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Australian Government
Department of Industry,
Science and Resources

Public Interest Disclosure Procedures

Introduction

This document constitutes the Department of Industry, Science, and Resources' (the department) procedures for facilitating and dealing with public interest disclosures for the purposes of section 59(1) of the [Public Interest Disclosure Act 2013 \(Cth\)](#) (PID Act). These procedures outline the process and legislative requirements for managing internal disclosures made under the PID Act, in addition to providing guidance for decision makers.

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 from any reprisals or threats of reprisals as a result of making a disclosure.

In these procedures, all references to the Secretary or principal officer of the department include references to their delegate.

What is Disclosable Conduct?

Disclosable conduct is wrongful conduct engaged in by an agency, public official, or government contractor that may include, but is not limited to:

- illegal conduct
- corruption
- maladministration
- abuse of public trust
- deception relating to scientific research
- wastage of public money
- unreasonable danger to health and safety
- danger to the environment.

Disclosable conduct also includes conduct that involves abuse of power by a public official or conduct engaged in by a public official that could, if proven, give reasonable grounds for disciplinary action (see [Attachment A](#) for a fuller reflection of the relevant sections of the Act relating to eligible and ineligible disclosable conduct).

Disclosable conduct **does not** include personal work-related conduct, that is, conduct, by act or omission, engaged in by one public official in relation to another, and that occurs in relation to one official's engagement or appointment as a public official, or in relation to that official's exercise of functions and powers as a public official, and which tends to have personal implications for that official

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(see section 29A of the PID Act). Some examples of personal work-related conduct that is **not** disclosable conduct include:

- conduct relating to an interpersonal conflict between the first official and the second official
- conduct relating to the transfer or promotion of one official by another
- conduct relating to the terms and conditions of engagement or appointment of one official by another
- disciplinary action taken in relation to one official by another
- the suspension or termination of the second official's employment or appointment as a public official.

In addition, the following matters are also not disclosable conduct:

- 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 (section 31).

The conduct of members of Parliament is not covered by the PID Act because these members are not 'public officials' for the purposes of the PID Act. However, the departments of the Parliament and their employees are covered.

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 (section 32, PID Act).

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 (section 33, PID Act).

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 (PID) for the purposes of the PID Act. Some disclosures may only be identified as possible Code of Conduct breaches, while other disclosures may only be behavioural matters in nature and be subject to minor disciplinary action. Importantly, a disclosure of information can only be a PID under these procedures if it satisfies the following conditions:

- the disclosure is made by a public official, or a person who has been a public official
- 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; and
- the disclosure is made to an appropriate person.

A PID may be:

- an internal disclosure
- a legal practitioner disclosure
- an external disclosure
- a National Anti-Corruption Commission (NACC) disclosure; or

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- an emergency disclosure, as per section 26(1) of the PID Act.

