



Australian Government
Department of Employment
and Workplace Relations

Procedures for Dealing with Public Interest Disclosures

Contents

1. Purpose	3
2. Date of effect	3
3. Introduction	3
The department encourages the making of reports of disclosable conduct	3
What is disclosable conduct?	4
4. The disclosure process	6
Making a disclosure under the PID Act	6
5. Procedures for supervisors and managers	7
6. Procedures for Authorised Officers	8
Authorised Officers must advise disclosers and potential disclosers about the PID Act	8
Authorised Officer must protect public officials against reprisal actions	8
Disclosures involving corruption issues	8
Authorised Officer must decide whether or not to allocate a disclosure	9
Declining to allocate the disclosure	10
Where Authorised Officers allocates an internal disclosure	10
7. Anonymous disclosures	11
8. The Principal Officer's duty to investigate	12
Decision not to investigate	13
Decision to investigate	14
Mandatory referrals	14
9. Procedures for investigators	15
Interviewing witnesses	15
Procedural fairness	16
Time limits	16
10. Reports of investigations	17
11. Confidentiality	17
12. Record Keeping	18
13. Monitoring and evaluation	18
14. Protections available to the discloser and witnesses	18
15. Assessing the risk of reprisal	19
16. Further information	20
17. Document details	21

1. Purpose

- 1.1 These procedures are for the purpose of dealing with public interest disclosures made under s59(3) of the Public Interest Disclosure Act 2013 ('the PID Act'). The PID Act creates a public interest disclosure scheme that promotes internal reporting of suspected wrongdoing in public sector agencies. These procedures will assist department employees and other people to understand their obligations under the PID Act.
- 1.2 There are five types of public interest disclosure which are:
 - a) an internal disclosure
 - b) an external disclosure
 - c) an emergency disclosure
 - d) a legal practitioner disclosure, and
 - e) a NACC disclosure.
- 1.3 These procedures provide detailed information about the processes for dealing with internal disclosures. Further information about the other types of disclosures is available on the [Commonwealth Ombudsman's website](#).

2. Date of effect

- 2.1 This policy is effective from 1 November 2023.

3. Introduction

The department encourages the making of reports of disclosable conduct

- 3.1 The department encourages and supports the reporting of wrongdoing by public officials in accordance with the PID Act.
- 3.2 The department will take active steps to support and to protect persons who make disclosures under the PID Act. Some of these supports include a dedicated public interest disclosure team, active management of reprisal risk in accordance with these procedures and welfare support through the department's employee assistance provider.
- 3.3 The department recognises that it is important to have an effective system for reporting and investigating disclosable conduct to promote the integrity and accountability of the department and the Commonwealth public sector. Some of the additional potential benefits of such a system include reducing work health and safety risks to our workers, avoiding waste of public money and ensuring our programs and processes are managed efficiently. Another potential benefit is increasing the confidence of our workers in the way the department is managed.

What is disclosable conduct?

3.4 The full definition of disclosable conduct is set out in section 29 of the PID Act. That definition applies for the purposes of these procedures.

3.5 In summary terms, disclosable conduct is conduct by an Agency or by a public official that:

- a. contravenes a law of the Commonwealth, a State or a Territory
- b. occurs in a foreign country and contravenes a law in force in that country that applies to the agency or public official and that corresponds to a law in force in the Australian Capital Territory
- c. perverts, or attempts to pervert, the course of justice or involves corruption of any other kind
- d. constitutes maladministration, including conduct that is:
 - I. based on improper motives
 - II. unreasonable, unjust or oppressive, or
 - III. negligent
- e. is an abuse of public trust
- f. is fabrication, falsification, or deception in relation to scientific research, or misconduct in relation to scientific work
- g. results in the wastage of public money or public property or of the money or property of an authority covered by the PID Act
- h. unreasonably results in a danger to the health and safety of a person or unreasonably results in or increases the risk of a danger to the health and safety of a person
- i. results in a danger to the environment or results in or increases the risk of a danger to the environment
- j. is prescribed by the PID Rules, or
- k. is engaged in by a public official that:
 - I. involves abuse of the public official's position, or
 - II. could, if proved, give reasonable grounds for disciplinary action resulting in termination of the public official's engagement or appointment.

3.6 It does not matter whether disclosable conduct occurred before or after 15 January 2014 (being the date of commencement of the PID Act). However, if the disclosable conduct has already been addressed via another process, the principal officer or their delegate may determine that an investigation under these procedures is not required.

