



DEPARTMENT OF THE  
HOUSE OF REPRESENTATIVES

# Public Interest Disclosure Policy and Procedure


## Document change control

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## Document sign-off

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## Contents

<b>1. Introduction .....</b>	<b>4</b>
<b>2. What are public interest disclosures? .....</b>	<b>4</b>
<b>3. What is not a PID?.....</b>	<b>5</b>
3.1 Public interest disclosure and the National Anti-Corruption Commission (the NACC).....	6
<b>4. Procedures .....</b>	<b>6</b>
4.1 Authorised officers.....	6
4.2 Principal Officer’s obligations.....	7
4.3 Disclosure to a supervisor .....	7
4.4 Protecting confidentiality.....	7
<b>5. Making a disclosure.....</b>	<b>8</b>
5.1 Initial consideration and allocation .....	8
5.2 Risk assessment .....	11
5.3 Support for disclosers.....	13
5.4 Support for a person against whom a disclosure has been made .....	13
5.5 Consideration and investigation by principal officer or their delegate .....	13
<b>6. Further information.....</b>	<b>17</b>
<b>Attachment A – Guide to making a Public Interest Disclosure .....</b>	<b>18</b>
<b>Attachment B – Rights and responsibilities of disclosers.....</b>	<b>21</b>
<b>Attachment C – Rights and responsibilities of persons who are the subject of a PID .....</b>	<b>22</b>
<b>Attachment D: Disclosure process .....</b>	<b>23</b>

## 1. Introduction

The Public Interest Disclosure (PID) scheme promotes the reporting and investigation of allegations of serious wrongdoing in the Commonwealth.

This document constitutes the department's procedures for facilitating and dealing with public interest disclosures for the purposes of section 59(3) of the [Public Interest Disclosure Act 2013 \(Cth\)](#) (PID Act).

The department is committed to the highest standards of ethical and accountable conduct. The department encourages the reporting of wrongdoing under the PID Act and will act on disclosures where appropriate and protect disclosers and others who provide, or are considering providing, assistance in relation to disclosures from any reprisals or threats of reprisals.

The operation of these procedures will be reviewed regularly to ensure their continued effectiveness.

In these procedures, all references to the Clerk of the House of Representatives (Clerk) include references to his or her delegate.

## 2. What are public interest disclosures?

It is important to note that not all disclosures of information that might be made to the department will be a 'public interest disclosure' for the purposes of the PID Act (a PID). A disclosure of information will only be a PID to which these procedures relate if it meets the requirements under the Act, including:

- (a) it is made by a public official or a person who has been a public official<sup>1</sup>
- (b) the information tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of 'disclosable conduct' as defined by the PID Act;<sup>2</sup> and
- (c) the disclosure is made to an appropriate person.<sup>3</sup> This includes an authorised officer or the supervisor of the discloser.

Only if each of the above requirements has been met will the disclosure be covered by the PID Act and the discloser have the benefit of the protections that it confers.

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<sup>1</sup> This includes a current or former APS or Parliamentary Service employee or contracted service provider: see section 69 of the [PID Act](#).

<sup>2</sup> What does and does not constitute disclosable conduct is defined in sections 29-33 of the [PID Act](#).

<sup>3</sup> Generally, to constitute a PID, the disclosure must first be made to an 'authorised internal recipient' or a supervisor of the discloser as defined in sections 34 and 8 (respectively) of the PID Act. In some limited circumstances, a disclosure can be made to an external party. The PID Act sets out strict requirements which must be met for such external disclosures to be afforded the protections contained in the PID Act: see section 26 of the [PID Act](#).

Disclosures about personal work-related conduct are not covered by the PID Act, unless:

- the conduct constitutes reprisal action, or
- the conduct is of such a significant nature it would undermine public confidence in or has other significant implications for the department.

