



Australian Government
Department of Education

Procedures for Dealing with Public Interest Disclosures

Department of Education





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

Contents

1. Purpose	5
2. Date of effect	5
3. Introduction	5
The department encourages the making of reports of disclosable conduct	5
What is disclosable conduct?	5
4. The disclosure process	7
Making a disclosure under the PID Act	7
Mandatory reporting and referral obligations for PID Officers	8
Corruption	8
Criminal offences	9
5. Procedures for supervisors and managers	9
6. Procedures for Authorised Officers	10
Authorised Officer must advise disclosers and potential disclosers about the PID Act	10
Authorised Officer must decide whether or not to allocate and/or refer a disclosure	10
Where Authorised Officer allocates an internal disclosure	12
7. Anonymous disclosures	13
Where a discloser provides no name and no contact details, or provides no name but anonymous contact details	13
8. Deciding whether or not to investigate	14
Decision not to investigate	15
Decision to investigate	15
Procedure for investigators	15
Interviewing witnesses	16
Procedural fairness	17
Time limits	17
10. Reports of investigations	18
11. Confidentiality	19
12. Record keeping	19
13. Monitoring and evaluation	20
14. Protection from reprisal and liability	20
15. Assessing the risk of reprisal	21
16. Support for disclosers and subjects of disclosures	22
17. Further Information	22
18. Document Information	23

Document review	23
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1. Purpose

- 1.1 These procedures are for the purpose of dealing with public interest disclosures made under 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.

2. Date of effect

- 2.1 This policy is effective from 24 August 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.
- 3.3 The department recognises that it is important to have an effective system for reporting and investigating disclosable conduct. Some of the potential benefits of such a system are reducing the work health and safety risks to our workers, saving money, and making our programs and processes more efficient. 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:
 - i. is based on improper motives

- II. is unreasonable, unjust, or oppressive, or
 - III. is 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, or
 - j) is engaged in by a public official that:
 - I. involved abuse of the public official's position, or
 - II. could, if proved, give reasonable grounds for disciplinary action resulting in the 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, however, if the disclosable conduct has already been addressed via another process, the Principal Officer (i.e. the Secretary) 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) personal work-related conduct, except where this constitutes reprisal action, would undermine public confidence in an agency, or would have significant implications for an agency
 - b) disagreements with government policy or proposed policy, expenditure, or proposed expenditure
 - c) disagreements with action or proposed action by a Minister, the Speaker of the House of Representatives, or the President of the Senate
 - d) judicial conduct (unless of an administrative nature and unrelated to matters before the court or tribunal)
 - e) conduct of members of Parliament, or
 - f) conduct of an intelligence agency (or public official of) if engaged in the proper performance of its functions or exercise of its powers.
- 3.9 Personal work-related conduct is an action or omission taken in relation to a public official's engagement or appointment and/or employment (i.e. a work-related action) that has, or would tend to have, personal implications for that public official (i.e. the action personally affects that person). It can include:
- a) interpersonal conflict, including bullying and harassment
 - b) decisions about a person's employment, engagement, transfer, or promotion – including decisions to suspend, terminate, or discipline a person, or the terms and conditions of a person's employment or engagement, or

- c) conduct in relation to which the public official has or had review rights under section 33 of the *Public Service Act 1999* or comparable review processes.

4. The disclosure process

Making a disclosure under the PID Act

- 4.1 All current and former employees of the department are entitled to make a disclosure under the PID Act.
- 4.2 All contracted service providers and their employees who provide, or who provided, services to the department under a contract with the department are entitled to make a disclosure under the PID Act.
- 4.3 All public officials and former public officials are entitled to make a disclosure under the PID Act.
- 4.4 A public interest disclosure may be made anonymously or openly.
- 4.5 A public interest disclosure may be made orally or in writing.
- 4.6 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, it should be reasonably clear from the nature of the disclosure that it is one to which the PID Act would apply.
- 4.7 Where a public official is considering making a disclosure, they should, in the first instance, contact one of the department's Authorised Officers to get information about making a public interest disclosure under the PID Act.
- 4.8 Employees 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 Commonwealth Ombudsman (the Ombudsman).
- 4.9 Employees or former employees or officers of contracted service providers may make a disclosure of disclosable conduct to an Authorised Officer or, in certain circumstances, to the Ombudsman. In limited circumstances, a public official may be able to make another type of disclosure, including an external, emergency, or legal disclosure; for more information see section 26 of the PID Act.
- 4.10 Names and contact details of the department's Authorised Officers are available on the department's intranet or by emailing pid@education.gov.au.
- 4.11 Where possible, an employee 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 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.
- 4.12 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.
- 4.13 A potential discloser should not investigate a matter themselves before making a disclosure.