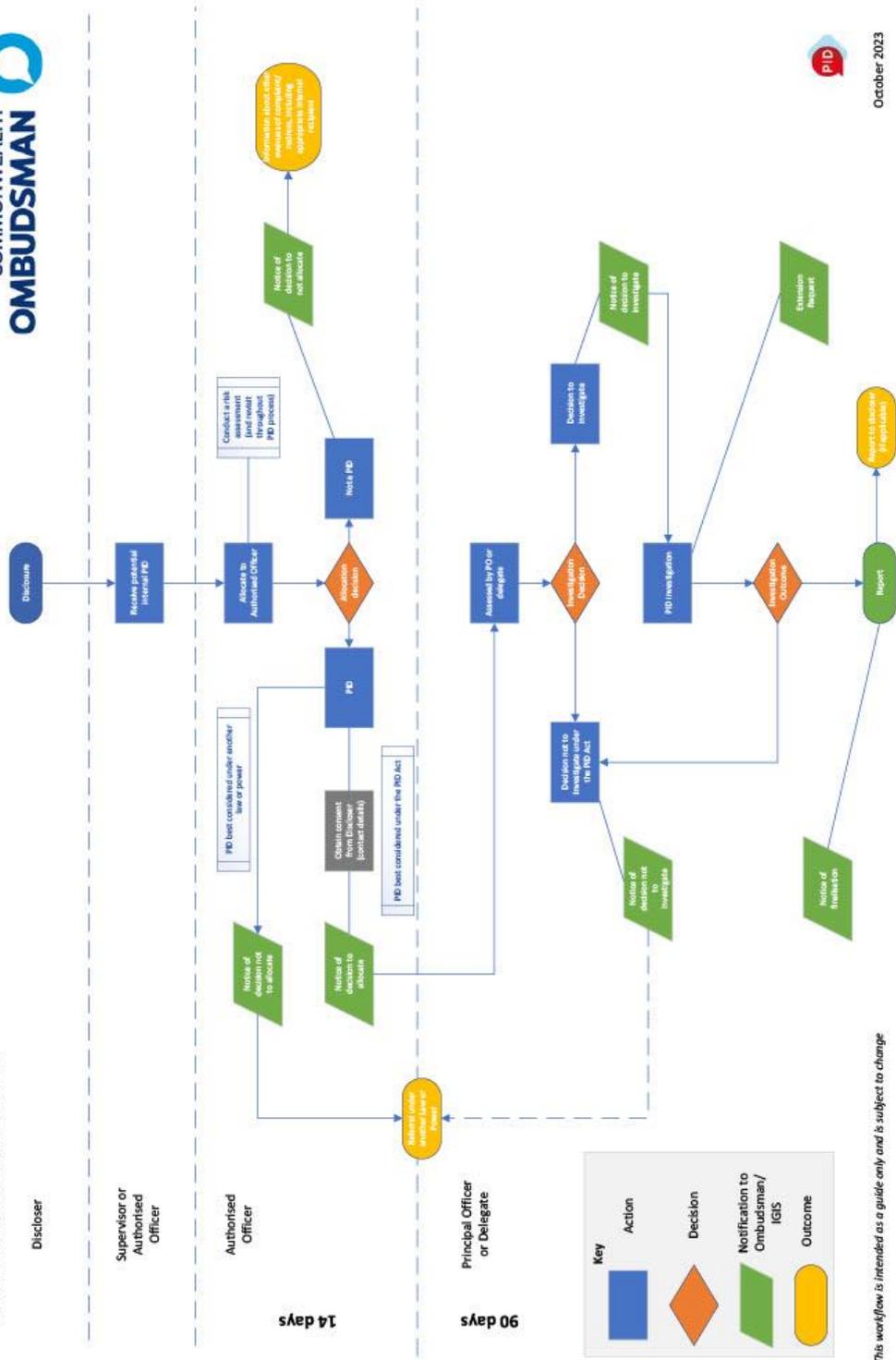
If a person makes a disclosure outside of the circumstances defined in section 26(1) of the PID Act, they are not protected from the consequences of breaching any privacy or confidentiality requirements that apply to the disclosed information.

These procedures do not address external disclosures or legal practitioner disclosures, as such disclosures will not involve decisions to allocate by a supervisor or authorised officer. Procedures for legal practitioner disclosures and external disclosures can be found at the [Commonwealth Ombudsman website](#).

If a discloser makes a disclosure internally which justifies being regarded as an emergency disclosure, the authorised officer or the Integrity Branch will ensure it is referred to the Commonwealth Ombudsman immediately. These procedures also outline circumstances in which an internal disclosure may be referred to the NACC, and thereby may subsequently become a NACC disclosure.

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. Further guidance material can also be obtained from the following website: <https://www.ombudsman.gov.au/complaints/public-interest-disclosure-whistleblowing>.

Public Interest Disclosure Flowchart



*From 31 January 2024, authorised officers within the Department of Industry, Science and Resources are either SES Band 2 or SES band 1 officers.

** Integrity branch is the coordination point for PIDs in DISR.

Procedures

Authorised officers

An authorised officer of an agency is the principal officer of the agency as well as any public officials who are appointed by the principal officer (in writing) as an authorised officer for the purposes of the PID Act. Authorised officers have a range of decision-making, notification, and other responsibilities under the PID Act.

The department maintains a list of authorised officers for the purposes of the PID Act who have been appointed by the Secretary (See [the Public Interest Disclosure Scheme iCentral page](#)). 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.

Procedures for supervisors

If a person discloses information to a supervisor, and the supervisor has reasonable grounds to believe the information concerns or could concern, disclosable conduct, they must provide information to an authorised officer either in person or by email to the PID inbox (publicinterestdisclosures@industry.gov.au) as soon as reasonably practicable.

