

# Public Interest Disclosures Policy

---

Version 4.0

7 December 2023

# Public Interest Disclosures Policy

---

1.	Introduction .....	4
2.	Accessibility of this Policy .....	4
3.	Overview .....	4
4.	Who does the Policy apply to?.....	5
5.	Roles and responsibilities .....	5
6.	What should be disclosed? .....	7
7.	Assessment of disclosures of wrongdoing .....	10
8.	Who can receive a disclosure within STC?.....	10
9.	Who can receive a disclosure outside STC? .....	10
10.	How to make a disclosure.....	12
11.	Can a disclosure be anonymous?.....	12
12.	Feedback to staff who disclose wrongdoing .....	12
13.	Maintaining confidentiality .....	14
14.	Managing the risk of detrimental action and workplace conflict .....	14
15.	Protection against detrimental action .....	14
16.	Support for those disclosing wrongdoing .....	16
17.	Sanctions for making false or misleading statements .....	17
18.	Rights of persons who are the subject of a disclosure.....	17
19.	Review and dispute resolution.....	17
20.	Review of Policy .....	17
21.	Reporting to Ombudsman .....	18
22.	Further information .....	18

## Policy Control Information

---

<b>Policy Name</b>	Public Interest Disclosures Policy (previously Protected Disclosure Policy)
<b>Policy Owner</b>	General Counsel
<b>Legislative Reference</b>	<i>Public Interest Disclosures Act 2022</i> (NSW)
<b>Reviewing Committee</b>	Risk, Audit and Compliance Committee (RACC)
<b>Approval Body</b>	Board
<b>Current Version</b>	4
<b>Approval Date</b>	7 December 2023
<b>Next Review Date</b>	14 November 2026 by RACC

## Revision History

Version	Authors	Revision Date	Date Approved	Revision Notes
Version 4	STC Legal team	14 November 2023	7 December 2023	Update after triennial review but also taking into account new model document from Ombudsman's Office after legislative changes
Version 3	STC Legal team	17 August 2021	Date: 22 October 2021	Update after triennial review
Version 2	STC Legal team	19 February 2018	Date: 20 March 2018	Update, including change of Policy name
Version 1	NSW Ombudsman's Office	15 November 2016	Date: 26 April 2017	Model document adapted for STC

Other related documents include:

- STC's Code of Conduct and Ethics; and
- STC's Work Health and Safety Policy.

## 1. Introduction

This document sets out the policy (the Public Interest Disclosures Policy, or “**the Policy**”) that the SAS Trustee Corporation (**STC**) has established to implement an internal disclosure system for staff to report or disclose wrongdoing without fear of reprisal or detrimental action. The Policy sets out what should be disclosed, who you can disclose wrongdoing to in STC, and how disclosures of wrongdoing will be dealt with by STC. The Policy demonstrates STC’s compliance with the *Public Interest Disclosures Act 2022* (NSW) (**PID Act**), including s.42 which requires every agency to have such a policy.

STC, as an NSW statutory body, is an agency that is required to comply with the PID Act. However, STC is **not** covered by the 2019 amendments to the *Corporations Act 2001* (Cth) which provide protection to whistleblowers in certain circumstances, but it will provide protection to whistleblowers through this Policy and in its exercising of its statutory functions and duties.

This Policy will complement normal communication channels between managers and staff. Staff are encouraged to raise matters of concern at any time with their managers, but also have the option to make a public interest disclosure in accordance with this Policy and the PID Act.

This internal disclosure system is not intended for staff grievances that do not relate to wrongdoing, which should be raised in accordance with STC’s Code of Conduct and Ethics (**Code**). If a staff member makes a disclosure under this Policy which is substantially a grievance, the matter will be dealt with under the Code.

## 2. Accessibility of this Policy

The Policy is available on the State Super website (under *Governance and Policies*) and internally for staff on the Objective system. Staff are made aware of the Policy during the induction process when they commence work with State Super. The Policy is one of the policies that staff are given specific training about in the annual compliance training which staff are required to attend and participate in.

## 3. Overview

STC is committed to maintaining a culture where staff are encouraged to report any conduct that they reasonably believe involves wrongdoing. STC aims to effectively deal with disclosures of wrongdoing and misconduct through instilling appropriate cultural practices and behaviours as documented in this Policy. STC is committed to:

- creating a climate of trust, where staff are comfortable and confident about disclosing wrongdoing;
- encouraging staff to come forward if they are aware of or suspect wrongdoing within STC;
- keeping the identity of the staff member disclosing wrongdoing confidential, where this is possible and appropriate;
- protecting staff from any adverse action resulting from making a disclosure;
- dealing with disclosures thoroughly and impartially and if some form of wrongdoing has been found, taking appropriate action to address it;
- keeping staff who make disclosures informed of their progress and the outcome;
- encouraging staff to disclose wrongdoing within STC, but respect any decision to disclose wrongdoing externally in accordance with the provisions of the PID Act;
- ensuring managers at all levels within STC understand the benefits of disclosing wrongdoing, are familiar with this Policy, and are aware of the needs and concerns of those who do disclose wrongdoing;
- reassessing / reviewing the Policy periodically to ensure it is relevant and effective; and

- providing adequate resources to:
  - encourage disclosures of wrongdoing;
  - protect and support those who make them;
  - provide training for staff about how to make disclosures of wrongdoing;
  - inform staff about the benefits of internal disclosures to STC and for the public interest generally;
  - properly assess and investigate or otherwise deal with allegations;
  - properly manage any workplace issues that the allegations identify or that result from a disclosure; and
  - appropriately address any identified problems.