- 3.7 It does not matter whether the public official who carried out the alleged conduct has ceased to be a public official since the time the conduct is alleged to have occurred, but it is necessary that they carried out the conduct in connection with their position as a public official.
- 3.8 Disclosable conduct does not include:
- a. disagreements with government policy or proposed policy, expenditure or proposed expenditure and/or action or proposed action by a minister, the Speaker of the House of Representatives or the President of the Senate
 - b. judicial conduct (unless of an administrative nature and unrelated to matters before the court or tribunal)
 - c. conduct of members of Parliament or persons employed under the *Members of Parliament (Staff) Act 1984*, or
 - d. conduct of an intelligence agency (or public official of) if engaged in the proper performance of its functions or exercise of its powers.
 - e. Personal work-related conduct unless:
 - that conduct constitutes taking reprisal action against another person
 - is of such a significant nature that it would undermine public confidence in the agency, or
 - has other significant implications for the agency

Personal work-related conduct means conduct (by act or omission) engaged in by a public official (the **first official**) in relation to another public official (the **second official**) that:

- (a) occurs in relation to, or in the course of, either or both of the following:
 - (i) the second official's engagement or appointment as a public official
 - (ii) the second official's employment, or exercise of functions and powers, as a public official, and
- (b) has, or would tend to have, personal implications for the second official.

Examples: The following are examples of personal work-related conduct:

- (a) conduct relating to an interpersonal conflict between the first official and the second official (including, but not limited to, bullying or harassment)
- (b) conduct relating to the transfer or promotion of the second official
- (c) conduct relating to the terms and conditions of engagement or appointment of the second official
- (d) disciplinary action taken in relation to the second official
- (e) the suspension or termination of the second official's employment or appointment as a public official
- (f) conduct in relation to which the second official is, or would have been, entitled to review under section 33 of the *Public Service Act 1999* or under any comparable review process that forms, or formed, part of the second official's terms or conditions of engagement or appointment.

4. The disclosure process

Making a disclosure under the PID Act

- 4.1 All public officials in the department and former public officials are entitled to make an internal disclosure under the PID Act. Public officials include employees and all contracted service providers and their employees who provide, or who provided, services to the department under a contract, and others defined in s 29 of the PID Act.
- 4.2 A public interest disclosure may be made anonymously or openly.
- 4.3 A public interest disclosure may be made orally or in writing.
- 4.4 Where a public official makes a public interest disclosure, they do not have to state or intend that they are doing so under the PID Act. However, a disclosure is not a public interest disclosure if it is made in the course of performing the discloser's ordinary functions as a public official.
- 4.5 Where a public official is considering making a disclosure, they can contact one of the department's Authorised Officers to get information about making a public interest disclosure under the PID Act.
- 4.6 Public officials in the department may make a disclosure of disclosable conduct to their supervisor or their manager, or to an Authorised Officer, or in certain circumstances, to the Ombudsman.
- 4.7 Names and contact details of the department's Authorised Officers are available on the department's [intranet](#) or by emailing PID@dewr.gov.au.
- 4.8 Where possible, a public official in the department is encouraged to make their public interest disclosure to an Authorised Officer rather than their supervisor or manager. This is because Authorised Officers in the department have been best trained in receiving public interest disclosures and they can provide information about how to make a public interest disclosure and about the protections given to disclosers under the PID Act. A supervisor or manager who receives a disclosure is required to give the disclosure to an Authorised Officer.
- 4.9 The information contained in a disclosure should be clear and factual, and should, as far as possible, avoid speculation, personal attacks and emotive language. It should contain supporting evidence where that is available to the discloser and should, where possible, identify any witnesses to the disclosable conduct.
- 4.10 A potential discloser should not investigate a matter themselves before making a disclosure.
- 4.11 A person who knowingly makes a false or misleading disclosure will not have any protections under the PID Act.
- 4.12 A person who is considering making a disclosure should be aware that making a disclosure does not entitle them to protection from the consequences of their own wrongdoing.
- 4.13 Once a public interest disclosure has been made, it cannot be withdrawn. But a discloser may state that they do not wish the disclosure to be investigated and they may refuse to consent to their name and contact details being provided to the principal officer and delegate.

- 4.14 A person who has made a disclosure under the PID Act should not discuss the details of their disclosure with anyone who does not have a need to know about it. Discussions with persons which are not for the purpose of the PID Act will not be protected by the PID Act.
- 4.15 A supervisor or manager or Authorised Officer who receives a disclosure of disclosable conduct from a public official should deal with the disclosure in accordance with the PID Act, with the PID Standard and these procedures.