- 4.14 A person who knowingly makes a false or misleading disclosure will not have any protections under the PID Act.
- 4.15 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.
- 4.16 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 or delegate.
- 4.17 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 these people will not be protected by the PID Act.
- 4.18 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 and in accordance with the Ombudsman's Standard and these procedures.

Mandatory reporting and referral obligations for PID Officers

Corruption

- 4.19 The *National Anti-Corruption Commission Act 2022* (NACC Act) includes mandatory referral obligations for departmental staff who are 'PID Officers'. This includes the Principal Officer, or their delegates, and Authorised Officers who perform or exercise functions or powers under the PID Act.
- 4.20 If, while exercising their powers or functions under the PID Act, a PID Officer becomes aware of a corruption issue that:
 - a) concerns the conduct of a person who is, or was, a staff member of the department while that person is, or was, a staff member, and
 - b) the PID Officer reasonably suspects could involve corrupt conduct that is serious or systemic,the PID Officer must refer the corruption issue to the National Anti-Corruption Commission (NACC) as soon as reasonably practicable after becoming aware of it.
- 4.21 However, a PID Officer is not required to refer a corruption issue to the NACC if they believe on reasonable grounds that the NACC Commissioner is already aware of the corruption issue, or the NACC Commissioner decides a referral is not required.
- 4.22 When considering whether information could involve corrupt conduct that is serious or systemic, PID Officers should have regard to advice published by the Attorney-General's Department and the NACC.
- 4.23 Where a disclosure raises a corruption issue and is referred to the NACC, the PID Officer must, as soon as reasonably practicable, notify the discloser that the matter has been referred to the NACC.
- 4.24 Unless otherwise directed by the NACC, PID Officers must continue to handle a disclosure that raises a corruption issue in accordance with these procedures and the PID Act.
- 4.25 If, while handling a disclosure that has been referred to the NACC, the department receives a stop action direction from the NACC, the PID Officer must comply with the direction.
- 4.26 The PID Officer must notify the Ombudsman of a stop action direction that prevents the department from allocating some or all of a disclosure, or investigating, or further

investigating, a disclosure. Notification should be provided by sending the completed Ombudsman form, *Form 6 – Notification of a stop action direction*.

- 4.27 If a PID Officer receives a notice, summons, or direction from the NACC in respect of a disclosure that raises a corruption issue referred to the NACC, the PID Officer, may seek legal advice.

Criminal offences

- 4.28 If the Principal Officer or delegate suspects on reasonable grounds that information disclosed as part of a disclosure, or obtained during their investigation of a disclosure, is evidence of an offence against a Commonwealth, State or Territory law, they may disclose that information to a member of an Australian police force responsible for the investigation of the offence.
- 4.29 Police notification is mandatory if the suspected offence is punishable by imprisonment for two years or more, unless the information relates to a corruption issue that has already been referred to the NACC.

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 is required to:
- a) inform the discloser that their disclosure could be treated as an internal disclosure
 - b) explain to the discloser the next steps in the public interest disclosure process, including the referral of the disclosure to an Authorised Officer, and its potential allocation and investigation under the PID Act
 - c) advise the discloser about the circumstances in which a disclosure must be referred to an agency, or other person or body, under another law of the Commonwealth, including referral to the NACC if the disclosure appears to involve serious or systemic corrupt conduct
 - d) explain to the discloser the civil and criminal protections the PID Act provides to disclosers, and people assisting with the handling of a disclosure, and
 - e) as soon as practicable after receiving the disclosure, give the information to an Authorised Officer in the department.
- 5.2 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.
- 5.3 At the time a supervisor or manager gives information to an Authorised Officer under clause 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 clause 15 of these procedures for more information about assessing risk.

