

HR-P-001

## PIRSA CORPORATE

# WHISTLEBLOWERS POLICY AND PROCEDURE

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### DOCUMENT CONTROL

<b>Managed by:</b> Chief Executive's Office	<b>Responsible position:</b> Executive Director, Corporate	<b>Version:</b> 1.0
<b>Contact person:</b> Vic Aquaro	<b>Approved by:</b> Corporate Executive	<b>File number:</b> CORP F2008/000681
<b>Contact position:</b> Manager, Executive Services	<b>Date approved:</b> 24 June 2008	<b>Status:</b> Approved
<b>Contact number:</b> (08) 82260336	<b>Next review date:</b> 24 June 2009	<b>Security classification:</b> Public Domain

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## REVISION RECORD

Date	Version	Revision description
24 June 2008	1.0	Approved by Corporate Executive on the basis that the Whistleblower 'Contact Officer' operates independently to PIRSA's business divisions.

## 1. TITLE

Whistleblowers Policy and Procedure

## 2. POLICY STATEMENT

PIRSA models and is committed to high levels of professionalism and ethical behaviour in delivering its services. In the context of its employees, the [Public Sector Management Act 1995](#), the [Code of Conduct for South Australian Public Sector Employees](#) (Code of Conduct) and PIRSA's human resource management policies, embody the principles that need to be embraced and adopted to counter misconduct, corruption or other illegal activity.

The PIRSA culture values transparency and accountability in its administrative and management practices. This policy therefore supports a culture that:

- gives employees 'voice' in matters of ethics;
- fosters an environment where people feel safe in discussing genuine and legitimate concerns about governance and ethical behaviour within PIRSA;
- encourages the challenge of inappropriate behaviour at all levels within.

Ultimately it is envisaged that this policy will, amongst other things:

- Raise awareness about the need for compliance with the Code of Conduct and agency policies and rules;
- Promote efficient management of PIRSA's collective resources covering financial, capital and human resources;
- Enhance PIRSA's reputation as an organisation that takes its governance obligations seriously and is recognised as an 'ethical workplace'.

## 3. PURPOSE

This policy is not intended to restrict the effect of existing State legislation ([Whistleblowers Protection Act 1993](#)) (the Act) but reflects principally PIRSA's internal administrative mechanisms, protocols and approach relevant to the effective receipt and management of disclosures of public interest information and to ensure that its processes support the 'Object' of the Act. This policy sits along side other PIRSA policies and frameworks that inform accountability to good corporate governance and ethical practice.

The Act exists to:

*"protect persons disclosing illegal, dangerous or improper conduct; and for other purposes."*

The 'Object' of the Act is to:

*"facilitate the disclosure, in the public interest, of maladministration and waste in the public sector and of corrupt or illegal conduct generally-*

- (a) by providing means by which such disclosures may be made: and*
- (b) by providing appropriate protections for those who make such disclosures."*

## 4. SCOPE

This policy has applicability to all employees of PIRSA but, consistent with the Act, makes the proper allowances for the fact that members of the public can make public interest disclosures.

Consistent with good administrative practice and the Government's [Citizens' Rights to Information Charter](#), this policy is available through PIRSA's web-site to inform members of the public and assist those external to PIRSA that may have cause to contemplate making a public interest disclosure to PIRSA.

## 5. OBJECTIVES

The objectives of this policy are to:

- Encourage the disclosure of 'public interest information' i.e. information that tends to show:

*"that an adult person (whether or not a public officer), body corporate or government agency is or has been involved (either before or after the commencement of this Act)-*

- (i) in an illegal activity; or*
- (ii) in an irregular and unauthorised use of public money; or*
- (iii) in substantial mismanagement of public resources; or*
- (iv) in conduct that causes a substantial risk to public health or safety, or to the environment; or*

*that a public officer is guilty of maladministration in or in relation to the performance (either before or after the commencement of this Act) of official functions;"*

- Establish processes for the making of disclosures of public interest information.
- Enable PIRSA to effectively deal with disclosures from informants in a way that will protect the identity of the informant and provide for the secure storage of the information provided.
- Raise awareness for the need to protect informants against victimisation or reprisal by any person internal or external to PIRSA.
- Outline PIRSA's governance arrangements for management of disclosures including:
  - the establishment of 'Whistleblower Contact Officers'; and
  - the appointment of nominated agency 'Responsible Officers', consistent with the requirements of [Commissioners Standard 4](#).
- Establish protocols that facilitate the referral of all disclosures related to fraud or corruption to the Anti-Corruption Branch of SAPOL.

