

# Public Interest Disclosure Procedures

Declaration pursuant to s59 of the Public Interest Disclosure Act 2013

I, Melinda Bopping, Chief People Officer of the People Branch, Corporate and Technology Division and delegate of the Principal Officer of the Department of the Prime Minister and Cabinet, pursuant to s59(3) of the Public Interest Disclosure Act 2013 hereby establish these procedures. These procedures supersede any previous procedures made under s59 of the Public Interest Disclosure Act 2013, and takes effect upon execution.

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Chief People Officer

People Branch, Corporate and Technology Division

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# 1. Overview

## 1.1 Purpose

These Procedures set out how the Department of the Prime Minister and Cabinet (PM&C) facilitates and deals with public interest disclosures (PIDs) that relate to PM&C for the purposes of s59(3) of the Public Interest Disclosure Act 2013 (Cth) (PID Act).

1. Specifically, these procedures contain information about:
  - a. how a PID can be made to PM&C; and
  - b. how PM&C will manage PIDs that it receives.

## 1.2 Statement of Commitment

2. PM&C is committed to the highest standards of ethical and accountable conduct, and encourages the reporting of wrongdoing under the PID Act where appropriate. PM&C will take reasonable steps to protect public officials who make disclosures and departmental employees who are involved in disclosure investigations in accordance with the PID Act and these Procedures.

# 2. What is a Public Interest Disclosure?

3. It is important to note that not all disclosures of information (disclosure) that PM&C may receive will be a PID for the purposes of the PID Act.
4. A disclosure will only be a PID if all of the following conditions are met:<sup>1</sup>
  - a. it is made by a current or former public official; or someone who is deemed to be a public official,<sup>2</sup> and
  - b. the information tends to show, or the discloser believes on reasonable grounds that the information tends to show, disclosable conduct; and
  - c. the information is disclosed to an appropriate person (generally, their supervisor or an authorised internal recipient).
5. If the above requirements are met, the disclosure will be covered by the PID Act.
6. A disclosure may only be treated as a PID, and the discloser will only receive the benefit of the PID Act protections, if the above requirements are fulfilled. As such, it is important for

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1 The PID Act sets out four types of disclosure that can be made: an internal disclosure, external disclosure, emergency disclosure and legal practitioner disclosure. For further information please refer to s26 of the PID Act. The most common type of disclosure is an internal disclosure.

2 This includes a current or former APS employee or contracted service providers: see s69 of the [PID Act](#).

prospective disclosers to be aware of these requirements so that they can prepare their disclosure in a way that will ensure they are covered by the PID Act.

7. Further guidance on the elements of a PID is available at [Appendix 1](#) to these Procedures.
8. Summaries of the rights and responsibilities of a discloser, a person who is the subject of a disclosure, officials under the PID Act and other persons (including witnesses) under this procedure are set out at Appendices 2 - 5.

## 3. Interaction with the National Anti-Corruption Commission

9. The *National Anti-Corruption Commission Act 2022* (NACC Act) establishes the National Anti-Corruption Commission (the NACC). Further information is available on the [NACC's website](#).
10. At all stages of dealing with and handling a disclosure, staff members of PM&C who are exercising powers or functions under Division 1 or 2 of Part 3 of the PID Act (including the Principal Officer, Authorised Officers and their delegates) must be aware of and consider their mandatory obligation under s35 of the NACC Act.
11. S35 of the NACC Act provides that PID officers must refer a corruption issue to the NACC as soon as reasonably practicable upon becoming aware of a corruption issue that:
  - a. concerns the conduct of a person who is or was a staff member of PM&C while that person is, or was, a staff member; and
  - b. the PID officer suspects could involve corrupt conduct that is serious or systemic.
12. A PID officer is not required to refer a corruption issue if they believe on reasonable grounds that the NACC is already aware of the issue.
13. If a PID officer becomes aware of such a corruption issue as a result of an internal disclosure they must, as soon as reasonably practicable, notify the discloser of the referral of the issue to the NACC under s35 of the NACC Act.
14. Where a referral is made to the NACC, PM&C should continue to deal with/handle a disclosure (s39 of the NACC Act), unless a stop action direction has been issued under s43(1) of the NACC Act.
15. The NACC Act contains particular obligations with respect to stop action directions.

## 4. Making a Public Interest Disclosure

### 4.1 How a Disclosure can be made

16. Disclosures can be made verbally or in writing, including by phone and email. Disclosures can be made to:
  - a. a supervisor;
  - b. an Authorised Officer of PM&C; or
  - c. [publicinterestdisclosure@pmc.gov.au](mailto:publicinterestdisclosure@pmc.gov.au).

17. Disclosures can be made anonymously. However, prospective disclosers should be aware that this may limit the disclosure from being properly considered under the PID Act framework.
18. PM&C maintains a list of current Authorised Officers on the internet which can be accessed at [www.pmc.gov.au/government/public-interest-disclosure-act](http://www.pmc.gov.au/government/public-interest-disclosure-act)
19. When a disclosure has been considered a PID, protections for the discloser contained in the PID Act may apply. These include:
  - a. protection from reprisal action;
  - b. protection from liability and disciplinary action for making the PID (see s10(1)(a) of the PID Act); and
  - c. protection from contractual rights and remedies being exercised against the discloser on the basis of the PID (see s10(1)(b) of the [PID Act](#)).
20. If the discloser has made a false or misleading disclosure, the protections will not apply.

## 5. Procedures for Supervisors

### 5.1 Role of Supervisors

21. Under the PID Act, supervisors are public officials who supervise or manage individuals who make PIDs.
22. Supervisors may have PIDs made to them from time to time. This part of the Procedures applies to supervisors who are not Authorised Officers. If you are a supervisor and an Authorised Officer and believe a PID may have been made to you, refer to the [Procedures for Authorised Officers](#) section.

### 5.2 Responsibilities of Supervisors

23. If a supervisor reasonably believes that:

- a. a current or former public official under their supervision;
- b. has provided information to them;
- c. which the supervisor reasonably believes could concern one or more instances of disclosable conduct;

the supervisor must:

- d. inform the discloser that the disclosure could be treated as an internal disclosure for the purposes of the PID Act;
- e. explain to the discloser the procedures under the PID Act for such a disclosure to be:
  - i. given to an Authorised Officer;
  - ii. allocated to the discloser's agency or another agency; and
  - iii. investigated by the Principal Officer of the Department.

- f. advise the individual about the circumstances (if any) in which a public interest disclosure must be referred to an agency, or other person or body, under another law of the Commonwealth; and
  - g. explain to the discloser the civil and criminal protections this Act provides to protect disclosers, and those providing assistance in relation to such disclosures, from reprisals; and
  - h. give the information to an Authorised Officer of PM&C as soon as reasonably practicable.
24. Supervisors should adhere to the confidentiality requirements set out in the PID Act and these Procedures when handling PIDs.
25. Supervisors should endeavour to:
- a. familiarise themselves with the framework of the PID Act and its application, as well as these Procedures; and
  - b. be approachable to staff who may wish to make a disclosure to them.

## 6. Procedures for Authorised Officers

### 6.1 Role of Authorised Officers

26. An Authorised Officer is defined in the [PID Act](#). At PM&C, it refers to the Secretary, and people who may be appointed in writing as Authorised Officers from time to time. A list of the current Authorised Officers at PM&C is available at [www.pmc.gov.au/government/public-interest-disclosure-act](http://www.pmc.gov.au/government/public-interest-disclosure-act)
27. Authorised Officers receive and allocate PIDs relating to PM&C in accordance with the PID Act and these Procedures.