- 5.4 Where a supervisor or manager has given information to an Authorised Officer under clause 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.
- 5.5 Routine discussions in an area where everyday functions involve investigation of wrongdoing do not constitute disclosures under the PID Act requiring referral to an Authorised Officer. In such instances, information disclosed will not be considered a public interest disclosure unless there is a clearly expressed intention for the information to be received as one.

6. Procedures for Authorised Officers

Authorised Officer 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, which the Authorised Officer has reasonable grounds to believe may be disclosable conduct
 - b) the Authorised Officer has reasonable grounds to believe that the person may be unaware of what the PID Act requires for the disclosure to be an internal disclosure, and
 - c) the Authorised Officer is aware of the contact details of the person,the Authorised Officer must:
 - a) inform the person that the disclosure could be treated as an internal disclosure for the purposes of the PID Act
 - b) explain to the person what the PID Act requires for a disclosure to be an internal disclosure
 - c) explain to the person the circumstances in which a disclosure must be referred to another agency, person or body under another law of the Commonwealth (i.e. referral to the NACC if the disclosure could involve serious or systemic conduct)
 - d) explain to the person the protections provided by the PID Act to persons who make disclosures under that Act, and
 - e) advise the person of any orders or directions that may affect disclosure of the information.

Authorised Officer must decide whether or not to allocate and/or refer a disclosure

- 6.2 Where a public official, or a person who has been a public official, makes a disclosure of disclosable conduct directly to an Authorised Officer, the Authorised Officer must make a written record of the fact of the disclosure and, if the disclosure is not in writing, they should

- 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.
- 6.3 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.
- 6.4 An Authorised Officer who receives a disclosure must decide whether they are satisfied, on reasonable grounds, that there is no reasonable basis on which the disclosure could be considered to be an internal disclosure. Note: The bases on which an Authorised Officer could be satisfied of this include:
- a) that the disclosure has not been made by a person who is, or was, a public official
 - b) that the disclosure was not made to an authorised internal recipient or supervisor
 - c) that the disclosure is not about disclosable conduct
 - d) 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
 - e) that the conduct would be more appropriately investigated under another law or power, or
 - f) that the disclosure is not otherwise a public interest disclosure within the meaning of the PID Act.
- 6.5 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.
- 6.6 Where an Authorised Officer decides that a disclosure that has been made to them will not be allocated, they must – where the discloser’s contact details are known to the Authorised Officer – advise the discloser in writing that the disclosure is not going to be allocated, by sending to them a completed form *AO.10 Notice to Discloser - Decision Not to Allocate PID to Agency* as soon as reasonably practicable. The Authorised Officer must also notify the Ombudsman of their decision not to allocate the disclosure including the reasons by sending the completed Ombudsman form, *Form 4 – Notification of a decision not to allocate*.
- 6.7 An Authorised Officer may decide that a disclosure that has been made to them would be more appropriately investigated under another law or power other than the PID Act. If this occurs, the Authorised Officer must:
- a) if the disclosure will not be allocated, notify the discloser and the Ombudsman as set out at clause 6.6 above, and
 - b) as soon as reasonably practicable, take reasonable steps to facilitate the referral, which may include:
 - i. seeking consent from the discloser to share their identifying information for the purpose of facilitating investigation under the other law or power and arranging the transfer of documents, and
 - ii. in cases where it may not be appropriate or possible to make a complaint under another law of power on behalf of the discloser, providing information or contact details for making the complaint under the other law or power.
- 6.8 The Authorised Officer must keep appropriate written records associated with their handling of the disclosure. On making an allocation decision, records must include information provided to the discloser as set out at clause 6.1. Records must also include the Authorised

Officer's allocation decision and the reasons, the agency's consent if an allocation was made to another agency, and the record of notification of the allocation decision to the discloser.