Personal work-related conduct refers to conduct where one official engages in conduct that relates to another official's engagement, appointment or the exercise of their functions or powers, and the conduct has personal implications for that second official. This includes, but is not limited to, bullying and harassment, conduct relating to the terms and conditions of engagement, and disciplinary action (such as Code of Conduct investigations).

If a disclosure relates to both personal work-related conduct and other types of wrongdoing, it will still be covered by the PID Act as long as the wrongdoing meets the definition of disclosable conduct.

Accordingly, it is important that persons contemplating making a disclosure of information carefully review the contents of the PID Act and seek legal advice where appropriate in order to determine whether the disclosure can be made in a way that attracts the protections of the PID Act.

### 3. What is not a PID?

Disclosable conduct by a public official must be in connection with their position as a public official. Therefore, conduct that is private and has no bearing on their position as a public official is generally not disclosable conduct.

Conduct cannot be disclosable conduct, and therefore cannot be the subject of a public interest disclosure, if it relates only to action that has been, or is proposed to be, taken by:

- (a) a Minister
- (b) the Speaker of the House of Representatives
- (c) the President of the Senate

with which the person disagrees.

In addition, because Members or Senators who are not Ministers are unlikely to be acting as public officials for the purpose of the PID Act, their actions are unlikely to meet the definition of disclosable conduct under the PID Act.

A discloser should note that parliamentary privilege may exclude some matters from being dealt with by the PID Act. Where matters relate to proceedings in parliament, such as advice or support provided by a public official to the Parliament, parliamentary privilege gives the houses exclusive jurisdiction. Also note that the release of unpublished proceedings in parliament, including documents in support of a PID, is not permitted and may be dealt with as a contempt.

Summaries of the rights and responsibilities of a discloser and a person who is the subject of a disclosure under this procedure are set out at **Attachment B** and **Attachment C** respectively. A summary of the disclosure process is illustrated at **Attachment D**.

Further guidance material can also be obtained from the following website:

[www.ombudsman.gov.au/Our-responsibilities/making-a-disclosure](http://www.ombudsman.gov.au/Our-responsibilities/making-a-disclosure).

### 3.1 Public interest disclosure and the National Anti-Corruption Commission (the NACC)

Disclosures made to the department are covered by the *National Anti-Corruption Commission Act 2022* (NACC Act). Referrals made to the NACC are also a PID.

The Clerk, as principal officer, and authorised officers, have mandatory referral obligations under the NACC Act. A corruption issue concerning an employee must be referred to the NACC when:

- in the course of exercising their functions or powers they handle an internal disclosure that raises a corruption issue under the NACC Act, and
- they suspect the issue could involve serious or systemic corrupt conduct.

When these criteria are met, the Clerk or an authorised officer must refer the corruption to the NACC as soon as reasonably practicable after becoming aware of the issue, unless a specified exception applies.

The NACC investigates allegations of corrupt conduct involving a public official if the conduct could be serious or systemic corrupt conduct. The Commissioner of the NACC determines whether corrupt conduct could be considered serious or systemic. The NACC may investigate following a referral, or on its own initiative. If the NACC cannot investigate an issue, it may choose to deal with it in other ways, such as by referring it to another agency.

The NACC can also issue stop action directions under the PID Act which:

- prevent an agency from allocating a disclosure (under section 44B of the PID Act), or
- prevent an agency from investigating, or further investigating a disclosure (under section 50A of the PID Act).

If there are issues with a stop action direction, the agency must inform the Ombudsman within 10 business days of receiving the stop action direction.

Unless a stop action direction has been issued, the department may investigate disclosures while the matter is being considered by the NACC.

## 4. Procedures

### 4.1 Authorised officers

The department maintains a list of 'authorised officers' for the purposes of the PID Act who have been appointed by the Clerk. The Clerk is both the principal officer and an authorised officer under the PID Act. A PID can be made to an authorised officer of the department if the PID relates to the department or the discloser belongs, or last belonged, to the department.

The list of authorised officers can be accessed at [www.aph.gov.au/house/pid](http://www.aph.gov.au/house/pid).

