribed under the *PID Act*

A Disclosure may be made to one of the Authority's designated Responsible Officers in person, by telephone or in writing. The relevant contact details are:

Email: publicinterestdisclosure@aca.sa.gov.au

Postal: **Confidential**
Responsible Officer, Public Interest Disclosure
PO Box 294
ENFIELD PLAZA 5085

Telephone: 08 139 7400 (direct your enquiry to the Responsible Officer for Public Interest Disclosure)

Persons making disclosures may wish to ask to speak to, or email, or write to, one of the following of the Authority's designated Responsible Officers:

1. Chief Financial Officer
2. People & Culture Manager
3. Governance and Environment Manager

A Responsible Officer must not evaluate any disclosure/s that relate to matters involving themselves. These must be referred to another Responsible Officer.

The Responsible Officer who receives a disclosure will determine whether it is an Appropriate Disclosure under the *PID Act*.

5.1 Confidentiality

The identity of an Informant will be maintained as confidential in accordance with the *PID Act*.

When dealing with an Appropriate Disclosure, the identity of an Informant must only be divulged by the recipient:

- So far as may be necessary to ensure that the matters to which the information relates are properly investigated; or

- In accordance with the guidelines published by the ICAC; currently–
 - 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; or
 - the identity of the Informant is 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; or
 - the Informant consents to their identity being disclosed.

Other information relating to a disclosure (including, for example, the nature of the allegations) may be able to be disclosed, but before doing so the recipient must be mindful of the prohibition against victimisation in the *PID Act*.

An Informant may wish to remain anonymous, but in that event must ensure that the allegation is sufficiently supported by the provision of necessary details and evidence to enable the matter to be properly investigated.

In receiving, assessing and managing any Appropriate Disclosure, the Responsible Officer will make an assessment of the risk to the Informant and will ensure that all information is handled appropriately including as to the storage and communication of information on electronic devices.

5.2 Protection for the Informant

An Informant who makes an Appropriate Disclosure is protected by:

- Immunity from criminal or civil liability as provided for in section 5(1) of the *PID Act*;
- A prohibition on disclosure of their identity as provided for in section 8 of the *PID Act*;
- A prohibition against victimisation as provided for in section 9 of the *PID Act*; and
- A prohibition against hindering, obstructing or preventing an Informant from making an appropriate Disclosure as provided for in section 11 of the *PID Act*.

The *PID Act* does not provide any protection to people who knowingly make disclosures that are false or misleading in a material particular (whether by reason of the inclusion or omission of a particular).

A person who knowingly makes a disclosure that is false or misleading in a material particular is guilty of an offence and may be prosecuted.

A person who personally commits an act of victimisation against an Informant is guilty of an offence and may be prosecuted.

The Authority will take action as appropriate in the circumstances of the relevant disclosure/s to protect Informants from victimisation.

Such action may include acting in accordance with risk minimisation steps which are appropriate in the circumstances and/or referring the matter to the SA Police.

5.3 Contraventions

The following actions are deemed to contravene the *PID Act* and *PID Policy*:

- Knowingly making a disclosure that is false or misleading in a material particular; or
- Committing an act of victimisation in relation to an Informant; or
- Acting otherwise than in accordance with this Policy or the Public Interest Disclosure Procedure (including with respect to divulging the identity of an Informant) in relation to a Disclosure;

Any Employee of the Authority who is found to have committed any such contraventions may face disciplinary action by the Authority or the CEO (as appropriate).

Any Director of the Authority who is found to have committed any such contraventions may be removed from their position by the Governor in accordance with s13(3) of *the Act*.

5.5 Informing the Board

If a preliminary assessment identifies that there is evidence of suspected fraud, corruption, misconduct or maladministration that requires further investigation, the CEO will advise the Chair of the Board, on a confidential basis. This advice must include;

- The nature of the suspected activities;
- The title of the person or persons involved in the suspected activities;
- The investigations undertaken to date; and
- The proposed course of action for further investigation to resolve the matter.

The Responsible Officer will also inform the Board, on a confidential basis, of the fact that an assessment took place and the outcome of the investigation.

6 PUBLICATION OF THIS DOCUMENT

This Policy will be available for inspection at the Authority's Offices during ordinary business hours and via the Authority's website <https://aca.sa.gov.au/reports-plans-policies>

7 LEGISLATIVE REQUIREMENTS

[Independent Commissioner Against Corruption Act 2012](#)
[Ombudsman Act 1972](#)


8 RELATED POLICIES

[Delegations – COR008](#)
[Fraud Corruption, Misconduct & Maladministration Policy – COR014](#)

9 RELATED PROCEDURES, GUIDELINES & FORMS

[Fraud Corruption, Misconduct & Maladministration Procedure – CORPROC014](#)

AUTHORISED BY AND EFFECTIVE DATE

Signature:  _____ Date: Feb 23, 2024
(Chief Executive Officer)






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Final Audit Report

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