Where Authorised Officer allocates an internal disclosure

- 6.9 Where the Authorised Officer is aware of the contact details of the discloser, they should, using form *AO.3. Notice to Discloser - Acknowledgement of Receipt of a PID*, and *D.2. PID Discloser Confidentiality Acknowledgement and Consent* and *D.3. PID Discloser Reprisal Risk Self-Assessment* as soon as practicable after receiving the disclosure and before allocating the disclosure, ask the discloser:
- a) whether they consent 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) to provide information to support assessment of potential reprisal risks.
- 6.10 The Authorised Officer should make a written record of the discloser's responses (if any) to the questions referred to in clause 6.9 which may be achieved by using the department's relevant templates.
- 6.11 Where a discloser does not respond within seven days to the question referred to in clause 6.8, the discloser is taken not to have consented to the disclosure of their name and contact details to the principal officer and their delegates.
- 6.12 An Authorised Officer must obtain the consent of an Authorised Officer in another agency before the first Authorised Officer can allocate an internal disclosure to that agency.
- 6.13 Where an Authorised Officer in the department allocates a disclosure to an agency (including to the department) they should complete form *AO.6 Notice to Agency's PO - Decision to Allocate PID to Agency* and send it to the Principal Officer or to their delegate.
- 6.14 The Authorised Officer should notify the Ombudsman by sending the completed Ombudsman form, *Form 1 – Notification of allocation or reallocation*.
- 6.15 After allocating a disclosure to an agency (including the department), it remains open to the Authorised Officer to decide to reallocate the disclosure to one or more other agencies. The Authorised Officer should notify the Ombudsman of the reallocation decision by sending the completed Ombudsman form, *Form 1 – Notification of allocation or reallocation*.
- 6.16 Where the Authorised Officer is aware of the contact details of the discloser, the Authorised Officer must inform the discloser of the allocation using completed form *AO.9. Notice to Discloser - Decision to Allocate PID to Agency* as soon as reasonably practicable.
- 6.17 Where an Authorised Officer in the department allocates a disclosure, they must either conduct a reprisal risk assessment, or, keeping in mind confidentiality arrangements, they must pass on any relevant information obtained regarding reprisal risk to a reprisal officer. A 'reprisal officer' is an employee the Authorised Officer has agreed will be responsible for assisting with the reprisal risk assessment. The reprisal officer may also assist with actions to manage reprisal risks and support the discloser and affected parties. Reprisal risk must be assessed based on a checklist of risk factors, such as provided in form *AO.5. PID Risk Assessment* and have regard to any assessment of risk provided under these procedures by the discloser's supervisor or manager. For more information on assessing risk, see clause 15.
- 6.18 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.

7. Anonymous disclosures

- 7.1 All persons, including public officials, persons who have been public officials and others, may make disclosures in an anonymous way if they wish to do so.

Where a discloser provides no name and no contact details, or provides no name but anonymous contact details

- 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 decides to make 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 completed form *AO.9. Notice to Discloser - Decision to Allocate PID to Agency*, should also be given to the Principal Officer or delegate at the same time as form *AO.6 Notice to Agency's PO - Decision to Allocate PID to Agency*.

8. Deciding whether or not to investigate

- 8.1 Where an Authorised Officer allocates an internal disclosure to the Principal Officer or delegate and the Principal Officer or delegate has been given the contact details of the discloser, and it is reasonably practicable to do so, the Principal Officer or delegate must, within 14 days after the disclosure was allocated to the department, inform the discloser in writing that the Principal Officer or delegate may decide:
- a) not to investigate the disclosure, or
 - b) not to investigate the disclosure further
- and the Principal Officer or delegate must inform the discloser of the grounds on which that decision will be taken. In practice, this information can be given to the discloser at the same time as the notice of allocation.
- 8.2 The Principal Officer or delegate must, as soon as practicable after receiving an allocation of a disclosure from an Authorised Officer (whether from within or without the department) consider whether to exercise the discretion under section 48 of the PID Act not to investigate the disclosure under the PID Act and record their decision by completing form *PO.2 - Record of Decision to Investigate or Not to Investigate as a PID*.
- 8.3 In broad terms, the Principal Officer 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 disclosure is substantially the same as a disclosure that has been investigated under the PID Act (including where the information is the same or substantially the same as information previously disclosed under the PID Act and a decision was previously made not to investigate the earlier disclosure)
 - e) the disclosure is substantially the same as a disclosure that has already been investigated, or is currently being investigated, under another law of the Commonwealth, 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 conduct disclosed, or substantially the same conduct, has been investigated under another law or power, and the Principal Officer or delegate is satisfied that there are no further matters concerning the conduct that warrant investigation
 - g) the discloser has informed the Principal Officer or delegate that they do not wish the disclosure to be pursued and the Principal Officer or delegate 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 ['Agency Guide to the Public Interest Disclosure Act 2013'](#).