## 4.2 Principal Officer's obligations

The Clerk as the principal officer must ensure the department:

- takes reasonable steps to assess the risk of, and deal with, reprisal against disclosers and witnesses
- provides confidentiality for the investigation process
- ensures that appropriate action is taken in relation to a report of an investigation
- makes training and education relating to PID, integrity and accountability available to employees, including training for authorised officers, and
- complies with the PID Act and PID standards.

## 4.3 Disclosure to a supervisor

If a public official discloses information to a supervisor and the supervisor has reasonable grounds to believe that the information concerns, or could concern, disclosable conduct, the supervisor must give the information to an authorised officer of the department as soon as reasonably practicable.

## 4.4 Protecting confidentiality

The authorised officer and the Clerk will take all reasonable steps to protect the identity of a public official who has made a PID from the time the disclosure is made.

Only individuals directly involved in dealing with the PID (such as the authorised officer and Clerk) may be advised of the details of the PID. These individuals must not disclose the identity of the discloser or any information which is likely to reveal the identity of the discloser without the consent of the discloser.

It is an offence for a public official to disclose information that is likely to enable the identification of a person as a person who has made a public interest disclosure other than in accordance with the PID Act. It is also an offence for an official to disclose information to another person or use information in a way that is not in accordance with the PID Act.

Similarly, if a person discloses information to another person or uses information otherwise than in accordance with the PID Act, the person commits an offence if the information was obtained by the person:

- in the course of conducting a disclosure investigation; or
- in connection with the performance of a function or the exercise of a power by the person under the PID Act.

Identifying information about a discloser will not be disclosed to a court or tribunal except where necessary to give effect to the PID Act.

#### 4.4.1 Protection for disclosers and witnesses

Public officials are protected from reprisal that is taken because a person believed or suspected that they have made, may have made, propose to make, or could make a PID.

Reprisal includes harassment or intimidation, harm or injury to a person, and any damage to a person (including their property, reputation or business or financial position), in addition to employment-related harm. It includes conduct that causes detriment as well as direct and indirect threats.

## 5. Making a disclosure

### 5.1 Initial consideration and allocation

#### Step 1: Consider whether a disclosure meets the requirements for a PID

When an authorised officer receives a disclosure of information, they will consider the information disclosed and determine whether there are reasonable grounds on which the disclosure could be considered to be an internal disclosure made in accordance with the PID Act.

The authorised officer may also be contacted by another agency for the purpose of considering whether to accept the allocation of a PID concerning the department.

The authorised officer may obtain further information and make inquiries for the purpose of making a decision about the allocation of the disclosure. However, this should be distinguished from conducting a PID investigation.

If the authorised officer is so satisfied:

- they will allocate the disclosure to one or more agencies for further handling and investigation in accordance with the process outlined at **Step 2**.

If the authorised officer is not so satisfied:

- the disclosure will not be allocated and:
  - if contacting the discloser is reasonably practicable, the authorised officer must inform the discloser in writing of:
    - the reasons why the disclosure will not be allocated to an agency, and
    - any other course of action that might be available to the discloser under other laws of the Commonwealth, and
  - if the disclosure relates to conduct that may need to be addressed under the department's:
    - fraud control plan
    - Procedures for determining breaches of the Code of Conduct and for determining sanction
    - WHS procedures, or
    - any other of the department's policies or procedures

the authorised officer may refer the matter to be dealt with in accordance with the relevant policy or procedure.



Where the person making the disclosure was not a public official, and the authorised officer believes on reasonable grounds that the person has information that concerns disclosable conduct, the authorised officer may make a determination to deem the person to be a public official. The authorised officer must inform the person, in writing, that they have been taken to be a public official for the purposes of the PID Act.

### **Step 2: Allocate the disclosure**

The authorised officer will use his or her best endeavours to decide the allocation within 14 days after the disclosure is made.