## 6. POLICY DETAILS

### Preamble

The Act stipulates conditions, which must be met in order for a person making a disclosure to receive protection, namely:

- there must be an “appropriate disclosure”; and
- the information disclosed must be “public interest information”.

(Refer below for definitions of “appropriate disclosure”; and “public interest information”)

A false disclosure may have undesirable consequences. Therefore the Act deters those that contemplate lodging a false disclosure, where they know it to be false or are reckless about whether it is false, by virtue of relatively severe penalties (fine or imprisonment) and not being afforded the protection of the Act.

### **Whistleblower ‘Contact Officer’**

Any potential informant that may have genuine cause to consider making a public interest disclosure may find it beneficial to obtain objective and unbiased advice as detailed in Stage 2 below.

Given PIRSA’s business diversity and geographic dispersal, the Chief Executive has placed responsibility on a trained senior officer to act as a ‘business neutral’ contact to provide advice to a potential informant contemplating a disclosure. The nature of the advice will be:

- confidential;
- unbiased;
- non-judgmental; and
- objective.

The Contact Officer will be selected by Corporate Executive on the basis that the officer occupies an independent role to that of PIRSA’s business divisions and possesses qualities such as trustworthiness, ability to relate to people and reassure them, diplomacy and tact and ability to be objective.

Advice will generally be confined to explanation of the Act and its key principles, clarification of PIRSA policy and procedural aspects and an indication of the ‘appropriate authority’ or agency nominated ‘responsible officer’ to whom the disclosure should be formally made.

The Contact Officer does not receive and/or respond to complaints but can refer the matter to a nominated ‘responsible officer’ with the knowledge and agreement of the informant.

The Contact Officer’s details are found in the table below headed ‘Roles and Responsibilities’.

### **‘Responsible Officers’**

#### **Overview**

At this point it is also important to note that Section 5 of the Act is intentionally not restrictive or exclusive in terms of to whom a disclosure may be made to. In order to gain protection of the Act, section 5 simply requires that the disclosure be made to any person *to whom it is, in the circumstances of the case, reasonable and appropriate to make the disclosure*. This could be an ‘appropriate authority’ or any other person.

‘Appropriate authority’ is defined (by Section 5 – see definition below) to include a ‘responsible officer’ of a government department. However, ‘responsible officer’ is not

defined by the Act; and the informant may at their own volition, potentially make a disclosure to any officer deemed by them to be a responsible officer within PIRSA as distinct from those nominated as part of PIRSA's internal governance model.

[Commissioners Standard 4](#) requires that Chief Executives ensure the nomination of appropriate 'responsible officers' to take disclosures.

Notwithstanding the non-restrictive nature of the Act providing an avenue for the informant to make a disclosure to those identified in the Act and more broadly any responsible officer, PIRSA has, as part its internal governance model, nominated 'responsible officers' to manage disclosures. The role of the nominated 'responsible officer' is to:

- investigate the substance of the complaint to determine whether there is evidence in support of the matters raised;
- advise the informant of their rights and obligations under the Act;
- not divulge the identity of the informant except insofar as is required to ensure proper investigation of the allegations;
- ensure to the extent possible, action to protect informants from any victimisation or reprisal;
- where appropriate, conduct and/or manage any internal investigation and make an assessment;
- seek Crown Law advice where appropriate;
- where necessary, refer the matter to an appropriate body for investigation;
- keep the informant apprised of progress and the resultant outcome of any investigation relevant to his/her disclosure;
- ensure Natural Justice Principles and procedural fairness is applied to all parties; and
- not cause any detriment (victimisation) to the informant on the basis of the allegations made.

### **Nominated 'responsible officers'**

Given PIRSA's diversity of business the Chief Executive, Executive Directors, General Manager Strategic Human Resources and the Principal Consultant Human Resources will be nominated 'responsible officers'. Furthermore on the basis of the Office for State/ Local Government Relations (OSLGR) specific policy/legislative interface with the local government sector, the Manager Governance and Compliance OSLGR will also be a nominated 'responsible officer'. Further details for responsible officers are found in the table below headed 'Roles and Responsibilities'.