Decision not to investigate

- 8.5 Where the Principal Officer or delegate decides under section 48 of the PID Act not to investigate a disclosure under Division 2 of Part 3 of the PID Act, the Principal Officer or delegate must, as soon as reasonably practicable, inform the Ombudsman of that decision, and of the reasons for that decision, by sending the completed Ombudsman form, *Form 2 – Notification of decision not to investigate or not to investigate further*.
- 8.6 Where the Principal Officer 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 Principal Officer 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 *PO.4 - Notice to Discloser - Decision Not to Investigate as a PID* and sending it to the discloser.

Decision to investigate

- 8.7 Where the Principal Officer or delegate has considered exercising the discretion under section 48 of the PID Act and has decided that they are required to investigate the disclosure, and where the Principal Officer or delegate has been given the name and contact details of the discloser, the Principal Officer or delegate must inform the discloser that they are required to investigate the disclosure, and inform the discloser of the estimated length of the investigation by completing form *PO.3 - Notice to Discloser - Decision to Investigate as a PID* and sending it to the discloser.
- 8.8 If the Principal Officer 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 Principal Officer 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 *PO.4 - Notice to Discloser - Decision Not to Investigate as a PID* and sending it to the discloser, and
 - b) the Ombudsman of that decision and the reasons by sending the completed Ombudsman form, *Form 2 - Notification of decision not to investigate or not to investigate further*.

Procedure for investigators

- 9.1 Where the Principal Officer or delegate has decided under clause 8.7 to commence an investigation into an internal disclosure, they may conduct the investigation as they think fit.
- 9.2 The Principal Officer or delegate is responsible for conducting investigations and may delegate the investigative function to a person internal or external to the agency.

- 9.3 The Principal Officer 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.
- 9.4 The Principal Officer or delegate may, for the purposes of the investigation, obtain information from such persons, and make such inquiries, as they think fit.
- 9.5 When conducting an investigation, the Principal Officer or delegate must ensure that a decision as to whether evidence is sufficient to prove a fact is made on the balance of probabilities.
- 9.6 Despite clauses 9.1 and 9.3, the Principal Officer or delegate, in conducting an investigation under these procedures, must comply with:
- a) the Ombudsman's Standard, and
 - b) 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

- 9.7 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 section 57 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, and
 - III. subject to the PID Act, not to disclose the identity of the person who made the disclosure.
- 9.8 Where the investigator conducts an interview as part of an investigation, the investigator must ensure that:
- a) an audio or visual recording of the interview is not made without the interviewee's knowledge
 - b) at the end of the interview, the interviewee is given an opportunity to make a final statement or comment or express a position, and
 - c) any final statement, comment, or position is included in the record of the interview.
- 9.9 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

- 9.10 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.
- 9.11 Procedural fairness may require that the discloser's identity be revealed to the person who is the subject of the disclosure.
- 9.12 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: clause 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 action should or should not be taken or will or will not be taken.
- 9.13 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.
- 9.14 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

- 9.15 The investigator has 90 days from the date the disclosure was allocated in which to complete the investigation.
- 9.16 When a disclosure is reallocated to the department, a decision is made to re-investigate a disclosure, or the Principal Officer or delegate becomes aware that a stop action direction issued by the NACC that prevented the investigation no longer applies, the 90 day timeframe to complete the investigation will start from that date.
- 9.17 The investigation is complete once the investigation report is prepared.
- 9.18 It is possible to seek one or more extensions of time from the Ombudsman, by sending the completed Ombudsman form, *Form 3 – Extension of time to investigate a PID*. The discloser will be notified and will be updated on the progress of the investigation as soon as reasonably practicable after an extension is agreed.
- 9.19 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 and an outline of action taken to progress the investigation.
- 9.20 An investigation that is not completed within time does not become invalid.