### 6.2 Responsibilities of Authorised Officers

28. After an Authorised Officer receives a disclosure, the following steps must be taken:
- a. consider whether the discloser understands the PID Act;
  - b. perform an assessment of the disclosure;
  - c. decide whether to allocate the PID to a Principal Officer for consideration; and
  - d. notify the discloser and the Commonwealth Ombudsman of the allocation.
29. The Authorised Officer is also responsible for conducting a risk assessment (see [Appendix 6](#)).

#### Stage 1: Receipt of information

30. Where an individual discloses, or proposes to disclose, information to an Authorised Officer and the Authorised Officer has reasonable grounds to believe that the information concerns, or could concern, disclosable conduct, and the individual may be unaware of the consequences of making a disclosure under the PID Act, the Authorised Officer must:
- a. advise the person that their disclosure could be considered an internal disclosure under the PID Act;

- b. explain what is required in order for the disclosure to be considered an internal disclosure;
- c. advise the individual about the circumstances (if any) in which a public interest disclosure must be referred to any agency, or other person or body, under another law of the Commonwealth; and
- d. advise the person of any designated publication restrictions that may affect disclosure of the information.<sup>3</sup>

## Stage 2: Consider whether a disclosure should be allocated

31. When an Authorised Officer receives a disclosure (from a discloser, or the discloser's supervisor), they will consider the information disclosed and must allocate a disclosure to one or more agencies (which may or may not be PM&C) unless the Authorised Officer is satisfied on reasonable grounds that:
- a. there is no reasonable basis on which the disclosure could be considered to be an internal disclosure; or
  - b. the conduct disclosed would be more appropriately investigated under another law or power (this ground cannot be satisfied only because the conduct disclosed raises a corruption issue).
32. The Authorised Officer must use their best endeavours to make a decision about the allocation of a disclosure within 14 days after the date on which the disclosure is made to or given to an Authorised Officer.
33. Before making a decision, the Authorised Officer must consider whether they have satisfied their obligations under s60 of the PID Act (which relate to providing information to disclosers).
34. If the Authorised Officer suspects the disclosure involves serious and systemic corrupt conduct, the Authorised Officer must refer the corruption issue to the NACC.
35. If the Authorised Officer decides to allocate a disclosure, it must be allocated to a Principal Officer of one or more agencies for investigation in accordance with [Stage 3](#).

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<sup>3</sup> For more information about designated publication restrictions please refer to the dictionary of the [PID Act](#).

36.If the Authorised Officer decides not to allocate a disclosure, the Authorised Officer must:

- a. if reasonably practicable, give written notice to the discloser of:
  - i. the decision not to allocate the disclosure and the reasons why the disclosure has not been allocated;
  - ii. if the Authorised Officer is satisfied on reasonable grounds that the conduct disclosed would be more appropriately investigated under another law or power, the details of:
    1. the other law or power;
    2. the agency or other person or body to which the conduct has been, or is to be referred;
    3. the steps taken or proposed to be taken to refer the conduct disclosed, or to facilitate its referral, for investigation; and
    4. otherwise, any other course of action that might be available to the discloser under another law or power.
- b. give written notice to the Ombudsman (or the Inspector-General of Intelligence and Security (IGIS) if the conduct disclosed relates to an intelligence agency, ACIC or the AFP in relation to their intelligence functions) of:
  - i. the reasons why the disclosure has not been allocated; and
  - ii. whether the Authorised Officer has taken, or proposes to take, action to refer the conduct disclosed, or to facilitate its referral, for investigation under another law or power, and if so, details of
    1. the other law or power;
    2. to whom the conduct has been referred;
    3. the agency or other person or body to which the conduct has been, or is to be referred; and
    4. the steps taken or proposed to be taken to refer the conduct disclosed for investigation.
- c. if the Authorised Officer is satisfied on reasonable grounds that the conduct disclosed would be more appropriately investigated under another law or power, take reasonable steps as soon as reasonably practicable to refer the conduct disclosed, or facilitate its referral, for investigation under the other law or power.

37.If a stop action direction under the NACC Act prevents the Authorised Officer from allocating a disclosure, the Authorised Officer must give written notice to the Ombudsman or IGIS (if the disclosure concerns conduct relating to an intelligence agency, IGIS, ACIC or AFP in relation to their intelligence functions), of

- a. the information that was disclosed to the Authorised Officer;
- b. the conduct disclosed; and
- c. if the discloser's name and contact details are known to the Authorised Officer, and the discloser consents to the Principal Officer and the Ombudsman/IGIS being informed – the discloser's name and contact details; and



- d. the stop action direction under the NACC Act that prevents allocation of some or all of the disclosure.
38. The Authorised Officer must also notify the discloser of the referral to the NACC as soon as reasonably practicable.
39. If a stop action direction is received under the NACC Act, the Authorised Officer must consider whether it is appropriate to notify a discloser that a stop action direction has prevented the allocation of the disclosure. The Authorised Officer must carefully consider the terms of any stop action direction and consult with the Principal Officer (who may also consult with the NACC) prior to notifying a discloser.
40. An appropriate written record must be kept by the Authorised Officer of:
- a. the decision and the reasons for the decision;
  - b. whether notice was given to the discloser, and if not, why not;
  - c. if notice was given, a copy of the notice given to the discloser must be retained, which includes confirmation of the day and time the notice was given and the means by which the notice was given.
41. If a stop action direction prevents the allocation of a disclosure to an agency, a written record must be kept of the details of the direction, including when the direction was made and when the stop action direction no longer applies. The written record must also indicate whether the Principal Officer of the relevant agency considers that it is reasonably practicable or appropriate for the discloser to be given a copy of the notice.

### Stage 3: Allocation

42. If the Authorised Officer decides to allocate the disclosure, the Authorised Officer must determine which agency it is appropriate to allocate the PID to. Generally, it is likely that PIDs that are made to PM&C and relate to PM&C should be investigated by PM&C.
43. In determining where to allocate a PID, the Authorised Officer must:
- a. have regard to:
    - i. the principle that an agency should not handle the PID unless some or all of the suspected disclosable conduct relates to that agency (unless the agency is the Ombudsman, IGIS, or an investigative agency); and
    - ii. any other matters as the Authorised Officer considers relevant to their decision where to allocate a PID, including:
      - 1. whether another agency in the same portfolio as PM&C would be better placed to handle the disclosure; and
      - 2. any recommendation from the Ombudsman or IGIS about the allocation of the disclosure following a review under s55 of the PID Act.
  - b. not allocate the PID to an agency other than PM&C unless the Authorised Officer of that agency has consented to the allocation.
44. In determining where to allocate a PID, the Authorised Officer may obtain information in a manner they think fit.

45. If the Authorised Officer decides to make subsequent allocation decisions in relation to a PID, they must comply with the steps in this policy again in respect of those subsequent decisions.

## Stage 4: Notification

### Consent to disclose discloser's name and contact details

Before notifying an agency or the Ombudsman/IGIS of the allocation of a disclosure, the Authorised Officer must ask the discloser (if the discloser's identity is known) whether they consent to their name and contact details being disclosed to the agency and the Ombudsman/IGIS.

### Notify the Principal Officer

46. The Authorised Officer must give written notice to the Principal Officer of each agency to which the handling of the PID is allocated (including where relevant, PM&C) and the Ombudsman (unless the Authorised Officer allocated the disclosure to the Ombudsman, the IGIS, an intelligence agency or the ACIC or AFP in relation to their intelligence functions) or the IGIS (if the Authorised Officer allocated the disclosure to the an intelligence agency, the ACIC or AFP in relation to their intelligence functions) of:
- the allocation;
  - the information that was disclosed to the Authorised Officer;
  - the conduct that was disclosed; and
  - if the discloser's name and contact details are known to the Authorised Officer, and the discloser consents to the Principal Officer and the Ombudsman/IGIS being informed – the discloser's name and contact details.