5. Procedures for supervisors and managers

- 5.1 Where a public official in the department discloses information to their supervisor or manager and that supervisor or manager has reasonable grounds to believe that the information concerns, or could concern, disclosable conduct, the supervisor or manager must give the information to an Authorised Officer in the department as soon as practicable.
- 5.2 The supervisor must inform the discloser that:
- a) the disclosure could be treated as an internal disclosure for the purposes of the PID Act; and
 - b) these procedures apply, including that the disclosure:
 - (i) must be given to an authorised officer; and
 - (ii) may be allocated to our agency or another agency; and
 - (iii) may be investigated by the principal officer of the department or the allocated agency (or their delegate); and
 - c) the circumstances (if any) in which a public interest disclosure must be referred to the NACC; and
 - d) civil and criminal protections in the PID Act provide protections to disclosers, and witnesses, from reprisals.
- 5.3 Where such a disclosure is made to a supervisor or manager, that person must make a written record of the fact of the disclosure, and if the disclosure is not in writing, they must make a written record of the substance of the disclosure and of the time and date of the disclosure. Where possible, the record should be verified by the discloser. The supervisor should obtain the discloser's consent to notify the Authorised Officer of their identity. The supervisor should provide the disclosure to the Authorised Officer stating that the discloser wished to remain anonymous, if consent is refused.
- 5.4 At the time a supervisor or manager gives information to an Authorised Officer under paragraph 5.1, they should also give the Authorised Officer their written assessment of any risks that reprisal action might be taken against the person who disclosed the information to the supervisor or manager. See section 13 of these procedures for more information about assessing risk.
- 5.5 Where a supervisor or manager has given information to an Authorised Officer under paragraph 5.1, and where the supervisor or manager is able to contact the discloser, they must inform the discloser that they have given the information to an Authorised Officer in the department and advise the discloser of the name and contact details of that Authorised Officer.

6. Procedures for Authorised Officers

Authorised Officers must advise disclosers and potential disclosers about the PID Act

6.1 Where:

- a. a person discloses, or is proposing to disclose, information to an Authorised Officer and
- b. the Authorised Officer has reasonable grounds to believe that:
 - a. the information concerns, or could concern, disclosable conduct and
 - b. the individual may be unaware of the consequences of making the disclosure
- c. the Authorised Officer is aware of the contact details of the person

the Authorised Officer must:

- d. inform the person that the disclosure could be treated as an internal disclosure for the PID Act
- e. explain to the person what the PID Act requires for a disclosure to be an internal disclosure
- f. advise the individual about the circumstances (if any) in which a public interest disclosure must be referred to the NACC
- g. explain to the person the protections provided by the PID Act to persons who make disclosures under the Act and
- h. advise the person of any orders or directions that may affect disclosure of the information.

Authorised Officer must protect public officials against reprisal actions

6.2 An Authorised Officer must assess the risk of reprisal against the discloser or any other vulnerable witness when information is received which is, or could be, a disclosure. The Authorised Officer may take into account information obtained from the discloser, a witness or the supervisor when conducting the assessment.

6.3 The Authorised Officer should follow the process set out at Part 15.

Disclosures involving corruption issues

6.4 If the disclosure involves conduct by a staff member in the agency that the Authorised Officer suspects could be serious or systemic corruption, the Authorised Officer must refer it as soon as reasonably practicable to the National Anti-Corruption Commission (**NACC**) (or, in the case of an intelligence agency, the IGIS or the NACC).

- 6.5 The Authorised Officer must notify the discloser as soon as reasonably practicable if they refer the disclosure to the NACC. The Authorised Officer must continue to deal with the disclosure including by allocating it unless the NACC issues a 'stop action' direction preventing the allocation of the disclosure.
- 6.6 The Authorised Officer must do the following if the NACC issues a 'stop action' direction:
- a) keep a record of the direction including when the direction was made and when the direction no longer applies
 - b) notify the Ombudsman (or the IGIS if applicable) of the direction and the information that was disclosed, the discloser's name (if known and if the discloser consents) and the nature of the direction, and
 - c) notify the discloser of the direction, if reasonably practicable. A written record of whether the notice was given to the discloser (or if not, why not), including the day and time, the means and the matters included in the notice.
- 6.7 Further information about the NACC and corrupt conduct is available in our [policy/webpage]. 'Staff member' and 'corrupt conduct' have particular meanings as set out in the [DEWR Corruption Control Policy](#).

Authorised Officer must decide whether or not to allocate a disclosure

- 6.8 Where a disclosure is made orally to an Authorised Officer, the Authorised Officer must make a written record of the fact of the disclosure which should include the substance of the disclosure and of the time and date of the disclosure. Where possible, the record should be verified by the discloser.
- 6.9 Where a disclosure has been given to or made to an Authorised Officer, the Authorised Officer must use their best endeavours to decide on the allocation of the disclosure within 14 days after the disclosure is given to or made to the Authorised Officer.
- 6.10 Where an Authorised Officer receives a disclosure, the Authorised Officer may obtain information and may make such inquiries as they think fit, for the purposes of deciding the allocation of the disclosure, including for the purposes of deciding whether the disclosure is an internal disclosure or not.
- 6.11 Where the Authorised Officer is aware of the contact details of the discloser, they should, as soon as practicable after receiving the disclosure and before allocating the disclosure, ask the discloser whether the discloser:
- a. consents to the Authorised Officer giving the discloser's name and contact details to the principal officer and to the principal officer's delegates, and
 - b. wishes the disclosure to be investigated.
- 6.12 The Authorised Officer should make a written record of the discloser's responses (if any) to the questions referred to in paragraph 6.8.
- 6.13 Where a discloser does not respond within seven days to the question referred to:

- a. in paragraph 6.11 a – the discloser is taken not to have consented to the disclosure of their name and contact details to the principal officer and their delegates, and
- b. in paragraph 6.11 b – the discloser is taken to wish the disclosure to be investigated.