In deciding the agency or agencies to which a disclosure will be allocated, the authorised officer will have regard to:

- the principle that an agency – other than the Ombudsman, the Inspector-General of Intelligence and Security (**IGIS**) or an investigative agency prescribed by the Public Interest Disclosure Rules – should only deal with disclosures that relate to that agency, and
- such other matters (if any) as the authorised officer considers relevant.

If an authorised officer under the PID Act suspects an issue concerning the conduct of a staff member or the department could involve serious or systemic corrupt conduct, the authorised officer must refer the issue to the NACC.

The authorised officer must not allocate a disclosure to another agency unless an authorised officer of that agency has consented to the allocation. A written record must be made of the consent provided by the agency that accepted the allocation.

### **Step 3: Inform relevant persons of the allocation**

#### *Informing the receiving agency*

When the authorised officer allocates the handling of a disclosure to an agency, the authorised officer will inform the principal officer of that agency of:

- the allocation to the agency
- the information that was disclosed to the authorised officer
- the suspected disclosable conduct, and
- if the discloser's name and contact details are known to the authorised officer, and the discloser consents to the principal officer being informed – the discloser's name and contact details.

### ***Informing the discloser***

If contacting the discloser is reasonably practicable, as soon as reasonably practicable after the allocation has occurred, the authorised officer will also inform the discloser in writing of the allocation and of the information that has been provided to the principal officer of that agency. Disclosers will be advised of the investigative process and notification requirements.

### ***Informing other relevant bodies***

If the authorised officer allocated a disclosure to an agency, including the department itself, other than the Ombudsman, the IGIS or an intelligence agency, he or she will inform the Ombudsman of this in writing. If the disclosure is allocated to an intelligence agency, the authorised officer will inform the IGIS of this in writing.

Notification to the Ombudsman should be made by completing the relevant forms provided by the Ombudsman's office.

## **Step 4: Make a record of the allocation decision**

### ***Record of decision***

When an authorised officer allocates the handling of a disclosure to one or more agencies, they must keep an appropriate record of:

- the decision (including the name of each agency to which the disclosure is to be allocated)
- the reasons for the decision, and
- the consent provided by the authorised officer of the agency to which the allocation is made.

### ***Record of communication of decision to discloser***

In addition, the authorised officer must keep appropriate records of whether the discloser was informed of the allocation decision and, if so, of:

- the day and time the discloser was notified, and
- the means by which the discloser was notified, and
- the content of the notification.

These records should be kept confidential.

## 5.2 Risk assessment

### Step 1: Conduct a risk assessment

When the Clerk receives a PID that has been allocated to the department, they will assess the risk associated with reprisals related to the disclosure. They may delegate an authorised officer to undertake this risk assessment.

In assessing the risk of reprisals, the following risk matrix should be used:

		Likely seriousness of reprisal			
		Minor	Moderate	Major	Extreme
Likelihood of reprisal being taken against a discloser	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 the person on work-related emails).
- **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).
- **Extreme:** Action which is likely to have a very severe impact on the person (for example, physical violence or the denial of a promotion opportunity).

#### *Criteria for assessing likelihood of potential reprisals*

When considering the likelihood of a reprisal being taken against a discloser, all relevant factors should be taken into account, 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
  - the number of people who are aware of the information leading to the disclosure
- the number of people implicated in 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)
- 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 likely seriousness of potential reprisals***

In considering the likely seriousness of any potential reprisal against a discloser, all relevant factors should be taken into account, 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.

**Step 2: Develop a risk mitigation strategy if necessary**

Where the risk level is assessed as anything greater than low, the Clerk or their delegate will develop a risk management strategy for mitigating the risk of reprisals being taken against the discloser. This strategy may include some or all of the support measures set out at paragraph 4.3 and, in appropriate circumstances could include raising the matter with employees by reminding staff that taking or threatening to take a reprisal against a discloser is a criminal offence.

**Step 3: Monitor and review risks**

The Clerk or their delegate should monitor and review the risk assessment as necessary throughout the investigation process.