## 4. Who does the Policy apply to?

This Policy applies to:

- permanent employees of STC, whether full-time or part-time;
- temporary or casual employees of STC;
- consultants working with or for STC ;
- individual contractors working for STC;
- employees of contractors providing services to STC; and
- other people who perform public official functions whose conduct and activities could be investigated by an investigating authority, including volunteers.

It should be noted that any person who is employed by or is otherwise in the service of STC is a public official for the purposes of the PID Act.

The Policy also applies to public officials of another public authority who disclose wrongdoing relating to STC.

It should be noted that this Policy **does not** apply to members or former members of the STC schemes who wish to make a complaint about the service they have been provided by STC or its contracted service providers. However, although such a complaint is not covered by this Policy, it is covered by the STC Complaint and Dispute Resolution Policy (available via the State Super website under Governance and Policies).

## 5. Roles and responsibilities

### 5.1 The role of the CEO

Under the PID Act, the Chief Executive Officer CEO of STC (CEO) is the head of the agency. The CEO is responsible for ensuring that:

- STC has an internal disclosure system (which is set out in this Policy).
- STC's staff are aware of the contents of this Policy and the protection under the PID Act for people who make public interest disclosures.
- STC complies with the Policy and STC's obligations under the PID Act.
- The Policy delegates at least one staff member as being responsible for receiving public interest disclosures.

The CEO has the day-to-day management responsibility for maintaining and promoting the internal disclosure system and fostering a workplace reporting culture.

The CEO can receive disclosures directly from staff and is also responsible for:

- assessing disclosures received by or referred to the CEO, determining whether or not the disclosure should be treated as a public interest disclosure and for deciding how it will be dealt with;

- ensuring there are effective strategies in place within STC to support and protect disclosers from detrimental action and manage workplace conflict that may arise in relation to a disclosure;
- making decisions following any investigation or appoint an appropriate decision-maker;
- taking appropriate remedial action where wrongdoing is substantiated or systemic problems are identified;
- ensuring that STC complies with its regular reporting obligations about public interest disclosures to the NSW Ombudsman;
- referring actual or suspected corrupt conduct to the Independent Commission Against Corruption (ICAC); and
- referring any evidence of a detrimental action offence to the Commissioner of Police or the ICAC, in accordance with section 34 of the PID Act.

## 5.2 The role of the STC Board

Although the PID Act does not explicitly set out a role for the Board in relation to public interest disclosures, the Board has ultimate responsibility for oversight of the management of STC, including its internal disclosure system for public interest disclosures and its workplace culture. The Board takes this responsibility very seriously and is the ultimate approval body for this Policy. The Chair of STC's Risk, Audit and Compliance Committee (RACC) is authorised to receive a public interest disclosure where the disclosure relates to one or both the CEO or the General Counsel.

Under the authority of the Board and the CEO, STC is committed to establish and maintain a working environment that encourages staff to disclose wrongdoing and supports them when they do. This includes keeping the identity of disclosers confidential where practical and appropriate, and taking steps to protect them from detrimental action and managing workplace conflict.

Once a staff member makes a disclosure of wrongdoing, STC takes 'ownership' of the matter. This means it is up to the CEO or the Disclosures Coordinator to decide whether a disclosure should be investigated, and if so, how it should be investigated and by whom. STC will deal with all disclosures of wrongdoing fairly and reasonably and respect the rights of any staff member who is the subject of a disclosure.

To ensure that STC complies with the PID Act and deals with all disclosures of wrongdoing properly, STC provides all staff with annual training about the PID Act and this Policy.

## 5.3 The role of staff

Staff play an important role in contributing to a workplace where known or suspected wrongdoing is disclosed and dealt with appropriately. All staff are required to:

- disclose all known or suspected serious wrongdoing or other misconduct and support those who have made disclosures of wrongdoing;
- if requested, use their best endeavours to assist those dealing with a disclosure, including supplying information on request, cooperating with any investigation and maintaining confidentiality;
- treat any staff member or person dealing with a disclosure of wrongdoing with courtesy and respect; and
- respect the rights of anyone who is the subject of disclosures.

Staff must not take any detrimental action against any person who has made, may in the future make. Or is suspected of having made a disclosure of wrongdoing.

Staff must not make any false or misleading disclosure of wrongdoing.

Additionally, all staff are obliged to adhere to the Code. A breach of the Code can result in disciplinary action.

## 5.4 Disclosures Coordinator

The STC General Counsel performs the role of Disclosures Coordinator. The Disclosures Coordinator has a central role in STC's internal disclosure system. The Disclosures Coordinator

can receive and assess disclosures and is the primary point of contact in STC for the discloser. The Disclosures Coordinator has a responsibility to:

- assess each disclosure, other than one made to the Chair of the RACC and relating to the Disclosures Coordinator, to determine whether or not it should be treated as a public interest disclosure, decide how each disclosure will be dealt with;
- coordinate STC's response to each disclosure and ensure there is a written risk assessment for each disclosure that is treated as a public interest disclosure;
- acknowledge each disclosure and provide updates and feedback to the discloser;
- assess whether it is possible and appropriate to keep the discloser's identity confidential;
- assess the risk of detrimental action and workplace conflict related to or likely to arise out of a disclosure, and develop strategies to manage any risk identified;
- where required, provide or coordinate support to staff involved in the disclosure or investigation process, including protecting the interests of any staff member who is the subject of a disclosure; and
- ensure that STC provides annual reports to the NSW Ombudsman in accordance with section 78 of the PID Act.