### **The Main Stages that lead to a public interest disclosure.**

#### **Stage 1 (A person contemplating a disclosure considers relevant information)**

A potential informant is a person who has information that tends to show:

*"that an adult person (whether or not a public officer), body corporate or government agency is or has been involved (either before or after the commencement of this Act)-*

- (v) in an illegal activity; or*
- (vi) in an irregular and unauthorised use of public money; or*
- (vii) in substantial mismanagement of public resources; or*

(viii) *in conduct that causes a substantial risk to public health or safety, or to the environment; or*

*that a public officer is guilty of maladministration in or in relation to the performance (either before or after the commencement of this Act) of official functions;”*

**and**

the potential informant believes on reasonable grounds that the information is true, or is not in a position to form a belief on reasonable grounds about the truth of the information but believes that the information may be true and is of sufficient significance to justify its disclosure so that its truth may be investigated.

### **Stage 2 (The potential informant may wish to seek advice)**

Prior to a disclosure, a potential informant may find it highly desirable and beneficial to obtain independent and objective advice on the matter from:

- the whistleblower 'contact officer'; or
- a nominated 'responsible officer'; or
- a relevant union; or
- the Employee Ombudsman; or
- the State Ombudsman.

### **Stage 3 (The informant makes a formal disclosure)**

This policy encourages the informant to make their identity known to the nominated 'responsible officer' or 'appropriate authority' or any other responsible officer.

Disclosures expressed anonymously are much more difficult to investigate but will be considered on the basis of a range of factors that may include:

- seriousness of the issues raised;
- the credibility of the concern;
- any Crown Law advice;
- the likelihood of confirming the allegation from attributable sources.

It is preferable that disclosures to the nominated 'responsible officer' or 'appropriate authority' or any other responsible officer are in writing, documented and dated with as much information and detail as possible relevant to the allegations/complaint.

### **Stage 4 (A formal disclosure is received)**

#### **General**

This applies to any employee of PIRSA to whom a disclosure is made, whether or not they are a nominated 'responsible officer'.

Employees of PIRSA including those located within its Ministerial Offices need to be vigilant in respect to the receipt of correspondence that may 'on face' be a potential disclosure caught by the Act. Accordingly, in cases where the informant asks for whistleblower

protection and/or expressly requests confidentiality or the issues appear outwardly serious or there is any likelihood the Act applies, the recipient of the complaint should take a cautious approach and maintain confidentiality to an extent necessary to seek preliminary advice on the matter from the 'contact officer', or a nominated 'responsible officer' or Crown Law.

If the matter is not deemed to be captured by the Act or other legislation that invokes certain obligations and measures to not compromise confidentiality, PIRSA should, on the basis of good administrative practice, advise the complainant of PIRSA's intended course of action and whether it may or may not protect the complainant's confidentiality.

If the disclosure has no relevance to PIRSA's scope of responsibility the matter must be referred expeditiously on to an 'appropriate authority' or someone to whom it is reasonable and appropriate to disclose the public interest information to. In this respect it is prudent to receive the consent of the complainant prior to forwarding on the information.

### **Disclosures of Fraud or Corruption**

The Anti-Corruption Branch (ACB) of SAPOL has a State charter and responsibility to investigate all matters pertaining to fraud or corruption.

If the information on the face of the complaint relates to fraud or corruption, the person to whom the disclosure is made must pass on this information directly to the ACB as soon as practicable. In the case of an employee of PIRSA implicated, transmittal of the disclosure to the ACB will be done with the knowledge of the respective Executive Director and PIRSA's Chief Executive, unless:

- if the Executive Director is implicated, with the knowledge of the Chief Executive; or
- if the Chief Executive is implicated, with the knowledge of the Commissioner for Public Employment.

### **Disclosure made to PIRSA's Ministers**

Consistent with the Act an 'appropriate authority' can also be a Minister of the Crown.

Depending on circumstances and the specific case, PIRSA's Ministers on receipt of a public interest disclosure may without diminishment of responsibility and legislative obligations as an 'appropriate authority', delegate the matter to the agency to manage.