### 5.3 Support for disclosers

Regardless of the outcome of the risk assessment, the Clerk will take all reasonable steps to protect public officials who have made a PID from detriment or threats of detriment relating to the PID. Even if the disclosure is not substantiated, a disclosure is protected by the PID Act.

This may include taking one or more of the following actions:

- (a) appointing a support person to assist the discloser, who is responsible for checking on the wellbeing of the discloser regularly
- (b) informing the discloser of the progress of the investigation
- (c) advising the discloser of the availability of the Employee Assistance Program (EAP) and the Parliamentary Workplace Support Service (PWSS)
- (d) where there are any concerns about the health and wellbeing of the discloser, liaising with officers responsible for work health and safety in the department, or
- (e) transferring the discloser to a different area within the workplace (with the consent of the discloser).

### 5.4 Support for a person against whom a disclosure has been made

The Clerk will also take steps to support any employee who is the subject of a PID.

This may include taking one or more of the following actions:

- (a) advising the employee of his or her rights and obligations under the PID Act and about the department's investigation procedures, including the employee's rights to procedural fairness
- (b) informing the discloser of the progress of the investigation
- (c) advising the employee of the availability of the services provided by the EAP and the PWSS
- (d) ensuring that the identity of the employee is kept confidential as far as reasonably practicable
- (e) where there are any concerns about the health and wellbeing of the employee, liaising with officers responsible for work health and safety in the department, or
- (f) transferring the employee to a different area within the workplace (with the consent of the employee).

### 5.5 Consideration and investigation by principal officer or their delegate

#### Step 1: Provide initial information to disclosers

Within 14 days of the department being allocated a PID, the Clerk will provide the discloser with the following information about his or her powers to:

- decide not to investigate the disclosure
- decide not to investigate the disclosure further, or
- decide to investigate the disclosure under a separate investigative power.

## Step 2: Consider whether to investigate the disclosure

If a PID is allocated to the department, the Clerk will consider whether or not to investigate the PID.

The Clerk may decide not to investigate a disclosure if the Clerk considers that:

- the discloser is not and has not been a public official
- the information does not, to any extent, concern serious disclosable conduct
- the disclosure is frivolous or vexatious
- the information is the same or substantially the same as disclosable conduct that has been or is currently being investigated as part of another disclosure investigation
- the information concerns disclosable conduct that is the same or substantially the same as disclosable conduct that is being investigated under a law of the Commonwealth or the executive power of the Commonwealth and:
  - it would be inappropriate to conduct another investigation at the same time, or
  - the Clerk is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation
- the discloser has informed the Clerk that the discloser does not wish for the investigation of the disclosure to be pursued and the Clerk is reasonably satisfied that there are no matters concerning the disclosure that warrant investigation
- it is impracticable for the disclosure to be investigated because:
  - the discloser's name and contact details have not been disclosed
  - the discloser fails or is unable to give such information or assistance as the person who is or will be investigating asks the discloser to give, or
  - the age of the information makes this the case.

If the above circumstances do not apply, the Clerk will conduct an investigation, or appoint an authorised officer to conduct an investigation.

## Step 3: Notify the discloser and Ombudsman

### *If the disclosure will not be investigated*

If the Clerk decides not to investigate a disclosure, they will:

- if reasonably practicable to contact the discloser, inform the discloser that the Clerk has decided not to investigate the disclosure, identifying:
  - the reasons for the decision not to investigate (other than those reasons that would be exempt for the purposes of Part IV of the *Freedom of Information Act 1982*, have or be required to have a national security or other protective security classification or contain intelligence information), and
  - any courses of action that might be available to the discloser under other laws of the Commonwealth; and
- inform the Ombudsman of the decision not to investigate and the reasons for that decision.

***If the disclosure will be investigated***

If the Clerk decides to investigate the disclosure, they will, as soon as reasonably practicable, inform the discloser:

- that he or she is required to investigate the disclosure; and
- of the estimated length of the investigation.