### 5.5 Disclosure Officers

The people at STC authorised within STC to receive voluntary public interest disclosures are:

- the CEO;
- the Disclosures Coordinator;
- the Technical Scheme Manager (who is the senior staff member who regularly works at the STC Wollongong office);
- the Chair of the RACC (for disclosures relating to the CEO and/or Disclosures Coordinator).

### 5.6 Managers

Managers play an important role in managing the immediate workplace of those involved in or affected by the internal disclosure process. Managers must be aware of the internal disclosure system and this Policy and are responsible for creating a local work environment where staff are comfortable and confident about disclosing wrongdoing. They have a responsibility to:

- encourage staff to disclose known or suspected wrongdoing within the organisation and support staff when they do;
- identify disclosures made to them in the course of their work which could be public interest disclosures, and assist the staff member to make a disclosure to a Disclosure Officer;
- implement local management strategies, in consultation with the Disclosures Coordinator, to minimise the risk of detrimental action or workplace conflict in relation to a disclosure; and
- notify the Disclosures Coordinator or CEO immediately if they believe a staff member is being subjected to detrimental action as a result of disclosing wrongdoing.

## 6. What should be disclosed?

You must disclose any suspected wrongdoing within STC or any activities or incidents you see within STC that you believe involve wrongdoing.

In order for a disclosure of wrongdoing to be a public interest disclosure (**PID**), with the disclosure then entitled to certain protections under the PID Act and STC having to make certain decisions and take certain actions under the PID Act, the disclosure has to meet certain criteria (see below).

There are three types of PIDs in the PID Act. These are:

- **Voluntary PID:** This is a PID where a disclosure has been made by a public official because they decided, of their own accord, to come forward to disclose what they know.

- **Mandatory PID:** This is a PID where a public official has made a disclosure about serious wrongdoing because they have a legal obligation to make that disclosure/report, or because making that report is an ordinary aspect of their role or function in an agency.
- **Witness PID:** This is a PID where a person discloses information during an investigation of serious wrongdoing following a request or requirement.

There are various pieces of legislation that impose mandatory reporting duties on different public officials. An example of mandatory reporting is the duty on Police officers to report serious maladministration pursuant to section 211F of the *Police Act 1990* (obviously, this type of PID does not involve STC). Another example is section 11 of the *Independent Commission Against Corruption Act 1988*, which requires heads of agencies (such as the CEO of STC) to report any matter to the ICAC that they suspect, on reasonable grounds, concerns or may concern corrupt conduct. Such a mandatory report will be a mandatory PID.

The PID Act places a legal obligation on a manager who is not a STC Disclosure Officer but who receives a voluntary PID to communicate that PID to a Disclosure Officer. When a manager does so, they have made a mandatory PID. This means that, like the person who originally made the voluntary PID, the manager is also protected under the PID Act against detriment and liability. If STC receives such a disclosure, which is a voluntary PID made by one person and also a mandatory PID made by the manager, it will be handled by STC in accordance with the PID Act and the relevant steps taken by STC as for a voluntary PID (as set out in this Policy).

The PID Act also extends many of the protections that apply to voluntary PID makers to those who provide information as a witness in an investigation into serious wrongdoing. A disclosure will be a 'witness PID' if:

- a person (whether they are a public official or not) discloses information during an investigation, and
- that investigation is into serious wrongdoing, and
- they disclosed the information following a request or requirement of the investigator or investigating agency.

All information provided by a person in these circumstances constitutes a witness PID (provided the person is not wilfully providing false information). It is important to note that, unlike voluntary PIDs or mandatory PIDs, witness PIDs can be made by a person who is not a public official.

More information about the PID Act in general and in particular Mandatory and Witness PIDs can be found in the NSW Ombudsman's Guidance on the Public Interest Disclosures Act 2022 <https://www.ombo.nsw.gov.au/Find-a-publication/publications/guidelines/public-interest-disclosures-2022>.

## 6.1 Voluntary PIDs

This Policy relates to voluntary PIDs and references to PIDs throughout the remainder of this Policy mean voluntary PIDs.

A disclosure/report is a voluntary PID if it has the following five features, which are set out in sections 24 to 27 of the PID Act:

- A disclosure by a public official.
- A disclosure to a person who can receive PIDs (at STC, a Disclosure Officer).
- The public official making the disclosure **honestly and reasonably** believes the information they are disclosing shows or tends to show serious wrongdoing.
- The disclosure was made orally or in writing.
- The disclosure is voluntary.

If you make a PID, you will not be expected to prove that what you reported actually happened or is serious wrongdoing. But you do have to honestly believe, on reasonable grounds, that the information you are reporting shows or tends to show serious wrongdoing. Even though you do not have to prove the serious wrongdoing happened or provide evidence, a mere allegation with no



supporting information is unlikely to meet this test.