Declining to allocate the disclosure

6.14 An Authorised Officer who receives a disclosure must decline to allocate the disclosure if:

- a) they are satisfied, on reasonable grounds, that 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. It might be appropriate to decline to allocate the disclosure under s 43(4A) because on its face, the allegations are better dealt with under another law such as an investigation under the APS Code of Conduct. Allocating the disclosure for investigation even though it could be investigated under another law does not prevent the Principal Officer declining to investigate the disclosure later in the process.

Note: The bases on which an Authorised Officer could be satisfied of this include but are not limited to: that the disclosure has not been made by a person who is, or was, a public official; that the disclosure was not made to an authorised internal recipient or supervisor; that the disclosure is not about instances of disclosable conduct; that the disclosure was made in the course of performing the discloser's ordinary functions as a public official; that the person who is alleged to have carried out the disclosable conduct was not a public official at the time they are alleged to have carried out that conduct; and that the disclosure is not otherwise a public interest disclosure within the meaning of the PID Act.

6.15 Where an Authorised Officer decides that a disclosure that has been made to them is not to be allocated, they must notify the Ombudsman and the discloser (if their contact details are known) that:

- a) the disclosure is not to be allocated and the reasons why, and
- b) any actions that they have taken to refer the conduct for investigation under another law or power (such as referring the matter to be dealt with under the *Public Service Act 1999* as a breach of the APS Code of Conduct), or
- c) any courses of action that might be available to the discloser under another law or power by sending to them a completed Form 1.

6.16 A record must be kept of whether the notice was given to the discloser (and if not, why not), the date and time of the notice, the means by which the notice was given and the matters in the notice.

Where Authorised Officers allocates an internal disclosure

6.17 The Authorised Officer may allocate (or re-allocate) the disclosure to:

- a) a principal officer of our agency and / or

- b) a principal officer of another agency if the conduct relates to that agency, and with that agency's consent
 - c) a principal officer of another agency within the same portfolio as our own agency if the authorised officer considers that the agency would be better able to handle the disclosure, and with that agency's consent.
- 6.18 Where an Authorised Officer in the department allocates a disclosure to an agency (including to the department) they should complete Form 2 and send it to the Secretary or to the delegate nominated by the Secretary.
- 6.19 The Authorised Officer must notify the discloser, the principal officer of each agency the disclosure was allocated to and the Ombudsman, of the allocation, the reasons for the allocation, and the consent obtained from receiving agencies (if any).
- 6.20 The Authorised Officer should complete Form 2 to notify the relevant contact officer in the Ombudsman's Office and the receiving agency.
- 6.21 The Authorised Officer should inform the discloser of the allocation using completed Form 2.
- 6.22 A record must be kept of whether the notice was given to the discloser (and if not, why not), the date and time of the notice, the means by which the notice was given and the matters in the notice.
- 6.23 Where an Authorised Officer in the department allocates a disclosure, they should conduct a risk assessment based on a checklist of risk factors, and having regard to any assessment of risk provided under these procedures by the discloser's supervisor or manager. For more information on assessing risk, see section 15.
- 6.24 In deciding the allocation, the authorised officer:
- a. must have regard to the principle that an agency should not handle the public interest disclosure unless some or all of the disclosable conduct with which the information may be concerned (suspected disclosable conduct) relates to the agency
 - b. should have regard to any other matters (if any) the authorised officer considers relevant, and
 - c. may obtain further information for the purpose of allocating the public interest disclosure, but should not investigate the disclosure.

7. Anonymous disclosures

- 7.1 Public officials may make disclosures in an anonymous way if they wish to do so.
- 7.2 A disclosure is anonymous if the identity of the discloser is not revealed and if no contact details for the discloser are provided. It is also anonymous if the discloser does not disclose their name but does provide anonymous contact details.
- 7.3 Where a supervisor or manager receives a disclosure of one of these kinds, they must refer it to an Authorised Officer as soon as is reasonably practicable.
- 7.4 Where an Authorised Officer receives a disclosure of one of these kinds they must consider whether to exercise the power in section 70 of the PID Act to determine on their own initiative

that a person who has disclosed information to them is a public official in relation to the making of the disclosure. However, if the Authorised Officer cannot contact the discloser, no determination can be made because the Authorised Officer must be able to give written notice of the determination to the individual (see section 70(1)).