Further, in that circumstance, a supervisor must:

- clarify the claims or allegations about wrongdoing being made by their staff member (preferably, by putting them into writing and agreeing it with the staff member)
- explain the PID process to the staff member and the supervisor's obligations to pass the information to an authorised officer
- obtain the staff member's consent to disclose their name and contact details to the authorised officer
- report the matter to an authorised officer in a timely and confidential manner (avoiding any authorised officers who may have a conflict of interest)
- support the staff member and monitor the situation for any reprisal or workplace conflict (taking action or escalating to an appropriate officer where appropriate)
- ensure staff undergo available training and education about PID
- confront any workplace prejudices about making a disclosure
- set an example for staff through their own conduct and ethical approach.

Procedures for authorised officers

If a person discloses, or proposes to disclose information to an authorised officer and the officer has reasonable grounds to believe that the information could be a disclosure under the PID Act, then the authorised officer should:

- provide advice to public officials about the PID process, including how to make a PID, how the protections and immunities apply, and the reprisal risk assessment process
- assess all allegations of wrongdoing under the PID Act and decide if they constitute a PID

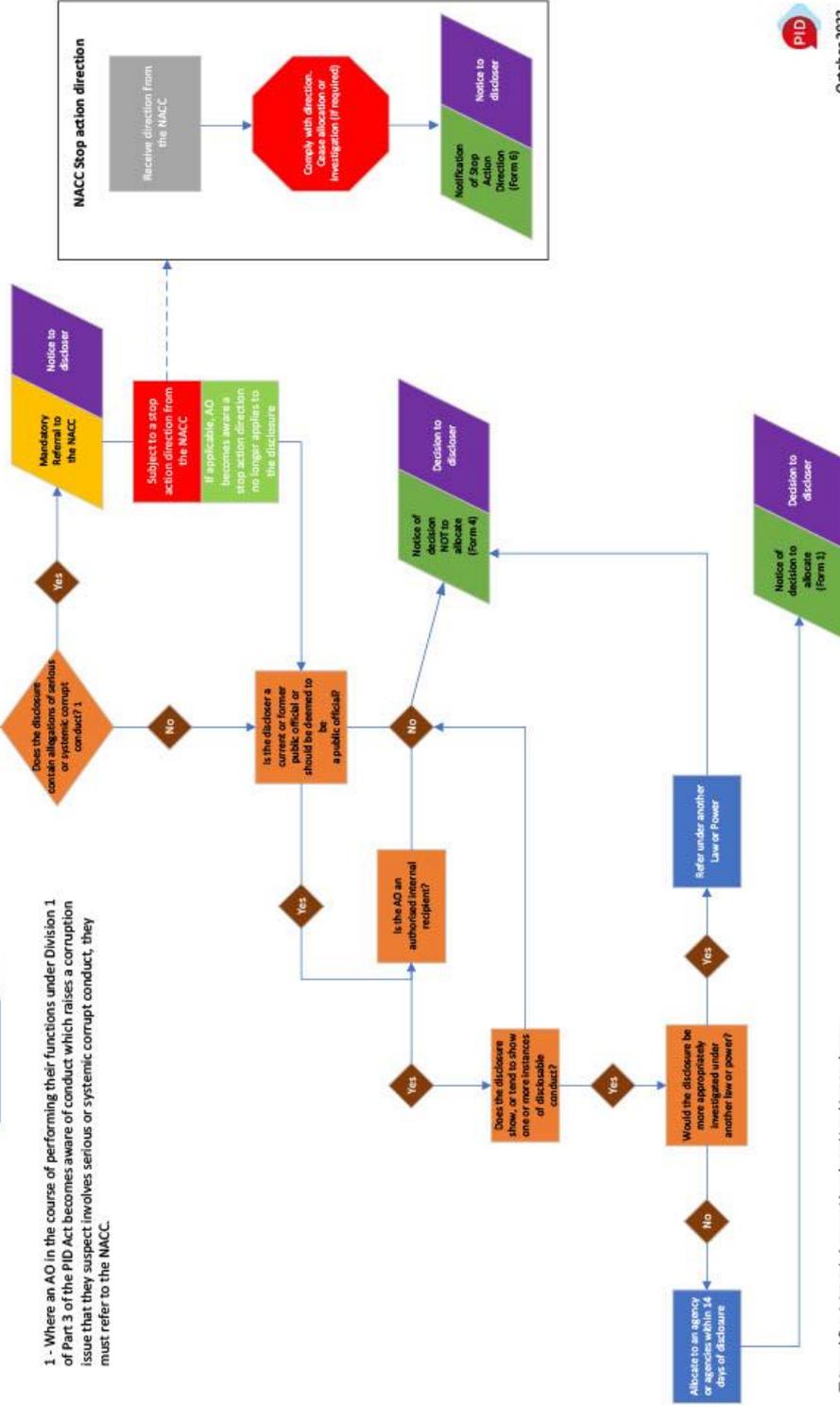
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- obtain consent to disclose the public official's name and contact details for the purpose of handling the PID and adhere to the PID Act confidentiality and identity protection requirements
- advise the individual about the circumstance (if any), in which a disclosure must be referred
- identify and address any possible conflict of interests that may affect the handling of the PID
- take reasonable steps to protect public officials who belong to an agency against reprisals that have been, or may be, taken in relation to a PID that has been made, may have been made, are proposed to be made, or could be made to the officer
- allocate the PID to the principal officer or an appropriately delegated PID investigator
- notify the public official, the Commonwealth Ombudsman and the principal officer if the matter is a PID and of the allocation decision
- notify the National Anti-Corruption Commission if, during the course of performing their duties, they become aware of corrupt conduct that is serious or systemic
- make appropriate records of their decision making.