If STC makes an error and does not identify that you have made a voluntary PID, you will still be entitled to the protections under the PID Act.

If you make a disclosure but believe that STC has made an error by not identifying that you have made a voluntary PID, you should raise this with the Disclosure Officer to whom you made the disclosure or the Disclosures Coordinator. If you are still not satisfied with this outcome, you can seek an internal review in writing to the Disclosures Coordinator. You may also contact the NSW Ombudsman.

A PID can only be made about six categories of serious wrongdoing – corrupt conduct, serious maladministration, serious and substantial waste of public money, a government information contravention, a privacy contravention and a local government pecuniary interest contravention. See below for details about these types of conduct.

All other wrongdoing or suspected wrongdoing must be disclosed to a manager, to be dealt with in line with the relevant STC policies. This might include:

- harassment or unlawful discrimination; or
- practices that endanger the health or safety of staff or the public.

Even if these disclosures are not dealt with as PIDs, STC recognises such disclosures may raise important issues. STC will respond to all disclosures and make every attempt to protect the staff member making the disclosure from detrimental action and follow the provisions of relevant STC policies including:

- STC's Work Health and Safety Policy; and
- STC's Code of Conduct and Ethics.

## **6.2 Corrupt conduct**

Corrupt conduct is the dishonest or partial (ie not impartial) exercise of official functions by a public official. For example, this could include:

- the improper use of knowledge, power or position for personal gain or the advantage of others; or
- acting dishonestly or unfairly or breaching public trust.

## **6.3 Serious maladministration**

Serious maladministration is conduct, other than conduct of a trivial nature, relating to a matter of administration that is unlawful or unreasonable, unjust, oppressive or improperly discriminatory or based wholly or partly on improper motives.

For example, this could include:

- making a decision and/or taking action that is unlawful; or
- refusing to grant someone a benefit for reasons that are not related to the merits of their application.

## **6.4 Serious and substantial waste of public money**

This category of serious wrongdoing involves the uneconomical, inefficient or ineffective use of resources that could result in losing or wasting public money. For example, this could include:

- not following a competitive tendering process for a large-scale contract; or
- having bad or no processes in place for a system involving large amounts of public funds.

## **6.5 Government information contravention**

A government information contravention means a failure, other than a trivial failure, by an agency or public official to exercise functions in accordance with:

- (a) the *Government Information (Information Commissioner) Act 2009*, or

- (b) the *Government Information (Public Access) Act 2009* (the **GIPA Act**), or
- (c) the *State Records Act 1998*.

For example, this could include:

- destroying, concealing or altering records to prevent them from being released; or
- knowingly making a decision in relation to an access application that contravenes the GIPA Act; or
- directing another person to make a decision in relation to an access application that contravenes the GIPA Act.

## 6.6 Privacy contravention

A privacy contravention means a failure, other than a trivial failure, by an agency or public official to exercise functions in accordance with:

- (a) the *Privacy and Personal Information Protection Act 1998*, or
- (b) the *Health Records and Information Privacy Act 2002*.

The sixth category of serious wrongdoing under the PID Act – local government pecuniary interest contravention – is not applicable to STC.

## 7. Assessment of disclosures of wrongdoing

All disclosures of wrongdoing made to STC will be promptly and thoroughly assessed to determine what action will be taken to deal with it and whether or not the disclosure will be treated as a PID.

The Disclosures Coordinator is responsible for assessing disclosures, in consultation with the CEO and the Chief Risk Officer where appropriate. All disclosures will be assessed on the information available to the Disclosures Coordinator at the time and be finalised in writing. It is up to the Disclosures Coordinator to decide whether an investigation should be carried out and how that investigation should be carried out. In assessing a disclosure, the Disclosures Coordinator may decide that it should be referred elsewhere or that no action should be taken on the disclosure. If the disclosure is assessed to be a PID, the Disclosures Coordinator will also prepare a written risk assessment of the disclosure.

It should be noted that disclosures by staff are not PIDs if they:

- mostly question the merits of government policy; or
- are made with the sole or substantial motive of avoiding dismissal or other disciplinary action.

## 8. Who can receive a disclosure within STC?

You are encouraged to disclose general wrongdoing to your manager. However, the PID Act requires that, for a disclosure to be a PID, it must be made to certain public officials identified in this Policy ie an STC Disclosure Officer. If you make a disclosure that may be a PID to your manager, they should assist you to make the disclosure to a Disclosure Officer.

## 9. Who can receive a disclosure outside STC?

Staff are encouraged to disclose wrongdoing within STC, but you can also make a PID disclosure to an integrity agency such as ICAC (see below), or to the head of or a disclosure officer for another agency, or to a Minister or a member of a Minister's staff as long as the disclosure is in writing, or to a Member of Parliament or a journalist only in the limited circumstances outlined below.

### 9.1 Integrity agencies

The PID Act lists a number of integrity agencies in NSW that staff can disclose wrongdoing to and the type of wrongdoing each authority can deal with. In certain circumstances, it may be preferable to make a disclosure of wrongdoing to an investigating authority, for example any disclosure about the CEO.