- 7.5 It is anticipated that an Authorised Officer should make this decision having regard to whether it is in the public interest, in the department's interest and in the discloser's interest to have the disclosure dealt with as a disclosure under the PID Act.
- 7.6 Where the discloser requests the Authorised Officer to make this determination, the Authorised Officer must make a decision on this request and must inform the discloser accordingly, and if the Authorised Officer's decision is to decline the request to make a determination under section 70, they must also give the discloser reasons for their decision.
- 7.7 Where an Authorised Officer makes a determination under section 70 that the PID Act has effect as if the individual had been a public official, the Authorised Officer should seek assistance from the Legal area on the drafting of the written notice.
- 7.8 The written notice must be given to the individual. A copy of the determination notice should also be given to the Secretary or their nominated delegate at the same time as Form 2.

8. The Principal Officer's duty to investigate

- 8.1 Where an Authorised Officer allocates an internal disclosure to the department and the Secretary or nominated delegate has been given the contact details of the discloser, the Secretary or delegate must if it is reasonably practicable to do so, within 14 days after the disclosure was allocated to the department, inform the discloser in writing using Form 3A that the Secretary or delegate may decide:
 - a. not to investigate the disclosure
 - b. not to investigate the disclosure further, or
 - c. decide to investigate the disclosure under another law or power.and the grounds on which that decision may be taken.
- 8.2 The Secretary or delegate must, as soon as practicable after receiving an allocation of a disclosure from an Authorised Officer (whether from within or outside the department) consider whether to exercise the discretion under section 48 of the PID Act not to investigate the disclosure under the PID Act.
- 8.3 In broad terms, the Secretary or delegate may decide not to investigate (or may decide to discontinue an investigation already begun) if:
 - a. the discloser is not a current or former public official (and a determination has not been made under section 70 of the PID Act)
 - b. the information does not to any extent concern serious disclosable conduct
 - c. the disclosure is frivolous or vexatious

- d. the information is the same, or substantially the same, as information previously disclosed under the PID Act, and
 - I. a decision was previously not to investigate the earlier disclosure, or not to investigate the earlier disclosure further or
 - II. the earlier disclosure has been, or is being, investigated as a disclosure investigation.
- e. the disclosure is substantially the same as a disclosure that has already been investigated, or is currently being investigated, under another law or power, and
 - I. it would be inappropriate to conduct another investigation at the same time, or
 - II. the principal officer is reasonably satisfied that there are no matters that warrant further investigation.
- f. the principal officer is satisfied, on reasonable grounds, that the conduct disclosed would be more appropriately investigated under another law or power
- g. the principal officer has been informed by the discloser or an Authorised Officer that the discloser does not wish the disclosure to be pursued and the principal officer is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation, or
- h. it is impracticable to investigate the disclosure because:
 - I. the discloser has not revealed their name and contact details
 - II. the discloser has refused or has failed or is unable to give the investigator the information they requested, or
 - III. of the age of the information.

8.4 Guidance on factors that might go towards the exercise of the power in section 48 is provided in the Ombudsman's webpage '[Information for Agencies](#)'.

Decision not to investigate

- 8.5 Where the Secretary or delegate decides under section 48 of the PID Act not to investigate a disclosure, the Secretary or delegate must, as soon as reasonably practicable, inform the Ombudsman of that decision, and of the reasons for that decision, by completing Form 6 and sending it to the relevant contact in the Ombudsman's Office.
- 8.6 Where the Secretary or delegate decides under section 48 of the PID Act not to investigate a disclosure, and where they have been given the name and contact details of the discloser, the Secretary or delegate must, as soon as reasonably practicable, inform the discloser of that decision, of the reasons for that decision and of other courses of action that may be available to the discloser under other laws of the Commonwealth, by completing Form 4 and sending it to the discloser.

- 8.7 If the principal officer decides not to investigate the disclosure because it would be more appropriately investigated under another law or power, they must as soon as reasonably practicable, take steps to refer the conduct disclosed, or facilitate its referral, for investigation under that law or power.

Decision to investigate

- 8.8 Where the Secretary or delegate considers they must investigate the disclosure, and where the Secretary or delegate has been given the name and contact details of the discloser, the Secretary or delegate must inform the discloser that they are required to investigate the disclosure. They must inform the discloser of the estimated length of the investigation by completing Form 5 and sending it to the discloser.
- 8.9 If the Secretary or delegate decides to investigate the disclosure and starts to investigate the disclosure but then decides not to investigate the disclosure further under section 48, the Secretary or delegate must inform:
- a. the discloser of that decision, or the reasons for the decision and of other courses of action that might be available to the discloser under other laws of the Commonwealth by completing Form 4A and sending it to the discloser, and
 - b. the Ombudsman of that decision and the reasons by completing Form 6A and sending it to the relevant contact in the Ombudsman's office.