Authorised Officer Flowchart



1. - Where an AO in the course of performing their functions under Division 1 of Part 3 of the PID Act becomes aware of conduct which raises a corruption issue that they suspect involves serious or systemic corrupt conduct, they must refer to the NACC.



This workflow is intended as a guide only and is subject to change

Protecting confidentiality

The authorised officer and the Secretary 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, Secretary or delegate) may be advised of the details of the PID. However, it may also be necessary for information about the discloser's identity, or information that would effectively identify them, to be reported to certain other people if it is necessary for the purposes of the PID Act such as to investigate the disclosure effectively, or to protect the individual making the disclosure from reprisals. These other 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.

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.

National Anti-Corruption Commission referrals

If an authorised officer, in the course of either allocating an internal disclosure or investigating an internal disclosure, becomes aware of a corruption issue that meets the below criteria, the authorised officer must refer the disclosure to the NACC as soon as reasonably practicable where:

- there are concerns the conduct of a person who is, or was, a staff member of the agency while that person is, or was, a staff member; and
- the authorised officer suspects could involve corrupt conduct that is serious or systemic.

If either of the two criteria are met, the authorised officer must refer the corruption issue to the NACC, and the PID may become a NACC Disclosure under the *National Anti-Corruption Commission Act 2022* (NACC Act), notwithstanding that the obligations of the department to continue to consider and potentially investigate the PID persist. The only exceptions to this requirement are if:

- the person believes on reasonable grounds that the Commissioner is already aware of the issue
- a determination made by the Commissioner provides that referral is not required because of the kind of corruption issue involved or the circumstances in which it arises.

Where such a referral occurs, the authorised officer must inform the discloser as soon as possible of the referral.

The NACC Commissioner may direct the agency to stop taking action in relation to a corruption issue. This may include a direction to stop investigating a PID.

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The Secretary must notify the Ombudsman in writing if a stop action direction prevents allocation or investigation of the disclosure.

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, and should be allocated to the department or if applicable, another Commonwealth agency.

If the authorised officer is satisfied of the need to allocate:

they will allocate the disclosure to one or more agencies (which may include the department) for further handling and investigation in accordance with the process outlined at Step 2.

If the authorised officer is not satisfied of the need to allocate:

- 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 and Corruption Control Strategy*
 - *Code of Conduct Guidelines*
 - *Procedures for determining breaches of the APS Code of Conduct and imposition of sanctions* 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.

Step 2: Allocate the disclosure

An allocation within the same organisation consists of an allocation to the Principal Officer of the Department for them to consider and, if reaching that conclusion, conduct an investigation.

The authorised officer will use their best endeavours to determine 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.

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In addition, if the authorised officer is contemplating allocating the disclosure to the Ombudsman, the IGIS or an investigative agency that has been prescribed by the Public Interest Disclosure Rules, the authorised officer must have regard to additional matters set out in the PID Act.²

The authorised officer cannot allocate a disclosure to another agency unless an authorised officer of that agency has consented to 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 the department or another 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 of the agency being informed — the discloser's name and contact details.