10. Reports of investigations

- 10.1 On completing an investigation under the PID Act, a report of the investigation must be prepared.
- 10.2 In preparing a report of an investigation under the PID Act, the investigator should comply with the PID Act, the Ombudsman's Standard and these procedures.
- 10.3 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, reprisal action taken against the discloser or any other person (together with related evidence), and the department's response to those claims or evidence
- and, where relevant, a report must:
- a) identify whether there have been one or more instances of disclosable conduct
 - b) identify any regulations, rules, administrative requirements, or similar matters to which the disclosable conduct (if any) relates
 - c) explain the steps taken to gather evidence
 - d) set out a summary of the evidence, and
 - e) set out any recommendations made based on that evidence.
- 10.4 The Principal Officer or delegate may adopt findings of an investigation or inquiry that was undertaken under another Commonwealth law or power.
- 10.5 The Principal Officer or delegate must, within a reasonable time of a report of an investigation under the PID Act being prepared, notify the discloser and the Ombudsman of the completion of the investigation and provide the discloser and the Ombudsman with a copy of the investigation report.
- 10.6 The Ombudsman should be provided a copy of the report with the completed Ombudsman form, *Form 5 - Notification of a finalised PID investigation*.
- 10.7 Despite clause 10.3, the Principal Officer or delegate may delete from the copy of the report given to the discloser and/or the Ombudsman 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:
 - I. the copy being a document:
 - that is exempt for the purposes of Part IV of the Freedom of Information Act 1982
 - having, or being required to have, a national security or other protective security classification, or
 - containing intelligence information, or
 - II. contravention of a designated publication restriction.
- 10.8 The Principal Officer or delegate will ensure appropriate action is taken, as soon as reasonably practicable, in response to recommendations relating to the department.

11. Confidentiality

- 11.1 It is an offence to use or disclose information obtained in a person's capacity as a public official that is likely to enable the identification of a discloser. However, there are exceptions including where the disclosure or use of the information is for the purposes of the PID Act (e.g. for providing assistance or legal advice in relation to a public interest disclose or to perform or exercise a function or power under the PID Act) or a law of the Commonwealth, or where the discloser has consented or acted in a way that is inconsistent with keeping their identity confidential.
- 11.2 The Principal Officer or delegate is also authorised to share information and documents with the Principal Officer or delegate of another investigative agency, such as the Ombudsman, or another agency to which the conduct disclosed relates, or to which a disclosure has been allocated.
- 11.3 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).
- 11.4 Any interviews conducted by an Authorised Officer or delegate (including investigator) should generally be conducted in private.
- 11.5 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 Written records of all decisions and notifications made in relation to a public interest disclosure must be kept. This includes a record of any allocation decisions made to one or more agencies. These records are kept in accordance with the department's records management policies and any other requirements specified in the PID Act and the *Public Interest Disclosure Standard 2013* (PID Standard). Records are to have due regard for confidentiality (also refer to clause 11 of these procedures).
- 12.2 If a disclosure was made orally, it must be documented by the recipient and consideration should be given to asking the discloser to sign a record of the disclosure. Subsequent conversations should also be documented.
- 12.3 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*).
- 12.4 All records made for the purposes of the PID Act in accordance with these procedures should be marked as prescribed in the Australian Government Protective Security Policy (PSPF) Information Classifications Guide.

- 12.5 Where a person will cease being an Authorised Officer in the department (including because of resignation or movement to another agency), their public interest disclosure 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 Principal Officer when requested.
- 13.2 The Principal Officer or delegate must provide to the Ombudsman certain information about disclosures they have handled for the purposes of the annual report under the PID Act as per section 15 of the PID Standard. The Principal Officer or delegate will send the department'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. Protection from reprisal and liability

- 14.1 It is an offence to take a reprisal, or to threaten to take a reprisal, against a person (including a discloser or a person who assists with a disclosure) because of a public interest disclosure (including a proposed or a suspected public interest disclosure). The penalties include up to two years imprisonment or 120 penalty units (\$37,500 as of 1 July 2023).
- 14.2 A reprisal involves causing a person detriment or threatening to do so. This may include:
- a) dismissing an employee, injuring an employee in their employment, altering an employee's position to their disadvantage, discriminating between an employee and other employees
 - b) harassing, intimidating, harming or injuring person, or
 - c) damaging a person's property, reputation or business or financial position.
- It does not include administrative action that is reasonable to protect the person from detriment, such as moving them to another work area.
- 14.3 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).
- 14.4 The Principal Officer and their delegates are responsible for taking reasonable steps to protect public officials who belong to the agency against reprisals that have been, may have been, are proposed to be, or could be made to the agency. Authorised officers have the same obligations regarding reprisal action relating to disclosures made or given to them.
- 14.5 If a person considers they have been caused detriment due to a disclosure, they should immediately report this to their supervisor or an appropriate PID Officer. Every allegation of reprisal will be taken seriously, recorded and responded to.