Mandatory referrals

Referral of information to police and others

- 8.10 During the course of the investigation, if the Principal Officer 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 Principal Officer may disclose the information to a member of an Australian police force.
- 8.11 If the information relates to an offence that is punishable for a period of at least two years, the Principal Officer must disclose the information to a member of an Australian police force unless the Principal Officer is satisfied that the investigator has the capacity, and the appropriate skills and resources needed to investigate the offence and meet the requirements of the Commonwealth Director of Public Prosecutions in gathering evidence and preparing briefs of evidence, or the investigator suspects on reasonable grounds that the conduct has been referred to the NACC.

Referral of information to the National Anti-Corruption Commissioner

- 8.12 During the course of the investigation, if the Principal Officer becomes aware of a corruption issue that concerns the conduct of a person who works, or has worked at the Agency and suspects that conduct could be systemic or serious, they must refer the disclosure to the NACC. The Principal Officer is not required to refer a relevant matter, if they are satisfied an exception under the Act applies.
- 8.13 If the referral is made, the Discloser must be notified as soon as reasonably practicable. The Principal Officer must continue investigating the disclosure unless the National Anti-Corruption

Commission issues a stop action direction. The Principal Officer must inform the Discloser as soon as reasonably practicable if a stop action direction has been issued.

9. Procedures for investigators

- 9.1 Where the Secretary or delegate has decided under paragraph 8.8 to commence an investigation into an internal disclosure, they may conduct the investigation as they think fit.
- 9.2 The Secretary or delegate must be independent and unbiased in the matter. They must ensure that they do not have an actual or perceived conflict of interest.
- 9.3 The Secretary or delegate may, for the purposes of the investigation, obtain information from such persons, and make such inquiries, as they think fit.
- 9.4 When conducting an investigation, the Secretary or delegate must ensure that a decision as to whether evidence is sufficient to prove a fact is made on the balance of probabilities.
- 9.5 Despite paragraphs 7.1 and 7.3, the Secretary or delegate, in conducting an investigation under these procedures, must comply with:
 - a. the Public Interest Disclosure Standard 2013
 - b. the Ombudsman's Guidance, and
 - c. to the extent they are relevant to the investigation:
 - I. the Commonwealth Fraud Control Framework
 - II. these procedures, and
 - III. the department's Procedures for Determining Breaches of the APS Code of Conduct and Deciding Sanctions established under section 15(3) of the Public Service Act 1999.

Interviewing witnesses

- 9.6 Subject to any restrictions imposed by a law of the Commonwealth other than the PID Act, the investigator must ensure that, if a person is interviewed as part of the investigation of an internal disclosure, that person is informed of:
 - a. the identity and function of each person conducting the interview
 - b. the process of conducting an investigation
 - c. the authority of the investigator under the PID Act to conduct an investigation
 - d. the protections provided to the person by Part 2 of the PID Act, and
 - e. the person's duty:
 - I. if they are a public official – to use their best endeavours to assist the investigator in the conduct of an investigation under the PID Act (subject to the public official's privilege against incriminating themselves or exposing themselves to a penalty)

- II. not to take or threaten to take reprisal action against the discloser or any other person, and
- III. subject to the PID Act, not to disclose the identity of the person who made the disclosure.

9.7 Where the investigator conducts an interview as part of an investigation, at the end of the interview, the interviewee must be given an opportunity to make a final statement or comment or express a position. The investigator must include any final statement, comment or position in the record of the interview.

9.8 Where the investigator is aware of the discloser's identity and considers that it is necessary to reveal the discloser's identity to a witness, the investigator must consult with the discloser, where practicable, before proceeding.

Procedural fairness

9.9 Procedural fairness does not require that a person against whom allegations are made must be advised as soon as the disclosure is received or as soon as an investigation is commenced.

9.10 Procedural fairness may require that the discloser's identity be revealed to the person who is the subject of the disclosure.

9.11 Where the investigator, in preparing the report of their investigation, proposes to:

- a. make a finding of fact, or
- b. express an opinion that is adverse to the discloser, to a public official who is the subject of the disclosure or to another person:

the investigator or delegate should give the person who is the subject of that proposed finding or opinion a copy of the evidence that is relevant to that proposed finding or opinion and must give the person a reasonable opportunity to comment on it.

Note: Paragraph 9.11 will not apply where the investigation does not make substantive findings or express adverse opinions but instead simply recommends or decides that further investigation or other action should or should not be taken or will or will not be taken.

9.12 The investigator must ensure that a finding of fact in a report of an investigation under the PID Act is based on logically-probative evidence.