### Notify the discloser

47. If reasonably practicable, the Authorised Officer must give a copy of the notice to the discloser as soon as reasonably practicable.

### Recordkeeping

48. Where the Authorised Officer has allocated a PID to an agency, the Authorised Officer must keep written records of:
- the decision (including the name of the agency or agencies to which the handling of the PID has been allocated);
  - the reasons for the decision to allocate the handling of the PID in that way;
  - if the handling of the PID has been allocated to an agency other than PM&C, a record of the consent of the Authorised Officer of that agency to the allocation; and
  - any consent provided by the discloser.
49. In addition, the Authorised Officer must keep written records of:
- whether the notice (or a copy of the notice) was given to the discloser, and if not, why not;
  - if the notice was given to the discloser:

- i. the day and time that the discloser was given the notice;
- ii. the means by which the discloser was given notice; and
- iii. the matters included in the notice.

## 6.3 Reprisal Risk Assessment

50. As soon as practicable after receiving a disclosure, the Authorised Officer must assess the risk that reprisals will be taken in relation to a disclosure using the information contained at [Appendix 6](#) to these Procedures. As part of conducting the risk assessment, the Authorised Officer may need to obtain information from other people involved in the discloser's workplace.
51. A reprisal occurs if someone causes, by act or omission, any detriment to another person because they believe or suspect that the person has made, may have made, proposes to make, or may make a PID. Reprisal also includes a threat to take reprisal action.
52. Authorised Officers should assess the risk of reprisal for the discloser, and any other person (including witnesses and staff) who might be suspected to have made, or could make, disclosures.
53. Where the reprisal risk is assessed greater than low, the Authorised Officer will develop a strategy to mitigate the risk of reprisal action being taken against the discloser.<sup>4</sup>
54. As part of the risk assessment process, the Authorised Officer should consider whether taking any of the actions set out in part 7 of these Procedures is required.
55. Where required, the risk assessment should be continually reviewed by the Principal Officer once the PID is allocated.
56. The Authorised Officer may consult with, or refer the task of preparing a risk assessment to, another area of PM&C with the appropriate skills and experience to complete a risk assessment (for example, the People Branch). Where this occurs, the risk assessment must be conducted in accordance with these Procedures.

# 7. Procedures for Principal Officers

## 7.1 Role of Principal Officers

57. The Secretary of PM&C is the Principal Officer for the purposes of the PID Act. The Secretary may delegate all or some of their powers as Principal Officer under the PID Act to:
- a. other PM&C employees; or
  - b. other public officials who belong to the agency.
58. Where the Principal Officer is referred to in these Procedures, it should be understood as including a reference to the Secretary and persons who may be delegated powers of the Principal Officer under the PID Act from time to time.

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<sup>4</sup> Further information about what is, and what is not, a reprisal, and how to conduct a risk assessment, is contained in the Ombudsman Agency Guide to the PID Act.

## 7.2 Responsibilities of Principal Officers

59. The Principal Officer is responsible for considering PIDs that are allocated to PM&C by an Authorised Officer. The following steps must be taken in performing this function:

- a. notify the discloser of the allocation;
- b. consider whether an investigation is required;
- c. if an investigation is required, conduct the investigation; and
- d. comply with the relevant post-investigation notification requirements.

60. The Principal Officer has 90 days from the allocation date in which to complete an investigation report in relation to a PID that is allocated to them. If further time is required, the Principal Officer must apply to the Ombudsman for an extension of time prior to the expiry of the relevant period.<sup>5</sup>

### Stage 1: Notify the discloser

61. As soon as practicable after a PID is allocated to a Principal Officer for consideration (usually within 14 days), the Principal Officer must inform the discloser that the following options are available to the Principal Officer in considering their PID:

- a. decide not to investigate the PID further; or
- b. decide to investigate the PID under a separate investigative power; or
- c. decide to investigate the disclosure under another law or power; or
- d. decide to investigate the PID.

62. This step may be taken after the Principal Officer has reached a decision under Stage 2 or as a first step in Stage 3.

### Stage 2: Consider whether an investigation is required

63. When a PID is allocated to a Principal Officer, the Principal Officer must consider whether the discretion in s48 of the PID Act not to investigate the PID should be exercised.

64. The discretion is available in circumstances where the Principal Officer is satisfied that any of the grounds listed in s48 of the PID Act apply. These include:

- a. the discloser is not, and has not been a public official; or
- b. the information does not concern serious disclosable conduct; or
- c. the PID is frivolous or vexatious; or
- d. the information is the same or substantially the same as information previously disclosed under the PID Act and a decision had been previously made under s48 not to investigate or further investigate the disclosure or the earlier disclosure has been, or is being, investigated as a disclosure investigation; or

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<sup>5</sup> There are forms available on the Ombudsman website where extensions of time can be requested.

- e. the conduct disclosed or substantially the same conduct, is being investigated under another law or power and the Principal Officer is satisfied on reasonable grounds that it would be inappropriate to conduct a PID investigation at the same time; or
- f. the conduct disclosed, or substantially the same conduct, has been investigated under another law or power, and the Principal Officer is reasonably satisfied that there are no further matters concerning the conduct that warrant investigation; or
- g. the Principal Officer is satisfied, on reasonable grounds, that the conduct disclosed would be more appropriately investigated under another law or power (unless this view is reached because the conduct disclosed raises a corruption issue)
- h. the discloser, an Authorised Officer of the agency, or a Principal Officer or Authorised Officer of another agency has informed the Principal Officer that the discloser does not wish investigation of the internal disclosure to be pursued, and the Principal Officer is satisfied on reasonable grounds that there are no matters concerning the disclosure that warrant investigation; or
- i. it is impracticable for the PID to be investigated:
  - i. because the discloser's name and contact details have not been disclosed; or
  - ii. because the discloser refuses or fails, or is unable, to give, for the purposes of the investigation, such information or assistance as the person conducting the investigation asks the discloser to give; or
  - iii. because of the age of the information.

#### If the Principal Officer decides to investigate disclosure

65.If the Principal Officer decides that the discretion in s48 of the PID Act does not apply to the PID, they are required to commence an investigation into the PID and should proceed to [Stage 3: Investigation](#), unless there is a stop action direction under the NACC Act.

#### If the Principal Officer decides not to investigate or further investigate disclosure

66.If the Principal Officer decides not to investigate (or further investigate) a disclosure under the PID Act, they must:

- a. if reasonably practicable, give written notice to the discloser that the Principal Officer has decided not to investigate (or further investigate) the disclosure, identifying:
  - i. the reasons for the decision not to investigate; and
  - ii. if the Principal Officer decides that the disclosure would be more appropriately investigated under another law or power, details of:
    1. the other law or power;
    2. the agency or other person or body to which the conduct has been or will be referred;
    3. the steps taken or proposed to be taken for the conduct to be referred or to facilitate referral.

The Principal Officer may delete from the reasons any reasons that would cause the document:

- iii. to be exempt for the purposes of Part IV of the *Freedom of Information Act 1982*;

- iv. to have or be required to have a national security or other protective security classification; or
  - v. to contain intelligence information.
- b. give written notice to the Ombudsman of the decision not to investigate (or further investigate) and the reasons for that decision. If the Principal Officer decides that the disclosure would be more appropriately investigated under another law or power, the Principal Officer must provide the Ombudsman with details of:
- i. the other law or power;
  - ii. the agency or other person or body to which the conduct has been or will be referred;
  - iii. the steps taken or proposed to be taken for the conduct to be referred or to facilitate referral.