### **Key factors associated with the Management of Disclosures**

The Act is intentionally non-specific about particular administrative procedures in response to receipt of disclosures. Each disclosure will have its unique set of circumstances and complexities and may require a specific approach. On this basis, those managing disclosures should be guided by the Crown Law and other relevant legislation as to the most appropriate approach to be adopted in dealing with a disclosure and the potentiality of an investigation. The factors below need to be stringently observed for the proper administrative management of disclosures.

### **OFFICIAL RECORDS**

The [PIRSA Document and Records Management Policy IM-P-002](#) and [PIRSA Access Controls and Security Guidelines IM-G-007](#) issued under the [State Records Act 1997](#) require employees to:

- capture and appropriately classify disclosure records (in electronic, physical or verbal form) into the PIRSA electronic document and records management system (Objective). Accordingly, all disclosure records must be captured into an Objective file classified as '*Human Resource Management – Fraud Corruption & Waste*', with an appropriate subject and/or free text file name, to ensure they are clearly classified and marked as a Whistleblower Protection Act matter.
- apply security privileges and access security classifications to disclosure records containing highly confidential, sensitive or private information when they are captured into Objective, to ensure they are protected from inappropriate access, usage, disclosure or alteration. Access to such disclosure records must be restricted to only a 'responsible officer' or to those employees who have a legitimate need for access.
- secure any physical disclosure records (such as physical files containing printed documents, photographs, video tapes, CD ROMs, DVDs) that contain information that is highly confidential, sensitive or private. Such records must be kept securely in a safe or locked filing cabinet or compactus, and not left on desks or in offices that are unsupervised. The level of security classification must be noted clearly on the physical Objective file cover and individual records.

## **CONFIDENTIALITY**

- the identity of the informant must not be divulged except insofar as is required to ensure proper investigation of the allegations (or with the consent of the informant).
- the matter should be confined to more senior staff and only those necessary to the formulation of advice to the 'responsible officer' and Crown Law.
- the informant should be advised of the above proviso and their consent must be obtained or alternatively refusal to consent to the disclosure of his/her identity in writing.

## **VICTIMISATION**

- the informant must not be victimised on the basis that he or she has made the allegation (the definition of victimisation is provided below).
- an act of victimisation may be dealt with either as a tort or in accordance with the provisions of the [Equal Opportunity Act 1984](#).

## **OBLIGATION TO THE INFORMANT BY THE NOMINATED 'RESPONSIBLE OFFICER'**

- explain their rights and obligations under the Act.
- explain how the matter will be progressed having regard for the Act, Crown Law advice, agency policy and procedures.
- notify the complainant as to the outcome of any investigation.
- to be aware of any fears he or she may have for their well being and the well being of others, such as relatives or friends, and to give or seek assistance to overcome these fears.

## **OBLIGATION OF THE INFORMANT**

- must assist with any investigation of the matters to which the information relates by the police or any other official investigating authority (other than the person to whom the information relates). Failing to assist without reasonable excuse will cause the informant to lose the protection of the Act.

## NATURAL JUSTICE PRINCIPLES

- the principles of natural justice will underpin the management of all public interest disclosures. The principles of natural justice concern procedural fairness and ensure that a fair decision is reached by an objective decision-maker. Maintaining procedural fairness protects the rights of individuals and enhances public confidence in the process.
- the person who is the subject of the complaint is entitled to know the allegations made against him or her and must be given the right to respond (this does not mean the person must be advised of the allegation as soon as the disclosure is received and/or the investigation has commenced). It is important to reiterate here that the identity of the informant must be kept confidential.

## MANAGEMENT OF AN EMPLOYEE THAT HAS BEEN IMPLICATED IN A DISCLOSURE

- PIRSA recognises that employees against whom disclosures are made must also be supported during the handling and investigation of disclosures. PIRSA will take all reasonable steps to ensure confidentiality of the employee subject of the disclosure during any assessment and or consequential investigation. Where findings do not substantiate disclosure, the results of the investigation and the identity of the employee subject of the disclosure will remain confidential.
- PIRSA will give its full support to an employee that is the subject of a disclosure where the allegations contained in a disclosure are clearly wrong or unsubstantiated. If the matter has been publicly disclosed, the Chief Executive or their delegate will consider any request by an employee to issue a statement of support setting out that the allegations were clearly wrong or unsubstantiated.