Where the matter is allocated to the department but is the responsibility of one of the department's portfolio agencies, a delegate of the Secretary within the relevant portfolio agency will be advised of the allocation and will be responsible for handling the disclosure.

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 decision of allocation or non-allocation of the PID, the reasons for that allocation decision, and where allocated to another agency, the information that has been provided to the principal officer of that agency.

Where a disclosure has been referred to the NACC and is subject to a 'stop action' direction, the written record must outline whether the principal officer considers it is appropriate or reasonably practicable that the discloser be given a copy of that direction notice.

Informing other relevant bodies

If the authorised officer allocated a disclosure to an agency (including the department) other than the Ombudsman, the IGIS or an intelligence agency, they 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.

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, if the disclosure was referred to an authorised officer based in an external agency.

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 of:

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

These records should be kept confidential.

Risk assessment

Step 1: Conduct a risk assessment

When the Secretary receives a PID that has been allocated to the department, they (or their delegate) will assess the risk that reprisals will be taken against the discloser.

In assessing the risk of reprisals, the Secretary should use the following risk matrix.

Likelihood of reprisals being possible and/or sought	Likelihood	Ratings of consequence if reprisal attempted				
		Insignificant	Minimal	Moderate	Substantial	Severe
Almost certain		Minor	Medium	High	Very high	Very high
Likely		Minor	Medium	Medium	High	Very high
Possible		Low	Minor	Medium	High	Very high
Unlikely		Low	Minor	Minor	Medium	High
Rare		Low	Low	Minor	Medium	High

Examples of seriousness of reprisals

- Insignificant:** Any remarks at the passive query level, no covert or overt hostility expressed and indications of awareness only.
- Minimal:** 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 "CC" the person on work-related emails which the person has a genuine business need to know)
- Substantial:** 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)

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- Severe: Action which is likely to have a very severe impact on the person (for example, physical violence or the denial of a promotion opportunity without reasonable cause).

Criteria for assessing likelihood of potential reprisals

When considering the likelihood of a reprisal being taken against a discloser, the Secretary should take into account all relevant factors, based on the available information, 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 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, the Secretary should take into account all relevant factors, based on the available information, 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 Secretary may ask the discloser 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

Where the risk level is assessed as anything greater than low, the Secretary 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 in this document 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 Secretary should monitor and review the risk assessment as necessary throughout the investigation process.

Support for disclosers

Regardless of the outcome of the risk assessment, the Secretary will take all reasonable steps to protect public officials who have made a PID from detriment or threats of detriment relating to the PID.

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

- appointing a support person to assist the discloser, who is responsible for checking on the wellbeing of the discloser regularly
- informing the discloser of the progress of the investigation
- advising the discloser of the availability of the Employee Assistance Program
- 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
- transferring the discloser to a different area within the workplace or approving remote/teleworking (with the consent of the discloser). This is only likely to be appropriate in cases involving very major or extreme risk.

Support for a person against whom a disclosure has been made

The Secretary 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:

- advising the employee of their rights and obligations under the PID Act and about the department's investigation procedures, including the employee's rights to procedural fairness
- advising the employee of the availability of the Employee Assistance Program
- ensuring that the identity of the employee is kept confidential as far as reasonably practicable
- 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
- transferring the employee to a different area within the workplace or approving remote/teleworking (with the consent of the employee). This is only likely to be appropriate in cases involving very major or extreme risk.

Consideration and investigation by principal officer

Step 1: Provide initial information to disclosers

The Secretary will, as soon as is reasonably practicable to do so, within 14 days after the disclosure has been allocated to the agency, provide the discloser with the following information about their powers to:

- decide not to investigate the disclosure
- decide not to investigate the disclosure further
- decide to investigate the disclosure under a separate investigative power; or
- decide to investigate the disclosure under another law or power

Step 2: Consider whether to investigate the disclosure

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

The Secretary may decide not to investigate a disclosure if the Secretary 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 Secretary is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation;
- the discloser has informed the Secretary that they do not wish for the investigation of the disclosure to be pursued and the Secretary 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 Secretary will conduct an investigation.