### If the disclosure cannot be investigated because of a stop action direction

67. If the disclosure cannot be investigated (or cannot be investigated further) because of a stop action direction under the NACC Act, the Principal Officer must give written notice of the stop action direction to the discloser and the Ombudsman as soon as reasonably practicable.
68. The Principal Officer must, as soon as reasonable practicable, inform the discloser if the Principal Officer investigates, or further investigates, a disclosure that is no longer the subject of a stop action direction under the NACC Act.

### Stage 3: Investigation

69. When the Principal Officer has decided to investigate a PID, if reasonably practicable, the Principal Officer will give written notice to the discloser that:
- a. they are required to investigate the disclosure;
  - b. the estimated length of the investigation; and
  - c. the discretion to cease investigating in s48 of the PID Act remains available.

### Conducting an investigation

70. The Principal Officer may conduct an investigation into a disclosure in any manner they see fit.
71. The Principal Officer may investigate the matter personally, or may refer the matter to an investigator to assist in determining whether there are one or more instances of disclosable conduct.
72. The Principal Officer must investigate whether there are one or more instances of disclosable conduct. Instances of disclosable conduct may relate to information that is disclosed or information obtained in the course of the investigation, unless the Principal Officer is satisfied on reasonable grounds that such information is tangential or remote to the disclosure.
73. Investigations should be conducted in a manner consistent with the Public Interest Disclosure Standard 2013 (Cth) and the general principles set out below.
74. The following general principles apply to the conduct of investigations:

- a. maintaining the confidentiality of the discloser's identity unless consent to disclose their identity has been provided;
- b. documentation of actions, conversations and decisions relating to a disclosure should be kept;
- c. a decision about whether evidence is sufficient to prove a fact will be determined on the balance of probabilities;
- d. a finding of fact will be based on logically probative evidence;
- e. the evidence relied on in an investigation must be relevant to the investigation;
- f. the investigation will be conducted in accordance with the principles of procedural fairness;
- g. a person who is the subject of the investigation will have an opportunity to respond or provide information;
- h. if an interview is to be conducted as part of the investigation:
  - i. it complies with the requirements set out in the PID Standard 2013 including:
    1. informing the interviewee of the identity and function of the interviewer/s;
    2. informing the interviewee of the process of conducting an investigation;
    3. informing the interviewee about the Principal Officer's authority and role in the investigation under the PID Act;
    4. informing the interviewee about the protections in Part 2 of the PID Act;
    5. ensuring no audio or visual recording of the interview is made without the interviewee's knowledge;
    6. providing the interviewee with a final opportunity to make a statement at the conclusion of an interview; and
    7. ensuring any such final statement made by an interviewee is included in the record of the interview; and
  - ii. the person being interviewed is offered the opportunity to bring a support person with them to the interview;
- i. a decision on whether there is sufficient evidence to prove a fact will be determined on the balance of probabilities; and
- j. findings will be made on the basis of relevant and logically probative evidence.

75. The Principal Officer may, as part of their investigation into a PID allocated to them, adopt findings contained in a report of an investigation or inquiry under:

- a. another law or power;<sup>6</sup> or
- b. the PID Act.

76. During an investigation of a disclosure, the Principal Officer should continue to consider whether one or more of the discretionary grounds in s48 of the PID Act applies to the

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<sup>6</sup> Procedures established under a law of the Commonwealth are considered to be a law of the Commonwealth.

disclosure. If the Principal Officer forms the view that one or more grounds apply to the PID, the Principal Officer should cease investigating and follow the appropriate process in Stage 2 (including with respect to notification and record keeping).

### Notifying police

77.If, during an investigation into a PID, the Principal Officer suspects on reasonable grounds that some or all of the information disclosed or obtained during the investigation is evidence of an offence against a law of the Commonwealth, a State or a Territory, the Principal Officer has the following notification obligations:

- a. if the offence is punishable by a period of imprisonment of at least two years, they must notify a member of the appropriate police force responsible for investigating the offence unless the investigator suspects on reasonable grounds that the relevant information raises a corruption issue and the corruption issue has already been referred to the NACC or IGIS (as relevant) or that agency is already aware of the issue; or
- b. if the offence is punishable by a period of imprisonment of less than two years, the Principal Officer may notify a member of the appropriate police force.

78.However, the Principal Officer's power to notify police is not limited by the PID Act.

### Obtaining information

79.The Principal Officer can obtain such information and make such enquiries as they consider appropriate in conducting an investigation.

80.Public officials are required to use their best endeavours to assist the Principal Officer, Ombudsman or the IGIS in the conduct of an investigation under the PID Act.

### What does procedural fairness require?

81. The requirements of procedural fairness may vary depending on the circumstances. Generally, it requires:

- a. the decision-maker to act fairly and without bias;
- b. at the point of an investigation where an adverse finding is likely to be made about a person's conduct:
  - i. the person has a right to know the substance of the allegations and any evidence against them; and
  - ii. the person is entitled to have a reasonable opportunity to respond to the allegations and any evidence against them.

### Report of the investigation

82.The Principal Officer must complete the investigation, by preparing a report of the investigation, within 90 days after:

- a. the initial allocation or reallocation of the disclosure to the department;



- b. in the case of a re-investigation, the day on which the Principal Officer decides to reinvestigate the disclosure; or
  - c. to the extent that a stop action direction under the NACC Act prevented the investigation, the day on which the Principal Officer becomes aware that a stop direction under the NACC Act which prevented the investigation no longer applies
83. The Ombudsman may extend, or further extend, the 90 day period by such period as the Ombudsman considers appropriate on application by the Principal Officer. If the Ombudsman grants an extension, the Principal Officer will, as soon as reasonably practicable, inform the discloser of the progress of the investigation.
84. When an investigation is completed, the Principal Officer must prepare a report of the investigation. This report must set out:
- a. the matters considered in the course of the investigation; and
  - b. an explanation of the steps taken to gather evidence; and
  - c. the duration of the investigation; and
  - d. a summary of the evidence;
  - e. the Principal Officer's findings (if any) including whether there have been one or more instances of disclosable conduct established; and
  - f. if disclosable conduct is established, the report must set out the regulations, rules, administrative requirements or similar matters to which the disclosable conduct relates;
  - g. the action (if any) that has been, is being, or is recommended to be, taken; and
  - h. claims of any reprisal action taken against the discloser, or any other person, that relates to the matters considered in the course of the investigation, together with any related evidence, and PM&C's response to those claims and that evidence.

#### Stage 4: Post-investigation

85. Within a reasonable time after completing an investigation, the Principal Officer must give a copy of the report to the discloser and the Ombudsman.<sup>7</sup>
86. The Principal Officer may delete from the copy of the report given to the discloser any material:
- a. that is likely to enable the identification of the discloser or another person; or
  - b. would be exempt for the purposes of Part IV of the *Freedom of Information Act 1982*, would require a national security or other protective security clearance, contains intelligence information or contravenes a designated publication restriction as defined in the PID Act.
87. The Principal Officer may delete from a copy of the report given to the Ombudsman any material:
- a. that is likely to enable the identification of the discloser or another person; or
  - b. contravenes a designated publication restriction as defined in the PID Act.

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<sup>7</sup> The PID Act sets out particular information which may be removed from a copy of a report given to a discloser and the Ombudsman. Please see the PID Act for more information.

88.If an investigation report contains recommendations, the Principal Officer should ensure that they provide the recommendations to a person within the Department who would be able to consider and address those recommendations.

## 8. Support for public officials in the PID Process

89.PM&C is committed to taking steps to protect public officials who belong, or belonged, to PM&C from detriment, or threats of detriment, relating to disclosures made under the PID Act. This protection extends to disclosers, subjects and people involved as witnesses in PID investigations.