9.13 The investigator must ensure that the evidence that is relied on in an investigation is relevant.

Note: In broad terms, evidence is relevant to an investigation if it is of consequence to the matter under investigation and makes the existence of a fact more probable or less probable than it would be without the evidence.

Time limits

9.14 The investigator has 90 days from the date the disclosure was allocated in which to complete the investigation.

- 9.15 It is possible to seek one or more extensions of time from the Ombudsman.
- 9.16 The Ombudsman has indicated that an application for extension should be made as soon as it becomes apparent that the investigation will not be completed within 90 days, and should include reasons why the investigation cannot be completed within the time limit, the views of the discloser (if they can be obtained) and an outline of action taken to progress the investigation.
- 9.17 An investigation that is not completed within time does not become invalid.

10. Reports of investigations

- 10.1 In preparing a report of an investigation under the PID Act the investigator should comply with the PID Act, the PID Standard, the Ombudsman's Guidance and these procedures.
- 10.2 A report of an investigation under the PID Act must set out:
- a. the matters considered in the course of the investigation
 - b. the duration of the investigation
 - c. the investigator's findings (if any)
 - d. the action (if any) that has been, is being or is recommended to be taken, and
 - e. any claims made about, and any evidence of, detrimental action taken against the discloser and any other public official or witness, and the department's response to those claims and that evidence
- 10.3 The investigator must, within a reasonable time of preparing a report of an investigation under the PID Act, give a copy of the report to the discloser and the Ombudsman.
- 10.4 Despite paragraph 10.3, the investigator 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. the inclusion of which would result in the copy being a document:
 - I. that is exempt for the purposes of Part IV of the Freedom of Information Act 1982
 - II. having, or being required to have, a national security or other protective security classification, or
 - III. containing intelligence information.
- 10.5 Despite paragraph 10.3, the investigator must delete from the copy of a report given to the discloser any material which would result in the report contravening a designated publication restriction.

11. Confidentiality

- 11.1 The investigation of the disclosure should be conducted in as confidential a manner as is possible. In particular, the identity of both the discloser and the person alleged to have engaged in the disclosable conduct should not be revealed except where this is reasonably necessary for the effective investigation of the disclosure (including because of the need to afford procedural fairness).
- 11.2 Any interviews conducted by an Authorised Officer or delegates (including investigators) should be conducted in private.
- 11.3 Any interviews with the discloser should be arranged so as to avoid the identification of the discloser by other staff of the agency.

12. Record Keeping

- 12.1 Where an Authorised Officer is required to keep a record under these procedures, the record may be kept in accordance with the department's Recordkeeping Policy and Recordkeeping Guidelines. Access to these records must be restricted to the Authorised Officers, delegates (including investigators) or other employees in the department who require access in order to perform some function under the PID Act or for the purposes of another law of the Commonwealth (for example, under the Work Health and Safety Act 2011 or the Public Service Act 1999).
- 12.2 Where a form is required to be sent under these procedures, a copy of the form should be kept.
- 12.3 All records made for the purposes of the PID Act in accordance with these procedures should be marked as prescribed in the department's Recordkeeping Policy and Recordkeeping Guidelines.
- 12.4 Any email messages sent by Authorised Officers or delegates that contain identifying information should clearly include 'to be read by named addressee only' in the subject line.
- 12.5 Where a person will cease being an Authorised Officer in the department (including because of resignation or movement to another agency), their PID records must be transferred to another Authorised Officer in the department.

13. Monitoring and evaluation

- 13.1 Each Authorised Officer must provide a report to the Secretary when requested.
- 13.2 The Secretary will send the Agency's report to the Ombudsman within the time requested by the Ombudsman or as otherwise agreed with the Ombudsman.
- 13.3 The department is committed to the continuous evaluation of the effectiveness of the policy, procedures and subsequent outcomes which will occur through a range of audit processes.

14. Protections available to the discloser and witnesses

Civil, criminal and administrative liability

- 14.1 An individual is not subject to any civil, criminal or administrative liability for making a public interest disclosure. However, the discloser's liability for their own conduct is not affected.

- 14.2 A witness is not subject to any civil, criminal or administrative liability because of assistance provided in relation to a public interest disclosure. However, the witness' liability for their own conduct is not affected.

Protections from reprisal action

- 14.3 It is an offence to take a reprisal, or to threaten to take a reprisal, against a person because of a public interest disclosure (including a proposed or a suspected public interest disclosure). This protection covers any person including the discloser, a person who may, could or proposes to make a disclosure, and a witness.
- 14.4 The Federal Court or Federal Circuit Court may make orders for civil remedies (including compensation, injunctions and reinstatement of employment) if a reprisal is taken against a person because of a public interest disclosure (including a proposed or a suspected public interest disclosure). A person taking a reprisal may also be prosecuted under the PID Act with criminal penalties of two years imprisonment or 120 penalty units.

What is a reprisal?