## 7. ROLES AND RESPONSIBILITIES

Party / Parties	Roles and responsibilities
<b>Chief Executive</b>	Accountable for: <ul style="list-style-type: none"><li>• A clear and effective agency policy for the making and handling of disclosures made within and/or to PIRSA.</li><li>• Ensuring the policy has been communicated to and understood by all employees.</li></ul>
<b>Nominated 'Responsible Officers':</b>	<ul style="list-style-type: none"><li>• Take and manage a relevant public interest disclosure.</li></ul>
Chief Executive (8226 0162)	<ul style="list-style-type: none"><li>• Where appropriate, conduct and/or manage any internal investigation and make an assessment.</li></ul>
Executive Director, Corporate (8226 0466)	<ul style="list-style-type: none"><li>• Seek Crown Law advice where appropriate.</li><li>• Where necessary, refer the matter to an appropriate body for investigation.</li></ul>
Executive Director, Agriculture, Food and Wine (8226 0204)	<ul style="list-style-type: none"><li>• Keep the informant apprised of progress and the resultant outcome of any investigation relevant to his/her disclosure.</li></ul>

Party / Parties	Roles and responsibilities
Executive Director, SARDI (8303 9397)	<ul style="list-style-type: none"> <li>• Be aware to not cause any detriment (victimisation) to the informant on the basis of the allegations made.</li> </ul>
Executive Director, Minerals and Energy Resources (8463 4153)	<ul style="list-style-type: none"> <li>• Ensure Natural Justice Principles and procedural fairness is applied to all parties.</li> </ul>
Executive Director, Rural Solutions SA (8226 0285)	
Executive Director, Fisheries (8226 2318)	
Executive Director, Commercial Investment (8226 0025)	
Executive Director, Forestry (8735 1220)	
General Manager Strategic Human Resources, Corporate (8226 0231)	
Principal Consultant Human Resources, Corporate (8226 0265)	
Executive Director, Community and Local Government Relations (8204 8726)	
Manager Governance and Compliance, OSLGR (8204 8725) - on the basis of OSLGR's specific policy/legislative interface with the local government sector.	
<b>Whistleblower 'Contact Officer'</b>	<ul style="list-style-type: none"> <li>• Provide advice to a potential informant (employee or member of the public) contemplating a disclosure.</li> </ul>
Manager, Executive Services (8226 0336)	
Senior Project Officer Compliance, OSLGR (8204 8725) - on the basis of OSLGR's specific policy/legislative interface with the local government sector.	

Party / Parties	Roles and responsibilities
<b>Informant</b>	<ul style="list-style-type: none"> <li>• Report unlawful behaviour, waste, maladministration, or other matters of public interest.</li> <li>• Act in good faith when making a complaint (does not make a false disclosure knowing it to be false or being reckless about whether it is false).</li> <li>• Assist in the investigation of the complaint if required.</li> </ul>
<b>Employee</b>	<ul style="list-style-type: none"> <li>• Protect and maintain the confidentiality of a person they know or suspect to have made a disclosure.</li> <li>• Refrain from any activity that is, or could be perceived to be, victimisation or harassment of a person who makes a disclosure.</li> </ul>

## 8. MONITORING, EVALUATION AND REVIEW

The Manager, Executive Services and the General Manager Strategic Human Resources, Corporate will:

- review the policy and procedures 12 months post implementation;
- thereafter review the policy and procedures annually.

## 9. DEFINITIONS AND ABBREVIATIONS

Term	Meaning
<b>Whistleblower</b>	A person who makes an 'appropriate disclosure' of 'public interest' information
<b>Appropriate Disclosure</b>	<p>A person makes an appropriate disclosure where:</p> <ul style="list-style-type: none"> <li>• the person believes on reasonable grounds that the information disclosed is true; or, if not in a position to form a belief on reasonable grounds about the truth of the information, but believes the information may be true and is of sufficient significance to justify its disclosure so that its truth may be investigated</li> </ul> <p>and</p> <ul style="list-style-type: none"> <li>• the disclosure is made to a person to whom it is, in the circumstances of the case, reasonable and appropriate to make the disclosure (defined by the Act, ss5 (2)).</li> </ul>