### 8.1 What is Detriment?

90.Detriment includes any disadvantage that a person may experience, including:

- a. dismissal of an employee;
- b. injury of an employee in their employment;
- c. alteration of an employee's position to their detriment; or
- d. discrimination between an employee and other employees of the same employer.
- e. harassment or intimidation of a person;
- f. harm or injury to a person, including psychological harm;
- g. damage to a person's property;
- h. damage to a person's reputation;
- i. damage to a person's business or financial position;
- j. any other damage to a person.

91.Detriment will not include reasonable administrative action taken to protect a discloser from detriment.

92.Disclosers should be aware that making a disclosure does not exclude them from reasonable management action related to unsatisfactory performance or inappropriate behaviour on their part.

### 8.2 Support

93.PM&C will take reasonable steps to protect disclosers from detriment or threats of detriment relating to the disclosure. This may include:

- a. appointing a support person to assist the discloser, who is responsible for checking on the wellbeing of the discloser;
- b. advising the discloser about the availability of the Employee Assistance Program and PM&C's network of Harassment Contact Officers;
- c. if there are concerns about the health and wellbeing of the discloser, liaising with PM&C's work health and safety section; or

- d. transferring the discloser to a different area within the workplace or approving remote/teleworking (with the discloser's consent). This is only likely to be appropriate in cases of very major or extreme risk.
94. PM&C will also take reasonable steps to support any employee who is the subject of a PID. This may include:
- a. advising the employee of their rights and obligations under the PID Act and these Procedures, including the employee's right to procedural fairness;
  - b. advising the employee about the availability of the Employee Assistance Program and PM&C's network of Workplace Respect Officers;
  - c. ensuring that the employee's identity is kept confidential as far as reasonably practicable;
  - d. if there are concerns about the health and wellbeing of the employee, liaising with PM&C's Wellbeing Team in People Branch;
  - e. transferring the employee to a different area within the workplace or approving remote/teleworking (with their consent); or
  - f. advising the employee that it is open to them to seek their own independent legal advice in relation to their rights and responsibilities under the PID Act.

## 9. Confidentiality

95. Disclosures should be assessed and investigated discreetly, and in a way that maintains the confidentiality of the discloser and any subjects of a disclosure unless they have given consent for particular information to be disclosed.
96. The PID Act contains offence provisions that apply to the disclosure or use of information that does, or could, identify a disclosure.
97. When sending emails in relation to a potential PID, the subject line should make it clear that the email is for the addressee's eyes only.

## 10. Resources

98. Further advice concerning these Procedures can be obtained by contacting PM&C's People Branch on: (02) 6271 6000 or [help@hr.pmc.gov.au](mailto:help@hr.pmc.gov.au).
99. The following guidance may also be helpful:
- a. Commonwealth Ombudsman: [www.ombudsman.gov.au/about/making-a-disclosure](http://www.ombudsman.gov.au/about/making-a-disclosure)
  - b. Australian Public Service Commission: [www.apsc.gov.au](http://www.apsc.gov.au)
  - c. National Anti-Corruption Commission: [www.nacc.gov.au](http://www.nacc.gov.au)

# 11. Document control

Date published	Version	Approved by	Brief description of change
September 2023	1.0	Melinda Bopping	Updated to incorporate changes to the PID Act and the introduction of the NACC Act

# Appendix 1 - Relevant extracts from the Commonwealth Ombudsman's agency guide to the Public Interest Disclosure Act 2013 – version 3, published July 2023

## Who can make a public interest disclosure?

A person must be a current or former 'public official', as defined in ss69-70 of the PID Act, to make a public interest disclosure (s26(1)(a)).

In general, a person can make a disclosure if they belong, or previously belonged, to one of the agencies covered by the PID Act. This includes Commonwealth public servants, members of the Defence Force, appointees of the Australian Federal Police, Parliamentary Service employees, directors or staff of Commonwealth companies, statutory office holders or any other person who exercises powers under a Commonwealth law.

Individuals and organisations that provide goods or services under a Commonwealth contract (defined in s 30(3)) and their officers or employees, are also public officials for the purposes of the PID Act. This includes subcontractors who are responsible for providing goods or services, either directly or indirectly, to an agency covered by the PID Act for the purposes of a Commonwealth contract (s30(2)).

The PID Act specifically excludes some individuals from being public officials under the Act. Public official does not include a Member of Parliament, staff employed under the Members of Parliament (Staff) Act 1984 (MOP(S) Act employees), a judicial officer, a member of a Royal Commission or grant recipients.

A public official whose ordinary functions include sharing information about wrongdoing in the agency with their supervisor or an Authorised Officer (for example, those working in internal fraud control, case management, or protective security) will not meet the requirements for making an internal disclosure if the disclosure is made in the course of performing the discloser's ordinary functions as a public official (s26(1) – see 4.1.3.1 of this guide). If a public official in such a role intends to make a public interest disclosure, they will need to clearly express that intent when making the disclosure.

## Deeming individuals to be public officials

An Authorised Officer may deem an individual to be a public official if they reasonably believe the individual has information about wrongdoing and proposes to make a disclosure (s 70). Authorised officers are the Principal Officer of an agency (i.e., the agency head) and officers that the Principal Officer appoints as Authorised Officers under the PID Act (s 36). It is not necessary for the disclosing

individual to request that they be deemed a public official, but the Authorised Officer must provide the individual with a written notice of the determination.

An Authorised Officer might consider it appropriate to deem an individual to be a public official if the individual is not a public official, but nevertheless has 'inside information' about the agency's wrongdoing. Examples might include:

- a current or former volunteer with an agency
- a member of an advisory body to a Commonwealth agency (where the member's terms of engagement do not meet the definition of a public official)
- an employee of an organisation that receives grant funding from the Australian Government, or
- state and territory department officials who work alongside Commonwealth officials.

An Authorised Officer may also decide to deem a person to be a public official if they do not know, or cannot be certain, whether the person is a public official. For example, the person may be unwilling to provide identifying information for fear of reprisal. The relevant test is that the person was not a public official at the time the information they are disclosing was obtained (s70(1)(b)). If the Authorised Officer is otherwise satisfied that the person is or has been a public official, then deeming is not required.

An Authorised Officer's power to deem a person to be a public official operates only for the purposes of allowing that person to make a disclosure under the PID Act (s 70). An Authorised Officer cannot extend the reach of the PID Act by deeming a person to be a public official for the purposes of allowing a second person to make a disclosure about that first person's conduct. Additionally, a judicial officer, member of Parliament, member of a Royal Commission or a person employed under the Members of Parliament (Staff) Act 1984 cannot be deemed a public official for the purposes of making a disclosure (s70(3A)).

## What can be disclosed?

A public official can disclose information that they believe, on reasonable grounds, tends to show 'disclosable conduct'.

Disclosable conduct covered by the PID Act has to be conduct on the part of one of the following:

- an agency
- a public official in connection with their position
- a contracted Commonwealth service provider in connection with entering into or giving effect to the contract

The kinds of conduct that a disclosure can be made about are listed in the table to s29(1) of the PID Act. They are conduct that:

- contravenes a Commonwealth, State or Territory law
- in a foreign country, contravenes a foreign law that applies to the agency, official or service provider
- perverts the course of justice
- is corrupt
- constitutes maladministration, including conduct that is based on improper motives or is unreasonable, unjust, oppressive or negligent
- is an abuse of public trust
- involves fabrication, falsification, plagiarism or deception relating to scientific research, or other misconduct in relation to scientific research, analysis or advice
- results in wastage of public money or public property
- unreasonably endangers health and safety
- endangers the environment
- is prescribed by the PID rules (s29(1)).

Disclosable conduct also includes conduct by a public official that:

- involves or is engaged in for the purposes of abusing their position as a public official; or
- could give reasonable grounds for disciplinary action resulting in the termination of the public official's engagement or appointment (s29(2)).