**Step 4: Conduct an investigation**

If the Clerk decides to investigate, the investigator will investigate whether there are one or more instances of disclosable conduct. Investigations will comply with the requirements of the [Public Interest Disclosure Standard 2013](#).

***General principles***

The following general principles will apply to the conduct of investigations:

- maintaining the confidentiality of the identity of the discloser will be paramount when conducting the investigation
- the investigation will be carried out with as little formality as a proper consideration of the matter allows
- the investigation will be consistent with the principles of procedural fairness
- a decision whether evidence is sufficient to prove a fact will be determined on the balance of probabilities, and
- a person who is the subject of the investigation will be provided with an opportunity to respond or provide evidence in relation to the allegations.

Aside from compliance with these principles, the Clerk is free to conduct the investigation as they see fit. The way in which the investigation is conducted may vary depending on the alleged conduct which is being investigated. In particular, in circumstances where the Clerk considers that the nature of the disclosure is such that the outcome of the investigation is likely to be referral of the matter for investigation under another process or procedure, the investigation under these procedures may appropriately be conducted in a circumscribed way.

***Additional procedures required in particular circumstances***

If a disclosure relates to conduct that would require the department to take steps under the department's:

- fraud control plan
- procedures for determining breaches of the Code of Conduct and for determining sanction
- WHS procedures, or
- any other of the department's policies or procedures,

the processes set out in those procedures and policies must be complied with in the conduct of an investigation under these procedures.

If the Clerk considers that information disclosed in the course of a PID may be appropriately dealt with under another procedure or policy of the department, they may recommend in the investigation report that this occur and refer the matter to the relevant part of the department.

#### ***Obtaining information***

Instances of disclosable conduct may relate to information that is disclosed or information obtained in the course of the investigation rather than information provided in the initial disclosure.

During the investigation, the Clerk may, for the purposes of the investigation, obtain information from such persons and make such inquiries as the Clerk sees fit.

When being interviewed as part of an investigation, an interviewee will be informed of the following:

- the identity and function of each individual conducting the interview
- the process of conducting an investigation
- the authority of the Clerk under the PID Act to conduct the investigation, and
- the protections provided to witnesses under the PID Act.

The Clerk will ensure:

- an audio or visual recording of the interview is not made without the interviewee's knowledge
- when the interview ends, the interviewee is given an opportunity to make a final statement or comment or express a position, and
- any final statement, comment or position by the interviewee is included in the record of the interview.

In conducting the investigation, the Clerk may adopt findings set out in reports of investigations or inquiries under other Commonwealth laws or executive powers, or other investigations under the PID Act.

#### ***Referral of information to police and others***

If, during the course of the investigation, the Clerk suspects on reasonable grounds that some of the information disclosed or obtained in the course of the investigation is evidence of the commission of an offence against a law, the Clerk may disclose the information to a member of an Australian police force. If the information relates to an offence that is punishable for a period of at least two years, the Clerk must disclose the information to a member of an Australian police force.

The investigation may also include consideration of whether a different or further investigation should be conducted by the agency or another body under another law of the Commonwealth.



**Step 5: Prepare investigation report**

Once the investigator has completed the investigation, they will prepare a report of the investigation. The Ombudsman will receive a copy of all investigation reports and may make recommendations about investigation reports without a complaint having been made.

The Clerk must complete the investigation report within 90 days after the disclosure was allocated to the Clerk, unless this period is extended by the Ombudsman. If the period is extended, the Clerk will inform the discloser of the progress of the investigation.

***Content of report***

The report must set out:

- the matters considered in the course of the investigation
- the duration of the investigation
- the Clerk's findings (if any)
- any regulations, rules, administrative requirements or similar matters to which the disclosable conduct relates
- the action (if any) that has been, is being or is recommended to be taken, and to the extent relevant:

- the steps taken to gather evidence
- a summary of the evidence, and
- any claims made about and any evidence of detrimental action taken against the discloser, and the agency's response to those claims and that evidence.