Step 3: Notify the discloser and Ombudsman

If the disclosure will not be investigated

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

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- if reasonably practicable to contact the discloser, inform the discloser that the Secretary 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)
 - 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 Secretary decides to investigate the disclosure, they will, as soon as reasonably practicable, inform the discloser:

- that they are required to investigate the disclosure; and
- of the estimated length of the investigation.

Step 4: Conduct an investigation

If the Secretary decides to investigate, they will investigate whether there are one or more instances of disclosable conduct.

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 conducted in accordance with the principals of procedural fairness
- a person who is the subject of the investigation will have an opportunity to respond or provide information
- in the event that an interview is to be conducted it is conducted in a manner consistent with the PID Standard 2013; and
- a decision whether evidence is sufficient to prove a fact will be determined on the balance of probabilities, as per the PID Standard 2013.

Aside from compliance with these principles, the Secretary 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 Secretary 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 and Corruption Control Strategy
- Code of Conduct Guidelines

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- Procedures for determining breaches of the APS Code of Conduct and imposition of sanctions; 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 Secretary 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. For example, the Secretary may refer the matter to the Integrity Branch for further investigation without breaching the confidentiality provisions of the PID Act.

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 Secretary may, for the purposes of the investigation, obtain information from such persons and make such inquiries as they see 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 Secretary under the PID Act to conduct the investigation; and
- the protections provided to witnesses under section 12 of the PID Act.

The Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary 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.

See above for more information on mandatory referral of serious and systemic corruption issues to the NACC.

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Step 5: Prepare investigation report

Once the Secretary has completed the investigation, they will prepare a report of the investigation.

The Secretary must complete the investigation report within 90 days after the disclosure was allocated to the Secretary, unless this period is extended by the Ombudsman. If the period is extended, the Secretary 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 (noting that an investigation is ordinarily required to be completed within 90 days after the relevant disclosure was allocated to the agency)
- the Secretary's findings (if any)
- any regulations, rules, administrative requirements or similar matters to which the disclosable conduct relates
- explain the steps taken to gather evidence
- set out a summary of the evidence, as well as any findings and recommendations made based on that evidence
- the action (if any) that has been, is being or is recommended to be taken (including under other departmental policies or procedures). For example, the report might include a recommendation that an investigation be conducted under procedures established under the Commonwealth Fraud Control Guidelines or the *Public Service Act 1999*; and
- to the extent relevant, 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 Secretary will provide the discloser with a copy of the report within a reasonable time after preparing the report. However, the Secretary 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.

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These procedures for dealing with public interest disclosures have been issued by me in accordance with the *Public Interest Disclosure Act 2013* (as amended in 2023). The procedures replace the Department's previous Public Interest Disclosure Procedures, released in accordance with the Public Interest Disclosure Act 2013.

PID PROCEDURE Issued By:



MEGHAN QUINN

SECRETARY

Department of Industry, Science, and Resources

13 December 2023

Attachment A — Extracts from the Commonwealth Ombudsman's *Agency Guide to the Public Interest Disclosure Act 2013*

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)).

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; and
- 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; and
- is prescribed by the PID rules (s 29(1)).

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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; and
- 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.

Personal work-related conduct (for example, bullying or harassment) is not generally disclosable conduct. However, personal work-related conduct may be treated as disclosable conduct where:

- the conduct would constitute taking a reprisal against another person, or would be an offence under section 19 (reprisals in relation to disclosures—offences); or
- the conduct: (i) is of such a significant nature that it would undermine public confidence in an agency (or agencies); or (ii) has other significant implications for an agency (or agencies).

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).

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.

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 their identity where the disclosure is made anonymously.

In making a disclosure, the disclosure should:

- be clear and accurate in the disclosure
- provide any relevant supporting material—do not report false or misleading information
- be discreet about your PID and maintain confidentiality throughout the PID process
- provide reasonable help as required during the investigation
- seek advice about the process and your rights and responsibilities
- alert the authorised officer or investigation officer to any problems that you may be facing. This includes possible reprisal action in relation to your disclosure
- seek appropriate support if you need it.

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 these procedures; and
- able to seek assistance from the Ombudsman in relation to the operation of the PID Act.

Public Interest Disclosure Procedures

Responsibilities

A discloser must:

- 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 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 the IGIS's functions under the PID Act; and
- report to the Secretary any detriment the discloser believes they have 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 these 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 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 the IGIS's functions under the PID Act; and
- 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.