## What is not disclosable conduct?

### Personal work-related conduct

The PID Act provides that personal work-related conduct (s 29A) is not disclosable conduct. Personal work-related conduct is conduct engaged in by one public official in relation to another public official that has personal implications for the second official. The conduct must have occurred in relation the second official's engagement or appointment and/or in the course of their employment or exercise of their functions and powers as a public official. It includes, but is not limited to, conduct relating to:

- interpersonal conflict, such as bullying or harassment
- changing a person's duties
- disciplinary action
- adverse decisions about promotion or temporary acting arrangements
- terms and conditions of employment or engagement
- suspension or termination

- actions that could be reviewed under s33 of the Public Service Act 1999, or comparable review processes relating to terms or conditions of engagement or appointment

Excluding personal work-related conduct from the scope of disclosable conduct recognises that personal work-related conduct is often dealt with more effectively under other frameworks, as distinct from the PID Act, which is focused on significant integrity wrongdoing.

Personal work-related conduct will be disclosable conduct where the personal work-related conduct:

- amounts to reprisal action
- is of such a significant nature that it would undermine public confidence in an agency, or
- has other significant implications for an agency.

Personal work-related conduct that could be considered to be of a significant nature or have such significant implications for an agency as to affect public confidence in the agency, would depend on the circumstances of each case.

Disclosures of solely personal work-related conduct will not, unless an exception applies, constitute an internal disclosure for the purposes of the PID Act. Disclosures of information that tends to show both personal work-related conduct and disclosable conduct will still need to be allocated as an internal disclosure under the PID Act.

## Conduct relating to courts, tribunals and the Parliament

The PID Act has limited application to courts and tribunals. The following aspects of court and tribunal operations are excluded from the categories of disclosable conduct in the PID Act (s32):

- the conduct of judicial officers (defined in s32(1))
- the judicial functions of court staff, tribunal staff or tribunal members
- the conduct of tribunal members or tribunal staff when exercising a power of the tribunal
- any other conduct related to a court or tribunal unless it is of an administrative nature and does not relate to the management or hearing of matters before the court or tribunal.

The conduct of members of parliament or of MOP(S) Act employees is not covered by the PID Act (because they are not 'public officials' as defined in s69). However, the departments of the Parliament and their employees are covered.

## Disagreement with government policy or actions

It is not disclosable conduct just because a person disagrees with:

- a government policy or proposed policy
- action or proposed action by a minister, the Speaker of the House of Representatives or the President of the Senate
- expenditure or proposed expenditure related to such policy or action (s31).



Disclosable conduct also does not include judicial conduct, that is, the conduct of judicial officers, the judicial functions of court staff, tribunal staff or tribunal members, or any other conduct related to a court or tribunal unless it is of an administrative nature and does not relate to matters before the court or tribunal (s32).

The conduct of members of Parliament is not covered by the PID Act. However, the departments of the Parliament and their employees are covered.

### **Intelligence agencies**

Disclosable conduct also does not include the proper performance of the functions and proper exercise of the powers of an intelligence agency or its officials (s33).

## **Making a disclosure**

In order to gain the protections available under the PID Act, a disclosure must be made to an authorised recipient (s26). The PID Act focuses on the reporting and investigating of wrongdoing within government (internal disclosures) but allows for reporting outside government in specified circumstances.

### **Making an internal disclosure**

Under the PID Act, a public official can make an internal disclosure to their current supervisor or an Authorised Officer in:

- their current agency, or
- the agency to which they previously belonged, or
- the agency to which the disclosure relates.

Authorised officers are the Principal Officer of an agency (i.e. the agency head), and officers that the Principal Officer appoints as Authorised Officers under the PID Act (s36). If a public official has information about suspected wrongdoing in an agency other than the one in which they work, they can choose to make their disclosure directly to an Authorised Officer in that other agency. However, if the conduct disclosed relates to an intelligence agency, the public official must disclose it to an Authorised Officer in that agency (or the IGIS) and not to their own agency.

A public official can also make a disclosure to Authorised Officers of the Commonwealth Ombudsman, if they believe on reasonable grounds that it would be appropriate for the Ombudsman to investigate (ss26(1), 34). This could include, but would not be limited to, circumstances where the discloser believes that the agency will not take appropriate action to deal with the conduct disclosed.

If the matter involves an intelligence agency or agency with intelligence functions (see s8 definition), there are 2 options. Either the public official can make a disclosure to an Authorised Officer in the intelligence agency or, if they believe on reasonable grounds that it would be appropriate for the IGIS

to investigate, the public official may make a disclosure to an Authorised Officer of the IGIS (see [www.igis.gov.au](http://www.igis.gov.au)).

The PID Act also allows for agencies with special investigative powers to be prescribed under PID rules. If the matter concerns their functions and powers, a disclosure may be made to those special investigative agencies. However, at the time of publication there are no prescribed investigative agencies.

Making a disclosure internally gives the agency the chance to investigate the matter and remove any danger or correct any wrong practices as quickly as possible.

## Making other disclosures

A public official must use one of the proper avenues to gain the protections available under the PID Act. This means that a public official will not receive these protections if they give the information to someone outside government, for example a journalist or union representative, unless the conditions for an external or emergency disclosure are met. If these conditions are not met, they may be in breach of their duty to maintain appropriate confidentiality in relation to official information they have gained in the course of their work, or be subject to other civil, criminal or disciplinary action.

## External disclosures

A public official who has already made an internal disclosure under the PID Act may in some circumstances subsequently make a disclosure to any person (except a foreign public official), if (s 26(1) item 2):

- the final report of the internal PID investigation has not been prepared within 90 days of allocation, or the extended investigation period approved by the Ombudsman or the IGIS (this condition does not apply to Ombudsman/IGIS investigations under their respective legislation)
- the PID investigation has been completed and the discloser believes on reasonable grounds that the investigation was inadequate
- an investigation has been completed (whether the investigation was conducted under the PID Act or under other legislation) and the discloser believes on reasonable grounds that the response to the investigation was inadequate.

Additional restrictions apply to external disclosures (s26):

- the public official must not disclose more information than is reasonably necessary to identify the wrongdoing
- all of the externally disclosed information must have been the subject of at least part of a prior internal disclosure
- on balance, making that external disclosure must not be contrary to the public interest.

The external disclosure must not include intelligence information, including sensitive law enforcement information, and none of the information disclosed can concern the conduct of an intelligence

agency. Further, the definition of 'disclosable conduct' excludes conduct that an intelligence agency, or one of its officials, engages in as part of the proper exercise of the intelligence agency's functions.

If the agency decides not to allocate or investigate the official's disclosure (i.e., by making a decision under s 43 or s 48 of the PID Act, including a decision not to allocate or investigate because the conduct would be better investigated under another law or power), this will not meet the criteria for an official to make an external disclosure. The official may complain to the Ombudsman about the agency's decision not to allocate or investigate their disclosure. If the disclosure relates to one of the intelligence agencies or the intelligence functions of the ACIC or AFP, the official may complain to the IGIS.

### Emergency disclosure

If a public official believes on reasonable grounds that the information they have involves a substantial and imminent danger to the health or safety of one or more people or to the environment, they may make an emergency disclosure to any person except a foreign public official (s26(1) item 3), provided they meet certain requirements:

- The extent of the information they disclose must be only what is necessary to alert the recipient of the substantial and imminent danger.
- If they have not previously made an internal disclosure about the matter, or if they have done so and the investigation is not yet completed, there must be exceptional circumstances justifying their decision to make an external disclosure. This might include, for example, if the investigation was taking too long to complete having regard to the risk to a person's health and safety.

An emergency disclosure must not include intelligence information, including sensitive law enforcement information.

### Legal practitioner disclosure

An official may make an emergency or external disclosure to a legal practitioner (noting these disclosures may be made to any person other than a foreign public official in the circumstances discussed above).