The relevant integrity agencies with respect to STC are:

- *ICAC — for disclosures about corrupt conduct;*
- *the NSW Ombudsman — for most types of disclosures about serious maladministration;*
- *the Auditor-General — for disclosures about serious and substantial waste of public money;*
- *the Information Commissioner — for disclosures about government information contraventions;*
- *the Privacy Commissioner — for disclosures about privacy contraventions;*
- *the Law Enforcement Conduct Commission (LECC) — for disclosures about serious maladministration by the NSW Police or the NSW Crime Commission;*
- *the Inspector of the LECC — for disclosures about serious maladministration by the LECC or its staff; and*
- *the Inspector of the ICAC — for disclosures about serious maladministration by the ICAC or its staff.*

You should contact the relevant investigating authority for advice about how to make a disclosure to them. Contact details for each investigating authority are provided at the end of this Policy. You should be aware that the investigating authority may well discuss any such disclosures with STC.

STC will make every effort to assist and cooperate with the investigating authority to ensure the matter is dealt with appropriately and there is a satisfactory outcome. It will also provide appropriate support and assistance to staff who disclose wrongdoing to an investigating authority, if it is made aware that this has occurred.

## **9.2 Members of Parliament or journalists**

To have the protections of the PID Act, staff disclosing wrongdoing to a Member of Parliament (MP) or a journalist must have already made substantially the same disclosure to one of the following:

- an STC Disclosure Officer;
- someone at another agency who is able to receive a disclosure; or
- an integrity agency.

Further, the previous disclosure must have been substantially true and you must not have made it anonymously nor given a written waiver of your right to receive information relating to the disclosure.

Also, you must not have received from STC or other person or the integrity agency that received your initial disclosure:

- notification that they/it will not investigate the serious wrongdoing and will also not refer the previous disclosure to another agency, or
- the following information at the end of the investigation period (generally six months from when the previous disclosure was made):
  - notice of their/its decision to investigate the serious wrongdoing;
  - a description of the results of an investigation into the serious wrongdoing;
  - details of proposed or recommended corrective action as a result of the previous disclosure or investigation.

## **9.3 Other external disclosures**

If you disclose wrongdoing to a person or agency that is not listed above or make a disclosure to an MP or journalist without following the steps outlined above, you will not be protected under the PID Act. This may mean you may be in breach of your legal obligations or the Code by, for example, disclosing confidential information.

For more information about disclosing wrongdoing outside STC, contact the Disclosures Coordinator or the NSW Ombudsman's Public Interest Disclosures Unit. Their contact details are provided at the end of this Policy.

## 10. How to make a disclosure

You can disclose wrongdoing in writing or verbally in the first instance to an STC Disclosure Officer. You are encouraged to make a disclosure in writing as this can help to avoid any confusion or misinterpretation.

If a disclosure is made verbally, the person receiving the disclosure should make a comprehensive record of the disclosure and ask the person making it to sign this record. The staff member should keep a copy of this record.

You should provide as much information as possible so STC can deal with the disclosure effectively. The type of information you should include is:

- date, time and location of key events;
- names of person(s) involved in the suspected wrongdoing, their role, title and how they are involved;
- your relationship with the person(s) involved, such as whether you work closely with them;
- your explanation of the matter you are disclosing/reporting;
- how you became aware of the matter ;
- possible witnesses;
- other information you have that supports your disclosure.

You should report all wrongdoing you become aware of regardless of whether you think it is serious wrongdoing. It is important for STC to understand what is or may be occurring.

STC is then responsible for making sure your disclosure is handled appropriately under the PID Act, or if it is not a PID, in line with its other procedures. Even if your report is not a PID, it may fall within another one of STC's policies for dealing with reports, allegations or complaints.

The CEO of STC can, in certain circumstances, determine that a disclosure is a PID even if the disclosure does not otherwise have all the features of a PID. This is known as the 'deeming power'.

By deeming that a disclosure is a PID, it ensures that disclosers are provided with protections under the PID Act.

## 11. Can a disclosure be anonymous?

There will be some situations where you may not want to identify yourself when you make a disclosure. Although these disclosures will still be dealt with by STC, it is best if you identify yourself. This allows us to provide you with any necessary protection and support, as well as feedback about what action is to be taken or has been taken to deal with the issues raised in the disclosure, or the outcome of any investigation.

It is important to realise that an anonymous disclosure may not prevent you from being identified by the subjects of the disclosure or your colleagues. If STC do not know who made the disclosure, it is very difficult for it to prevent any detrimental action should others identify you.

## 12. Feedback to staff who disclose wrongdoing

Staff who disclose wrongdoing will be told what is happening in response to their disclosure provided they have identified themselves as set out below.

### 12.1 Acknowledgement

When you make a disclosure of wrongdoing to STC, STC will consider how it will deal with the disclosure. If the Disclosure Officer at STC believes that the disclosure is a (voluntary) PID, or looks like it may be a PID, you will be given the following information by STC:

- An acknowledgment (by letter) that the disclosure has been received. This acknowledgement will:
  - state that the disclosure will be assessed to identify whether it is a PID;

- state that the PID Act applies to how STC deals with the report;
- provide clear information on how you can access this Policy;
- provide you with details of a contact person and available supports.

## 12.2 Assessment and process for updates about investigation

Even if the disclosure is not a PID, it will still need to be dealt with in a manner consistent with STC's relevant internal complaints or through an alternate process.

If the report is not a PID, STC will let you know that the PID Act does not apply to the disclosure but how it will deal with the concerns raised.