**Step 6: Provide report to discloser**

If it is reasonably practicable to contact the discloser, the Clerk will provide the discloser with a copy of the report within a reasonable time after preparing the report. However, the Clerk may delete from the copy of the report given to the discloser any material:

- that is likely to enable the identification of the discloser or another person, or
- 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.

## 6. Further information

Further guidance material can also be obtained from the Commonwealth Ombudsman's website at: [Information for Agencies | Commonwealth Ombudsman](#).

## Attachment A – Guide to making a Public Interest Disclosure

### Who can make a public interest disclosure?

A person must be a current or former 'public official', as defined in s 69 of the PID Act, to make a public interest disclosure. This is a broad term which includes a Commonwealth public servant, member of the Defence Force, appointee of the Australian Federal Police, Parliamentary Service employee, director or staff member of a Commonwealth company, statutory office holder or 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 included. This includes subcontractors who are responsible for providing goods or services for the purposes of the Commonwealth contract (s 30(2)). An authorised officer can deem a person to be a public official to facilitate the making of a public interest disclosure.

### What can be disclosed?

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

- 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

if that conduct:

- 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 (s 29(1)).

Without limiting any of those grounds, 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, and conduct that could give reasonable grounds for disciplinary action against the public official (s 29(2)).

## What is not disclosable conduct?

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 (s 31).

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 (s 32).

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

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 (s 33).

A disclosure must be made to an appropriate person in order to gain the protections available under the PID Act (s 26). The PID Act focuses on the reporting and investigating of wrongdoing within government, but allows for reporting outside government in specified circumstances.

## Making an internal disclosure

Public officials can report suspected wrongdoing either to their current supervisor (defined in s 8 to mean someone who supervises or manages them) in an agency, or to an authorised officer of their agency or the agency to which they previously belonged. Authorised officers are the principal officer (i.e. the agency head) and officers that the principal officer appoints under the PID Act (s 36).

Disclosures should be clear and factual, covering as many of the following matters to help the department to determine how to proceed:

- Their name and contact details.
- The nature of the suspected wrongdoing.
- Who they believe committed the suspected wrongdoing.
- When and where the suspected wrongdoing occurred.
- How they become aware of the suspected wrongdoing.
- If 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.

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. It is important that the public official does not investigate the matter before making a disclosure as this may hinder a further investigation.

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 like a journalist or union representative unless the conditions for an external or emergency disclosure are 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.

## Attachment B – Rights and responsibilities of disclosers

### Rights

A discloser has a right to the protections set out in the PID Act, including protection from reprisals, from civil and criminal liability, and from the disclosure of his or her identity where the disclosure is made anonymously. However, 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.

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 or IGIS, 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 section 4.3 of the procedures
- able to seek assistance from the Ombudsman in relation to the operation of the PID Act.

### Responsibilities

A discloser must:

- comply with the PID Act requirements and the procedures set out in this document when making a PID
- use his or her best endeavours to assist the principal officer of any agency in the conduct of an investigation
- use his or her best endeavours to assist the Ombudsman in the performance of the Ombudsman's functions under the PID Act
- use his or her best endeavours to assist the IGIS in the performance of the IGIS's functions under the PID Act, and
- report to the Clerk any detriment the discloser believes he or she has been subjected to as a result of making the disclosure.

## **Attachment C – Rights and responsibilities of persons who are the subject of a PID**

### **Rights**

An employee of the department who is the subject of a disclosure will be:

- given support in accordance with section 4.4 of the procedures; and
- able to seek assistance from the Ombudsman in relation to the operation of the PID Act.

### **Responsibilities**

An employee of the department who is the subject of a disclosure must:

- use his or her best endeavours to assist the Clerk in the conduct of an investigation
- use his or her best endeavours to assist the Ombudsman in the performance of the Ombudsman's functions under the PID Act
- use his or her best endeavours to assist the IGIS in the performance of the 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.

## Attachment D: Disclosure process