There is also a specific category of public interest disclosure under the PID Act – 'a legal practitioner disclosure' - which allows a public official to disclose information to an Australian legal practitioner for the purposes of seeking legal advice or professional assistance in relation to the official's actual or proposed disclosure elsewhere (i.e., an internal disclosure, an emergency disclosure or an external disclosure).

An Australian legal practitioner is an Australian lawyer admitted to the legal profession by a Supreme Court of an Australian State or Territory and who holds a practicing certificate under a law of an Australian State or Territory (s 8 PID Act). In order to make a 'legal practitioner disclosure', the disclosure by the public official to the lawyer must be made for the purpose of obtaining legal advice

or professional assistance from the lawyer in relation to a disclosure that the discloser has made or proposes to make.

For a 'legal practitioner disclosure', the official must not disclose intelligence information including sensitive law enforcement information (s26(1) item 4).

### Disclosures to the NACC

A public official may make a public interest disclosure directly to the NACC. The NACC Commissioner has discretion to investigate a corruption issue raised through a disclosure if they are of the opinion that the issue could involve serious or systemic corrupt conduct. If the disclosure is made to the NACC and the Commissioner decides not to investigate it, the Commissioner may refer it back to the relevant agency for consideration or investigation.

The NACC Act and the PID Act offer different protections to disclosers. The NACC Act protections are available to any person who provides information or evidence related to a corruption issue to the Commission. Importantly, a public official will be able to access protections under both schemes where the information or evidence disclosed to the Commission also constitutes disclosable conduct under the PID Act.

# Appendix 2 - Rights, protections and responsibilities of disclosers

## Rights and protections

A discloser has right to the protections set out in the PID Act, including:

- protection from the unauthorised disclosure of their identity;
- protection from reprisal;
- protection from civil, criminal and administration liability for making a public interest disclosure (noting that the making of a disclosure does not protect the discloser from the consequences of their own wrongdoing, including where they have been involved in the misconduct that they are reporting).

The Authorised Officer and Principal Officer will take reasonable steps to protect the discloser against reprisal.

The taking of reprisal action against a discloser is an offence under the PID Act and can lead to imprisonment or the imposition of penalties.

If a discloser believes they are suffering or have been threatened with reprisal, they may apply to Court for an injunction, or for compensation for loss, damage or injury suffered from a reprisal.

During the PID Act process, a discloser will be:

- advised of the following:
  - any decision that a disclosure is not a disclosure within the meaning of the PID Act;
  - the allocation of their disclosure;
  - the decision of the department to investigate their disclosure;
  - the estimated duration of the investigation into their disclosure;
  - if the department decides not to investigate their disclosure, the reasons for that decision and any action that may be available to the discloser under other Commonwealth laws;
  - if an investigation is conducted under the PID Act and an extension of time is granted by the Ombudsman, the progress of the investigation; and
  - the outcome of the investigation (including provision of a copy of the investigation report except to the extent that it would be exempt for the purposes of Part IV of the *Freedom of Information Act 1982*, would require a national security or other protective security clearance, contains intelligence information or contravenes a designated publication restriction as defined in the PID Act).
- given support in accordance with paragraph 86 of the procedures.

- able to seek assistance from the Ombudsman in relation to the operation of the PID Act.

## Responsibilities

A discloser must:

- have regard to the Department's advice with respect to the making of disclosures;
- comply with the PID Act requirements and the procedures set out in this document when making a PID;
- use their best endeavours to assist the Principal Officer of an agency in the conduct of an investigation;
- use their best endeavours to assist the Ombudsman in the performance of the Ombudsman's functions under the PID Act.
- use their best endeavours to assist the IGIS in the performance of IGIS's functions under the PID Act.
- report to the Authorised Officer any detriment the discloser believes they have been subjected to as a result of making the disclosure; and
- cooperate with actions proposed by the Authorised Officer to protect the discloser from reprisals or the threat of reprisals or address work health and safety risks. In particular, although a discloser will be consulted regarding any actions proposed to be taken, such actions may be taken without the consent of the discloser.

## Advice to disclosers

When making a disclosure, a discloser should be clear and factual, and avoid speculation, personal attacks and emotive language, which can divert attention from the real issues in their disclosure.

When making a disclosure, disclosers should consider providing the following information:

- their name and contact details (if they wish)
- the nature of the suspected wrongdoing
- who they believe committed the suspected wrongdoing
- when and where the suspected wrongdoing occurred
- how they became aware of the suspected wrongdoing
- whether the suspected wrongdoing has been reported to anyone else
- if so, what that person has done to fix, stop or prevent it
- whether they are concerned about possible reprisal as a result of making a disclosure.

Disclosers should not investigate a matter themselves before making their disclosure.

The sooner a discloser raises a concern, the easier it is likely to be for the agency to take action.

# Appendix 3 – Rights, responsibilities and protections of persons who are the subject of a PID

## Rights

A departmental employee who is the subject of a disclosure will be:

- given support in accordance with paragraph 87 of the procedures;
- afforded procedural fairness; and
- able to seek assistance from the Ombudsman in relation to the operation of the PID Act.

## Responsibilities

A departmental employee who is the subject of a disclosure must:

- use their best endeavours to assist the Principal Officer of any agency in the conduct of an investigation;
- use their best endeavours to assist the Ombudsman in the performance of the Ombudsman's functions under the PID Act.
- use their best endeavours to assist the IGIS in the performance of IGIS's functions under the PID Act.
- comply with action taken by the department to address risks or concerns in relation to the PID.

An employee who is the subject of a disclosure should also be aware that:

- the outcome of an investigation under the procedures set out in this document may result in another, different investigation (for example, a Code of Conduct investigation) taking place; and
- the department may decide to take action in relation to the employee, for example temporarily transferring the employee to another work area without the employee's consent, in order to discharge its obligations including under the PID Act and work health and safety legislation.

# Appendix 4 – Obligations and Protections for Officials under the PID Act

## Additional obligations of the Principal Officer

The principal officer must:

- ensure that the number of authorised officers in the Department is sufficient to ensure that they are readily accessible by public officials who belong to the Department and that public officials are aware of the identity of the authorised officers;
- take reasonable steps to encourage and support public officials who make or are considering making PIDs, and persons who provide or are considering providing assistance in relation to PIDs;
- establish PID Procedures consistent with the PID Act and PID Standard;
- as soon as reasonably practicable, ensure that appropriate action in relation to the agency is taken in response to any recommendations in a PID report;
- take reasonable steps to provide ongoing training and education to public officials about the PID Act;
- ensure that officials who are appointed to perform functions and duties or exercise powers under the PID Act are given appropriate training and education within a reasonable time after their appointment;
- take reasonable steps to protect public officials who belong to the Department against reprisals that have been, or may be taken in relation to PIDs that have been made, may have been made, are proposed to be made or could be made to an authorised officer or supervisor.

## Additional obligations of authorised officers

An authorised officer must

- if an individual discloses, or proposes to disclose information to an authorised officer of the Department, and the authorised officer has reasonable grounds to believe that the information concerns or could concern disclosable conduct and the individual may be unaware of the consequences of making the disclosure:
  - inform the individual that the disclosure could be treated as an internal disclosure for the purposes of the PID Act;
  - explain what the PID Act requires for the disclosure to be an internal disclosure; and
  - advise the individual of the circumstances in which a PID must be referred to an agency or other person or body under another law of the Commonwealth;
  - advise the individual of any orders or directions of which the authorised officer is aware that are designated publication restrictions that may affect disclosure of the information; and



- take reasonable steps to protect public officials who belong to the Department against reprisals that have been, or may be taken in relation to PIDs that the authorised officer suspects on reasonable grounds have been made, may have been made, are proposed to be made or could be made, to them

## Additional obligations of supervisors

The obligations of supervisors are set out in s5.2 of the Procedures.