- 14.5 Reprisal occurs if someone causes, by an act or omission, any detriment to another person because they believe or suspect that person, or anyone else, has made, may have made, proposes to make, or could make a public interest disclosure.
- 14.6 A reprisal also includes direct or indirect threats to take a reprisal and could include termination of a person's employment, alteration of the employee's position to his or her disadvantage, discrimination between the employee and others, harassment or intimidation, harm or injury including psychological harm and damage to a person's property, financial position or reputation.

What is not a reprisal?

- 14.7 Administrative action that is reasonable to protect the discloser or a witness from detriment is not a reprisal. For example, where a person has made a disclosure in relation to practices in their immediate work area, it may be appropriate to transfer them to another work area to ensure they are not harassed or victimised, subject to a risk assessment which includes consideration of alternative options.
- 14.8 Similarly, other administrative actions such as engaging in performance management or behavioural management is not reprisal action so as long as the actions are not taken because a person makes, proposes to make or could make a disclosure.

Protection of the discloser's identity

- 14.9 It is an offence to disclose the identity of an individual who makes a public interest disclosure, unless the disclosure is for the purposes of the PID Act. There are other limited exceptions.
- 14.10 To ensure this protection is maintained, a discloser must not act in a way that is inconsistent with keeping their identity confidential.

15. Assessing the risk of reprisal

- 15.1 A risk assessment should be completed as soon as possible after the public interest disclosure is received, by the person who received the public interest disclosure. That might be the supervisor in the first instance.
- 15.2 Consultation should occur with the discloser and, if appropriate, their supervisor or manager to help to ascertain where threats of reprisal may lie.
- 15.3 The Ombudsman's webpage '[Information for Agencies](#)' provides information on how to carry out a risk assessment.
- 15.4 The first step is to identify risk factors, including, but not limited to:
 - a. past threats
 - b. the significance of the reported wrongdoing
 - c. the level of confidentiality with which the disclosure has been treated
 - d. the level of vulnerability of the discloser.
- 15.5 These factors will then need to be assessed, considering:
 - a. The likelihood of them occurring
 - b. The potential consequences if they do occur.
- 15.6 The department must attempt to control the risks, proactively, and continuously monitor and review the risks of reprisal. Disclosers and witnesses are encouraged to report risk factors or information to the Principal Officer or Authorised Officer responsible for the management of a particular disclosure.
- 15.7 The risk assessment will identify if there is low, medium or high risk of reprisal action being taken. The department may decide to implement risk mitigation strategies to address the particular risks identified during the assessment. Examples include temporarily changing the discloser's reporting line, conducting a higher frequency of risk assessments or making other administrative changes to how work is performed or allocated.
- 15.8 The Australian Public Service [Ethics Advisory Service](#) is available to all APS employees, including agency heads and SES staff, who wish to discuss and seek advice on ethical issues that occur in the workplace and make sound decisions around these issues.
- 15.9 For further information about this policy email integrity@dewr.gov.au

16. Further information

- 16.1 The PID Act is available in its entirety online: [The Public Interest Disclosure Act 2013](#)
- 16.2 The PID Standard is available here: [Public Interest Disclosure Standard 2013](#)
- 16.3 For more information relating to the PID Act, see the information on the PID Act on the [Ombudsman's website](#).
- 16.4 Other legislation and guides referenced in this policy:

Recordkeeping Policy and Recordkeeping Guidelines

[The Commonwealth Fraud Control Framework](#)

[The Freedom of Information Act 1982](#)

[The Ombudsman’s webpage ‘Information for Agencies’](#)

[The Public Service Act 1999](#)

[The Work Health and Safety Act 2011](#)

16.5 You may also contact the People Services Team for more information on the PID Act and these procedures through the [Integrity Inbox](#).

17. Document details

Policy Owner	Enterprise Risk, Assurance and Investigations Branch
Document Status	Final
Point of Contact	Director, Integrity
Approver	Jennifer Hewitt
Approval Authority	Assistant Secretary - Enterprise Risk, Assurance and Investigations Branch Legal and Assurance Division Department of Employment and Workplace Relations
Date of Approval	31 October 2023



With the exception of the Commonwealth Coat of Arms, the Department’s logo, any material protected by a trade mark and where otherwise noted all material presented in this document is provided under a [Creative Commons Attribution 3.0 Australia](http://creativecommons.org/licenses/by/3.0/au/) (http://creativecommons.org/licenses/by/3.0/au/) licence.

The details of the relevant licence conditions are available on the Creative Commons website (accessible using the links provided) as is the full legal code for the [CC BY 3.0 AU licence](http://creativecommons.org/licenses/by/3.0/au/legalcode) (http://creativecommons.org/licenses/by/3.0/au/legalcode).

The document must be attributed as the ‘Procedures for Dealing with Public Interest Disclosures’.