- 14.6 Additionally, an individual is not subject to any civil, criminal, or administrative liability for making a public interest disclosure or assisting with a public interest disclosure. However, there are some exceptions including where individuals knowingly make false or misleading statements, breach a designated publication restriction without reasonable excuse or are otherwise being reasonably managed or disciplined for any unsatisfactory performance or disclosable conduct on their part.

15. Assessing the risk of reprisal

- 15.1 An initial risk assessment should be completed as soon as possible after the public interest disclosure is received. This may be a supervisor or manager, a departmental Authorised Officer, or a 'reprisal officer'.
- 15.2 The risk assessment and responsibilities for maintaining it and taking necessary actions will usually be transferred to the Principal Officer or delegate when an allocation decision is made.
- 15.3 Keeping in mind confidentiality arrangements, another officer with the requisite skills and experience to conduct and/or maintain the risk assessment may be assigned (the 'reprisal officer').
- 15.4 Consultation should occur with the discloser and, keeping in mind confidentiality arrangements, may also occur with their supervisor or manager to help to ascertain where threats of reprisal may lie.
- 15.5 Forms *AO.5. PID Risk Assessment* and *D.3. PID Discloser Reprisal Risk Self-Assessment* provide guidance to conduct a risk assessment. Further information on how to conduct a risk assessment is available in the Ombudsman's ['Agency Guide to the Public Interest Disclosure Act 2013'](#).
- 15.6 The first step in a reprisal risk assessment 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, and
 - d) the level of vulnerability of the discloser.
- 15.7 These factors will then need to be assessed, considering:
- a) The likelihood of them occurring, and
 - b) the potential consequences if they do occur.
- 15.8 Upon consideration of the disclosure report and risk assessment, if a PID Officer believes that the person who made the disclosure is at risk of reprisal, they must take action to protect the discloser from reprisals or health and safety risks, in consultation with the discloser (if appropriate in the circumstances).
- 15.9 The PID Officer must attempt to control the risks, proactively, and continuously monitor, and review the risks of reprisal.

16. Support for disclosers and subjects of disclosures

- 16.1 The Principal Officer or delegate will take all reasonable steps to encourage and support:
- a) public officials who make, or are considering making, public interest disclosures relating to the agency, and
 - b) any other individuals who provide, or are considering providing, assistance in relation to public interest disclosures.
- 16.2 This may include taking one or more of the following actions:
- a) with the discloser's consent, appointing a support person to conduct regular wellbeing checks
 - b) informing the discloser of the progress of the investigation
 - c) advising the discloser of the availability of the Employee Assistance Program
 - d) where there are any concerns about the health and wellbeing of the discloser, liaising with officers responsible for work health and safety in the department
 - e) moving the discloser to a different area within the workplace after consultation with the discloser.
- 16.3 An Authorised Officer and/or delegate can discuss support requirements with a public official wishing to make, or after having made a PID.
- 16.4 The Principal Officer or delegate must also take steps to support a person who is the subject of a PID which proceeds to investigation.
- 16.5 This may include taking one or more of the following actions:
- a) advising the person of their rights and obligations under the PID Act and about the investigation process as set out in these procedures, including the person's rights to procedural fairness
 - b) advising the person of the availability of the Employee Assistance Program
 - c) ensuring that the identity of the person is kept confidential as far as reasonably practicable, and
 - d) where there are concerns about the health and wellbeing of the person, liaising with the officers responsible for work health and safety in the department.

17. Further Information

- 17.1 The PID Act is available in its entirety online: [The Public Interest Disclosure Act 2013](#)
- 17.2 For more information relating to the PID Act, see the information on the PID Act on the [Ombudsman's website](#).
- 17.3 Other legislation and guides referenced in this policy:
- Information Management Policy and Information Security Classifications Guide
- [The Commonwealth Fraud Control Framework](#)
- [The Freedom of Information Act 1982](#)
- [The Ombudsman's Agency Guide to the Public Interest Disclosure Act 2013](#)

[The Public Service Act 1999](#)

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

[The National Anti-Corruption Commission Act 2022](#)

- 17.4 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.
- 17.5 For more information on the PID Act and these procedures contact the pid@education.gov.au mailbox.

18. Document Information

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