If you are not happy with this assessment or otherwise disagree with it, you can raise it with the person who has communicated the outcome with you or a Disclosure Officer, request an internal review or request that the matter be conciliated. STC can, but does not have to, request the NSW Ombudsman to conciliate the matter.

If the disclosure is assessed to be a PID, STC will inform you as soon as possible how it intends to deal with the disclosure. This may include:

- That STC is investigating the serious wrongdoing.
- That STC will refer the disclosure to a different agency (if appropriate) to deal with the PID. If it does this, it will provide you with details of this referral.
- If STC decides to not investigate the disclosure and to not refer it to another agency for it to be investigated, it will tell you the reasons for this decision. STC will also notify the NSW Ombudsman of this decision.

Please note that if your disclosure is a PID but not a PID ie you made the disclosure under a statutory or legal obligation or incidental to the performance of your day to day functions, STC is not required to provide you with a copy of this Policy. If this is the case, STC will inform you in the acknowledgement letter.

If STC decides to investigate the serious wrongdoing, it will provide you with updates on the investigation at least every three months. During this time, if you would like more frequent updates, you should contact the contact person who was nominated when you made the disclosure.

When STC does conduct an investigation to make findings about the alleged serious wrongdoing; including who was involved, who was responsible, and whether the people involved, or the agency engaged, in serious wrongdoing. There may be circumstances where STC believes that an investigation is not warranted — for example, if the conduct has previously been investigated.

There may also be circumstances where STC decides that the disclosure should be referred to another agency, such as an integrity agency. For example, reports concerning possible corrupt conduct may be required to be reported to the ICAC in accordance with section 11 of the *Independent Commission Against Corruption Act 1988*.

Before referring a matter, STC will discuss the referral with the other agency, and it will provide you with details of the referral and a contact person within the other agency.

If STC decides not to investigate a disclosure and to not refer the matter to another agency, it must let you know the reasons for this.

## 12.3 Completion of investigation

If STC investigates the serious wrongdoing, it will provide you with the following information once the investigation is complete:

- A description of the results of the investigation — that is, STC will tell you whether it found that serious wrongdoing took place.
- Information about any corrective action as a result of the investigation/s — this means

it will tell you what action we took in relation to the person who engaged in the serious wrongdoing or if the serious wrongdoing was by STC, what it has put in place to address that serious wrongdoing.

Corrective action could include taking disciplinary action against someone or changing the practices, policies and procedures that STC has in place which led to the serious wrongdoing.

There may be some details about both the findings made as a result of the investigation and the corrective action taken that cannot be revealed to you. STC will always balance the right of a person who makes a report to know the outcome of that report, with other legal obligations it has. If you have made an anonymous report, in many cases STC may not be able to provide this information to you.

### 13. Maintaining confidentiality

STC understands that disclosers of wrongdoing may want their identity and the fact that they have made a disclosure to remain confidential. This can help to prevent any action being taken against them for disclosing wrongdoing. Where possible and appropriate STC will take steps to keep your identity, and the fact you have disclosed wrongdoing, confidential. STC will discuss with you whether it is possible to keep your identity confidential.

If your confidentiality cannot be maintained, STC will develop a plan, in consultation with you, to support and protect you from any possible detrimental action.

If you disclose wrongdoing, it is important that you only discuss your disclosure with those persons at STC responsible for dealing with it. This will include the Disclosures Coordinator and the CEO. The fewer people who know about your disclosure, before and after you make it, the more likely it will be that STC can protect you from any detrimental action.

Any staff involved in the investigation or handling of a disclosure, including witnesses, are also required to maintain confidentiality and not disclose information about the process or allegations to any person except for those people responsible for handling the disclosure.

### 14. Managing the risk of detrimental action and workplace conflict

When a staff member makes a disclosure, STC will undertake a thorough risk assessment to identify the risks of detrimental action relating to the disclosure, as well as possible related risks of workplace conflict or difficulties. The risk assessment will also identify strategies to deal with those risks and determine the level of protection and support that is appropriate.

Depending on the circumstances, STC may:

- relocate the discloser or the staff member who is the subject of the allegation within the current workplace;
- transfer the discloser or the staff member who is the subject of the allegation to another position for which they are qualified;
- grant the discloser or the staff member who is the subject of the allegation leave of absence during the investigation of the disclosure.

These courses of action are not punishment and will only be taken in consultation with the discloser.

### 15. Protection against detrimental action

STC will not tolerate any detrimental action towards or against staff who disclose wrongdoing or are believed to have disclosed wrongdoing.

The PID Act provides protection for staff who have made a PID by making it an indictable offence for a person to take detrimental action against another person if the first person suspects, believes or is aware that the other person has made, may have made or may make or proposes to make a PID.

Detrimental action against a person is an act or omission that causes, comprises, involves or encourages detriment to a person or a threat of detriment to a person (whether express or implied). Detriment to a person includes:

- injury, damage or loss;
- property damage;
- reputational damage;
- intimidation, bullying or harassment;
- unfavourable treatment in relation to another person's job;
- discrimination, prejudice or adverse treatment;
- disciplinary proceedings or disciplinary action, or
- any other type of disadvantage.