## Protection from liability

A person who is the principal officer, a delegate of the principal officer, an authorised officers, a supervisor of a person who makes a disclosure or a person assisting the principal officer (or delegate) is not liable to any criminal or civil proceedings, or any disciplinary action, for or in relation to any act or matter done or omitted to be done, in good faith:

- the performance or purported performance or any functions conferred on the person by the PID Act;
- the exercise, or purported exercise, or any power conferred on the person by the PID Act;
- in the case of a person assisting a principal officer or delegate, in assisting the principal officer or delegate in doing anything mentioned above.

# Appendix 5 – Rights, Responsibilities and Protections of Other Persons

## Responsibilities of public officials

Under s61 of the PID Act, public officials must use their best endeavours to:

- assist the principal officer in the conduct of an investigation under the PID Act.
- assist the Ombudsman in the performance of the Ombudsman's functions under the PID Act.
- assist the IGIS in the performance of IGIS's functions under the PID Act.
- assist any other public official to exercise a right, or performance any duty or function, under the PID Act.

## Immunities from liability for witnesses

A witness (other than a discloser) will not be subject to any civil, criminal or administrative liability because they give information or produce a document or other thing, or answer a question, that the witness considers on reasonable grounds to be relevant to:

- the making of a decision in relation to the allocation of a disclosure under s43 of the PID Act;
- a disclosure investigation or a proposed disclosure investigation; or
- a review or proposed review by the Ombudsman or IGIS under s55(3) of the PID Act about the handling of a disclosure.

This immunity does not apply to any liability of the witness for:

- making false or misleading statements;
- contravening a designated publication restriction;
- particular offences under the Criminal Code;
- their own conduct (the immunity only relates to the act of providing assistance in relation to the public interest disclosure).

- the culture of the workplace;
- whether any specific threats against the discloser have been received;
- whether there are circumstances that will make it difficult for the discloser not to discuss the disclosure in the workplace;
- whether there are allegations about individuals in the disclosure;
- whether there is a history of conflict between the discloser and the subject of the disclosure;  
and
- whether the disclosure can be investigated while maintaining confidentiality.

### **Criteria for assessing the likely seriousness of potential reprisals**

In considering the likely seriousness of any potential reprisal against a discloser, the Authorised Officer should take into account all relevant factors, including, to the extent relevant:

- the significance of the issue being disclosed;
- the likely outcome if the conduct disclosed is substantiated;
- the subject matter of the disclosure;
- whether the discloser is isolated;
- whether the discloser is employed on a full-time, part time or casual basis;
- whether the alleged wrongdoing that is the subject of the disclosure was directed at the discloser; and
- the relative positions of the discloser and the person whose alleged wrongdoing is the subject of the disclosure.

When conducting the risk assessment, where consistent with protecting the discloser's confidentiality, the discloser may be asked why they are reporting the wrongdoing and who they might fear a reprisal from, and may also speak to the discloser's supervisor or manager.

The following tables may assist in conducting a risk assessment.

# Appendix 6 – Risk Assessment Information

## Conducting a risk assessment

In conducting risk assessments in relation to the risk that reprisals will be taken against a discloser, the following matrix should be used:

		Likely seriousness of reprisal			
		Minor	Moderate	Major	Extreme
Likelihood of reprisal being taken	Almost certain	Medium	High	High	High
	Likely	Medium	Medium	High	High
	Unlikely	Low	Low	Medium	Medium
	Highly unlikely	Low	Low	Low	Medium

### Examples of seriousness of reprisals

- Minor: occasional or one-off action that is likely to have a relatively minor adverse effect on the person (for example, occasional exclusion of the person from a social activity).
- Moderate: repeated action which is likely to have an adverse effect on the person (for example, routinely failing to copy in the person on work-related emails which the person has a genuine business need to know about).
- Major: sustained or one-off action which has a significant impact on the person (for example, consistently excluding the person from team discussions or imposing a negative performance assessment on the person without reasonable cause and supporting evidence).
- Extreme: action which is likely to have a very severe impact on the person (for example, physical violence).

### Criteria for assessing the likelihood of potential reprisals

When considering the likelihood of a reprisal being taken against a discloser, the Authorised Officer should take into account all relevant factors, including to the extent relevant:

- the likelihood of the discloser being identified, which may involve a consideration of:
  - the size of the work area in which the discloser is located; and
  - the number of people who are aware of the information leading to the disclosure;
- the number of people implicated in the disclosure;
- the subject matter of the disclosure;
- the number of people who are aware of the disclosure or are likely to become aware of the disclosure (for example, through participation in the investigation as witnesses);

**Table 1 – Indicators of a higher risk of reprisals or workplace conflict**

Indicator	Questions for consideration
Threats or past experience	<p>Has a specific threat against the discloser been made? Is there a history of conflict between the discloser and the subjects of the disclosure, management, supervisors or colleagues?</p> <ul style="list-style-type: none"> <li>• Is there a history of reprisals or other conflict in the workplace?</li> </ul> <p>Is it likely that the disclosure will exacerbate this?</p>
Confidentiality unlikely to be maintained	<ul style="list-style-type: none"> <li>• Who knows that the disclosures has been made or was going to be made?</li> <li>• Has the discloser already raised the substance of the disclosure or revealed their identity in the workplace?</li> <li>• Who in the workplace knows the discloser’s identity?</li> <li>• Is the discloser’s immediate work unit small?</li> <li>• Are there circumstances, such as the discloser’s stress level, that will make it difficult for them to not discuss the matter with people in their workplace?</li> <li>• Will the discloser become identified or suspected when the existence or substance of the disclosure is made known or investigated?</li> <li>• Can the disclosure be investigated while maintained confidentiality?</li> </ul>
Significant reported wrongdoing	<ul style="list-style-type: none"> <li>• Are there allegations about individuals in the disclosure? Who are their close professional and social associates?</li> <li>• Is there more than one individual involved in the matter?</li> <li>• Is the reported wrongdoing serious?</li> <li>• Is or was the reported wrongdoing occurring frequently?</li> <li>• Is the disclosure particularly sensitive or embarrassing for any subjects of the disclosure, senior management, the Department or government?</li> <li>• Do any individuals have the motivation to take reprisal actions – for example, because they have a lot to lose, or because they have power over the discloser?</li> </ul>
Vulnerable discloser	<ul style="list-style-type: none"> <li>• Is or was the reported wrongdoing directed at the discloser?</li> <li>• Are there multiple subjects of the disclosure?</li> <li>• Is the disclosure about a more senior officer?</li> <li>• Is the discloser employer part-time or on a casual basis?</li> <li>• Is the discloser isolated – for example, geographically or because of shift work?</li> <li>• Are the allegations unlikely to be substantiated – for example, because there is a lack of evidence?</li> <li>• Is the disclosure being investigated outside the department?</li> </ul>

**Table 2 – Detailed risk assessment matrix**

	<b>Identified risk event</b>	<b>Likelihood High/Medium/Low</b>	<b>Consequence Minor/Moderate/Serious</b>	<b>Action to mitigate Yes/No (if yes, describe)</b>
1	Assault			
2	Verbal assault			
3	Stalking			
4	Cyber-bullying			
5	Silent treatment in workplace			
6	Interference to personal items			
7	Excluded from legitimate access to information			
8	Excluded from promotion			
9	Excluded from workplace sanctioned social events			
10	Unjustified change to duties/hours of work			
11	Dismissal			
12	Unjustified refusal of leave			
13	Onerous/unjustified audit of access to ICT/Time sheets			
14	Onerous/unjustified audit of expenditure of Commonwealth money/Cab charge use			
15	Other (describe)			