Term	Meaning
<b>Appropriate Authority</b>	<p data-bbox="660 344 1394 510">A disclosure is taken to have been made to such a person if it is made to an “appropriate authority”, but an “appropriate authority” is not the only person to whom a disclosure may be reasonable and appropriately made (the Act, ss5(3)).</p> <p data-bbox="660 555 1394 618">A Minister of the Crown is an “appropriate authority”, as are the following persons:</p> <ul data-bbox="660 633 1394 1832" style="list-style-type: none"> <li data-bbox="660 633 1394 696">• Where the information relates to an illegal activity – to a member of the police force;</li> <li data-bbox="660 719 1394 781">• Where the information relates to a member of the police force – to the Police Complaints Authority;</li> <li data-bbox="660 804 1394 898">• Where the information relates to the irregular or unauthorised use of public money – to the Auditor-General;</li> <li data-bbox="660 920 1394 983">• Where the information relates to a public employee – to the Commissioner for Public Employment;</li> <li data-bbox="660 1005 1394 1068">• Where the information relates to a member of the judiciary – to the Chief Justice;</li> <li data-bbox="660 1090 1394 1184">• Where the information relates to a member of Parliament – to the Presiding Officer of the House of Parliament to which the member belongs;</li> <li data-bbox="660 1207 1394 1301">• Where the information relates to a public officer (other than a member of the police force or member of the judiciary) – to the Ombudsman;</li> <li data-bbox="660 1323 1394 1525">• Where the information relates to a matter falling within the sphere of responsibility of an instrumentality, agency, department or administrative unit of government – to a responsible officer of that instrumentality, agency, department or administrative unit;</li> <li data-bbox="660 1547 1394 1682">• Where the information relates to a person or a matter of a prescribed class – to an authority declared by the regulations to be an appropriate authority in relation to such information;</li> <li data-bbox="660 1704 1394 1832">• Where the information relates to a matter falling within the sphere of responsibility of a local Government body – to a responsible officer of that body.</li> </ul> <p data-bbox="660 1854 1007 1883">(defined by the Act, ss5(4))</p> <p data-bbox="660 1917 1394 2013">Disclosures may be made to people other than the ‘appropriate authorities’ if it is, given the circumstances of the case, reasonable and appropriate to do so.</p>

Term	Meaning
<b>Public Interest Information</b>	<p>The Act defines <i>public interest information</i> to mean information that tends to show:</p> <ul style="list-style-type: none"> <li>• that an adult person (whether or not a public officer), body corporate or government agency is or has been involved (either before or after the commencement of the Act) in: <ul style="list-style-type: none"> <li>• an illegal activity; or</li> <li>• an irregular and unauthorised use of public money; or</li> <li>• substantial mismanagement of public resources; or</li> <li>• conduct that causes a substantial risk to public health or safety, or the environment;</li> </ul> </li> <li>or</li> <li>• that a public officer is guilty of maladministration in or in relation to the performance (either before or after the commencement of the Act) of official functions.</li> </ul>
<b>Victimisation</b>	<p>A person who causes detriment to another on the ground, or substantially on the ground, that the other person or a third person has made or intends to make an appropriate disclosure of public interest information commits an act of victimisation. <i>Detriment</i> includes injury, damage or loss; or intimidation or harassment; or discrimination, disadvantage or adverse treatment in relation to a person's employment; or threats of reprisal</p> <p>(the Act, s9)</p>
<b>'Adult', 'Body Corporate', 'Government Agency', 'Maladministration' and 'Public Officer'</b>	<p>See definitions within the <a href="#">Whistleblowers Protection Act 1993</a>.</p>

## 10. ASSOCIATED DOCUMENTS

- PIRSA's *Ethical Behaviour, Workplace Harassment and Grievance and Conflict Management* policies found through the following internal PIRSA Intranet link:  
<http://intranet.pirsa.sa.gov.au/dhtml/ss/section.php?sectID=229&tempID=37>
- [Code of Conduct for South Australian Public Sector Employees](#)
- [PIRSA Document and Records Management Policy IM-P-002](#)
- [PIRSA Access Controls and Security Guidelines IM-G-007](#)

## 11. REFERENCES

- [Whistleblowers Protection Act 1993](#)
- [Citizen's Rights to Information Charter](#)
- [Commissioner's Standard Number 4: Managed Performance](#)
- [Criminal Law Consolidation Act 1935 – Division 4](#)
- [Equal Opportunity Act 1984](#)
- [Public Sector Management Act 1995](#)
- [State Records Act 1997](#)