Detrimental action does **not** include:

- lawful action taken by a person or body to investigate serious wrongdoing or other misconduct;
- the lawful reporting or publication of a finding of serious wrongdoing or other misconduct;
- the lawful making of adverse comment, resulting from investigative action;
- the prosecution of a person for a criminal offence;
- reasonable management action taken by someone in relation to a person who made or may make a PID. For example, a reasonable appraisal of a PID maker's work performance.

A person who is found to have committed a detrimental action offence may face criminal penalties such as imprisonment or fines and may be required to pay the victim damages for any loss suffered as a result of the detrimental action. Taking detrimental action is also misconduct which may result in disciplinary action from an employer.

However, it should be noted that section 36 of the PID Act provides that an employer may be ordered by a court to pay damages recoverable under the PID Act in relation to detrimental action by a person, in circumstances where the person who took the detrimental action did so in connection with the person's position or role as an employee.

The maker of a PID is protected in the following ways:

- *Protection from detrimental action*
  - A person cannot take detrimental action against another person because they have made a PID or are considering making a PID.
  - Once STC becomes aware that a PID by a person employed or otherwise associated with STC that concerns serious wrongdoing relating to it has been made, STC will undertake a risk assessment and take steps to mitigate the risk of detrimental action occurring against the person who made the PID.
  - It is a criminal offence for someone to take detrimental action against a person because they have made or may make a voluntary PID. It is punishable by a maximum penalty of 200 penalty units or imprisonment for five years or both.
  - A person may seek compensation where unlawful detrimental action has been taken against them.
  - A person can apply for a court order (injunction) where detrimental action is threatened or has occurred (for example, an order to prevent dismissal or to require reinstatement).
- *Immunity from civil and criminal liability (see 15.2 below)*
- *Confidentiality*

- Public officials and agencies must not disclose information tending to identify a person as the maker of a PID unless doing so is permitted by the PID Act.

STC is committed to taking all reasonable steps to protect you from detriment as a result of having made a PID. STC is also committed to maintaining your confidentiality as much as possible while the PID is being dealt with. STC will not tolerate any type of detrimental action being taken against you because you have made a disclosure, might make one or are believed to have made one.

However, it is important for staff to understand the nature and limitations of the protection provided by the PID Act. The PID Act protects staff from detrimental action being taken against them because they have made, or are believed to have made, a PID. It does not protect staff from being subject to reasonable management action (such as ordinary performance reviews and performance management). Provided such action is not taken because of the PID, it is not detrimental action under the PID Act.

### **15.1 Responding to allegations of detrimental action**

If you believe that detrimental action has been or is being taken against you or someone else because you or they disclosed wrongdoing, you should tell your manager, the Disclosures Coordinator or the CEO immediately.

All managers must notify the Disclosures Coordinator or the CEO if they suspect that detrimental action against a staff member is occurring or has occurred, or if any such allegations are made to them.

If the CEO becomes aware of or suspects that detrimental action is being or has been taken against a person who has made a disclosure, STC will:

- Assess the circumstances to decide whether it should be treated as a PID and whether the matter warrants investigation or if other action should be taken to resolve the issue.
- If the allegation of detrimental action warrants investigation, ensure this is conducted by a senior and experienced member of staff.
- If it is established that detrimental action is occurring against someone who has made a disclosure, take all steps possible to stop that activity and protect the discloser.
- Take appropriate disciplinary action against anyone proven to have taken or threatened any action against someone who made a disclosure.
- Refer, under section 34 of the PID Act, any evidence of a detrimental action offence to the ICAC or NSW Police Force.

If you allege detrimental action, you will be kept informed of the progress and outcome of any investigation or other action taken in response to the allegation.

If you have disclosed wrongdoing and are experiencing detrimental action which you believe is not being dealt with effectively, contact the Ombudsman or the ICAC (depending on the type of wrongdoing you disclosed). Contact details for these investigating authorities are included at the end of this Policy.

### **15.2 Protection against legal action**

If you make a PID in accordance with the PID Act, you will not be subject to any liability, and no action, claim or demand can be taken against you for having made the PID. You will not have breached any confidentiality or secrecy obligations and you will have the defence of absolute privilege in defamation.

## **16. Support for those disclosing wrongdoing**

STC will make sure that staff who have disclosed wrongdoing, regardless of whether their disclosure is treated as a PID, are provided with access to any professional support they may need as a result of the disclosures process – such as stress management or counselling services.

Access to support may also be available for other staff involved in the internal disclosure process



where appropriate. People who make disclosures and other staff involved in the process can discuss their support options with the Disclosures Coordinator. This includes the Employee Assistance Program that is available to all staff.

## 17. Sanctions for making false or misleading statements

It is important all staff are aware that it is a criminal offence under s.84 of the PID Act to wilfully make a false or misleading statement when disclosing wrongdoing. STC will not support staff who wilfully make false or misleading disclosures. Such conduct may also be a breach of the Code resulting in disciplinary action.

## 18. Rights of persons who are the subject of a disclosure

STC is committed to ensuring staff who are the subject of a disclosure of wrongdoing are treated fairly and reasonably. This includes keeping the identity of any person the subject of a disclosure confidential, where this is practical and appropriate.

If you are the subject of the disclosure, you will be advised of the allegations made against you at an appropriate time and before any adverse findings. At this time, you will be:

- advised of the details of the allegation;
- advised of your rights and obligations under the relevant related policies and procedures;
- kept informed about the progress of any investigation;
- given a reasonable opportunity to respond to any allegation made against you; and
- told the outcome of any investigation, including any decision made about whether or not further action will be taken against you.

Where the allegations against the subject officer are clearly wrong, or have been investigated and unsubstantiated, the subject officer will be supported by STC. The fact of the allegations and any investigation will be kept confidential unless otherwise agreed to by the subject officer.

## 19. Review and dispute resolution

People who make voluntary PIDs can seek internal review of the following decisions made by STC:

- that STC is not required to deal with the report as a PID;
- to stop dealing with the report because STC decided it was not a PID;
- to not investigate the serious wrongdoing and not refer the report to another agency;
- to cease investigating the serious wrongdoing without either completing the investigation or referring the report to another agency for investigation.

STC will ensure that internal reviews are conducted in compliance with the PID Act.

If you would like to make an application for an internal review, you must apply in writing within 28 days of being informed of STC's decision. The application should state the reasons why you consider STC's decision should not have been made. You may also submit any other relevant material with your application.

If a dispute arises between STC and a person who has made a report which is, or may be, a PID, STC may request the NSW Ombudsman to conciliate the dispute. Conciliation is a voluntary process and will only be suitable for disputes where STC and the maker of the report are willing to resolve the dispute.

## 20. Review of Policy

This Public Interest Disclosures Policy is reviewed every three years, or as required, by STC's Legal & Governance team in order to capture changes to governing legislation, internal processes, or for any other applicable reasons.

This Public Interest Disclosures Policy will be subject to regular review by STC's independent internal auditor who will conduct an independent analysis on the Policy and may recommend amendments for the consideration of management.

## 21. Reporting to Ombudsman

Each year, STC will provide an annual report to the NSW Ombudsman which includes:

- information about voluntary PIDs received by it during each return period (yearly with the start date being 1 July);
- action taken by STC to deal with voluntary PIDs during the return period;
- how STC promoted a culture in the workplace where PIDs are encouraged.

## 22. Further information

Staff can contact the following NSW public sector bodies if they wish to report/make a disclosure regarding STC through STC's internal disclosure system but require more information or advice or if they want to make a disclosure about STC to the other public sector body.

<b>NSW Ombudsman</b> – for most types of disclosures about serious maladministration	Phone: 9286 1000 or 1800 451 524 Lvl 24, 580 George St, Sydney NSW 2000 Email: <a href="mailto:pid@ombo.nsw.gov.au">pid@ombo.nsw.gov.au</a> <a href="http://www.ombo.nsw.gov.au">http://www.ombo.nsw.gov.au</a>
<b>Independent Commission Against Corruption</b> – for disclosures about corrupt conduct	Phone: 8281 5999 or 1800 463 909 GPO Box 500, Sydney NSW 2001 Email: <a href="mailto:icac@icac.nsw.gov.au">icac@icac.nsw.gov.au</a> <a href="http://www.icac.nsw.gov.au">http://www.icac.nsw.gov.au</a>
<b>The Inspector of the Independent Commission Against Corruption</b> – for disclosures about serious maladministration by the ICAC or its staff	Phone: 9228 3023 PO Box 5341 Sydney NSW 2001 Email: <a href="mailto:oiicac_executive@oiicac.nw.gov.au">oiicac_executive@oiicac.nw.gov.au</a>
<b>Auditor-General</b> – for disclosures about serious and substantial waste of public money	Audit Office of NSW Phone: 9275 7100 GPO Box 12, Sydney NSW 2001 Email: <a href="mailto:governance@audit.nsw.gov.au">governance@audit.nsw.gov.au</a> <a href="http://www.audit.nsw.gov.au">http://www.audit.nsw.gov.au</a>
<b>Law Enforcement Conduct Commission</b> – for disclosures about serious maladministration by the NSW Police or the NSW Crime Commission	Phone: 9321 6700 or 1800 657 079 GPO Box 3880, Sydney NSW 2001 Email: <a href="mailto:contactus@lecc.nsw.gov.au">contactus@lecc.nsw.gov.au</a> <a href="http://www.lecc.nsw.gov.au">http://www.lecc.nsw.gov.au</a>
<b>The Inspector of the Law Enforcement Conduct Commission</b> – for disclosures about serious maladministration by the LECC or its staff	Phone: 9228 3023 PO Box 5341 Sydney NSW 2001 Email: <a href="mailto:oiicac_executive@oiicac.nw.gov.au">oiicac_executive@oiicac.nw.gov.au</a>
<b>Information Commissioner</b> – for disclosures about government information contraventions	Phone: 1800 472 679 GPO Box 7011, Sydney, NSW 2001 Email: <a href="mailto:ipcinfo@ipc.nsw.gov.au">ipcinfo@ipc.nsw.gov.au</a> <a href="http://www.ipc.nsw.gov.au">http://www.ipc.nsw.gov.au</a>
<b>Privacy Commissioner</b> – for disclosures about privacy contraventions	Phone: 1800 472 679 GPO Box 7011, Sydney, NSW 2001 Email: <a href="mailto:ipcinfo@ipc.nsw.gov.au">ipcinfo@ipc.nsw.gov.au</a> <a href="http://www.ipc.nsw.gov.au">http://www.ipc.nsw.gov.au</a>