

## Procedures for handling public interest disclosures

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I, Simon Delamont, Executive Director – People, a delegate of the Principal Officer of the Fair Work Ombudsman, pursuant to section 59 of the *Public Interest Disclosure Act 2013* (the **PID Act**) hereby establish these procedures. These procedures supersede the previous procedures made under section 59 of the *Public Interest Disclosure Act 2013* dated 31 July 2015.



Simon Delamont  
Executive Director, People  
Fair Work Ombudsman

30 August 2023

## Definitions

1. For the purposes of these procedures:

- a) A public official includes a current or former Australian Public Service employee, Parliamentary Services employee, member of the Defence Force, staff and director of Commonwealth companies, statutory office holder, staff and officer of Commonwealth contracted service providers, and any individual deemed to be a public official under s70 of the PID Act.-. A full definition of a public official is set out in s69 of the PID Act.
- b) A supervisor is a public official who supervises or manages the person making the disclosure (s8).
- c) An authorised officer is the principal officer of the agency as well as any other public official belonging to the agency who is appointed by the principal officer in writing. The list of authorised officers is found on the Fair Work Ombudsman (FWO) website.
- d) The principal officer is the agency head who is responsible for, amongst other things, investigating a disclosure allocated to them. The full definition of a principal officer is located at s73 of the PID Act. The Fair Work Ombudsman is the principal officer for the agency.
- e) Under s77 of the PID Act, the principal officer may delegate all or part of their functions to a public official in the agency. Where appropriate, the principal officer or their delegate may also appoint a second public official to assist with investigative functions.
- f) The principal officer may also delegate their investigative functions to an external investigator where appropriate when:
  - i) an investigator is an officer or employee of a contracted services provider to the agency
  - ii) the services under the contract are to be provided wholly or principally for the benefit of the agency, and

- iii) the investigator provides services for the purposes of the contract.
  - g) The Director, People Services is responsible for coordinating the monitoring and evaluation requirements as detailed in these procedures, notifying the Commonwealth Ombudsman when a disclosure is not allocated or investigated and for ensuring completed disclosure files are stored appropriately. The Director, People Services will undertake the duties of monitoring delegate for the purposes of these Procedures.
2. In this document, unless the contrary intention appears, a reference to the principal officer may also refer to a delegate of the principal officer.

## **The agency encourages the making of reports of disclosable conduct**

- 3. The purpose of the PID Act is to promote the integrity and accountability of the Commonwealth public sector by providing a legislative scheme for the investigation and allegations of serious wrongdoing in the Commonwealth public sector. This legislation facilitates the making of disclosures, ensures that disclosures are properly investigated and that public officials are supported and protected from reprisal as a result of disclosures under the PID Act.
- 4. The agency encourages and supports the reporting of wrongdoing by public officials in accordance with the PID Act.
- 5. The agency will take active steps to support and to protect those who make disclosures or are considering making disclosures under the PID Act, and who provide assistance in relation to those disclosures. A person taking a reprisal by causing, or threatening to cause, detriment to a person who it is believed is involved in any way with a proposed or existing public interest disclosure, is committing an offence.
- 6. Public officials can contact WHS & People Support to obtain information on available supports which includes access to the employee assistance program.

## **Relationship to other agency policies**

- 7. The PID Act complements existing agency complaint handling policies, guides and procedures. This policy should be read in conjunction with the Guide for Handling Conduct Issues, Managing and Reporting Unacceptable Behaviour Policy and the Procedures for Handling Suspected Code of Conduct Breaches.

## **What is disclosable conduct?**

- 8. The full definition of disclosable conduct is set out in s29 of the PID Act. That definition applies for the purposes of these procedures.
- 9. In summary terms, disclosable conduct is conduct by an agency, a public official in connection with their position as a public official, or a contracted service provider for a Commonwealth contract in connection with that contract, that:
  - a) contravenes a law of the Commonwealth, a State or a Territory, or

- 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, or
  - c) perverts, or attempts to pervert, the course of justice or involves corruption of any other kind, or
  - d) constitutes maladministration, including conduct that:
    - is based on improper motives,
    - is unreasonable, unjust or oppressive, or
    - is negligent, or
  - e) is an abuse of public trust, or
  - f) is a fabrication, falsification, plagiarism, or deception in relation to scientific research, or misconduct in relation to scientific work, or
  - g) results in the wastage of public money, or public property, or property of an authority covered by the PID Act, or
  - 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, or
  - i) results in a danger to the environment or results in or increases the risk of a danger to the environment, or
  - j) is prescribed by the PID Rules, or
  - k) is engaged in by a public official that:
    - involves abuse of the public official's position, or
    - could, if proved, given reasonable grounds for disciplinary action against the public official resulting in the termination of the public official's engagement or appointment.
10. It does not matter whether disclosable conduct occurred before or after the PID Act commenced on 15 January 2014.
11. 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.

## **What is not disclosable conduct?**

12. Disclosable conduct does not include the following:
- a) Subject to certain exceptions, personal work-related conduct engaged in by a first public official in relation to a second public official's engagement or employment that would have personal implications for the second public official. For example:
    - i) individual grievance or workplace conflicts
    - ii) conduct relating to the transfer or promotion of the second public official
    - iii) conduct relating to the terms and conditions of the second public official
    - iv) disciplinary action taken against the second public official

- v) the suspension or termination of the second public official's employment
- vi) conduct which the second public official would be able to seek review of under the *Public Service Act 1999* or similar.

Note: Personal work-related conduct is still disclosable conduct if it:

- i) would constitute taking a reprisal against another person, or an offence under s19 of the PID Act
  - ii) is of such a significant nature that it would undermine public confidence in an agency (or agencies) or has other significant implications for an agency (or agencies).
- b) Conduct that is wholly private and has no bearing on the position as a public official is generally not disclosable conduct.
  - c) Disagreement with a government policy of proposed policy
  - d) Disagreement with an action or proposed action by a minister, the Speaker of the House of Representatives or the President of the Senate
  - e) Disagreement with expenditure or proposed expenditure related to such policy or action
  - f) Conduct of a judicial officer, the chief executive officer of a court, or a member of staff of the chief executive officer of a court, when exercising a power of the court or performing a function of a judicial nature
  - g) Conduct of a member of a Commonwealth tribunal, the chief executive officer of a Commonwealth tribunal, when exercising a power of the court or performing a function of the Commonwealth tribunal
  - h) Certain conduct connected with intelligence agencies.

## What is corrupt conduct?

13. As set out in these procedures identification of 'corrupt conduct' as part of handling a PID can also trigger obligations to refer the conduct to the National Anti-Corruption Commission (NACC).
14. In summary, Section 8(1) of the *National Anti-Corruption Commission Act 2022* (the NACC Act) states each of the following is corrupt conduct:
  - a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly:
    - i) the honest or impartial exercise of any public official's powers as a public official; or
    - ii) the honest or impartial performance of any public official's functions or duties as a public official;
  - b) any conduct of a public official that constitutes or involves a breach of public trust;
  - c) any conduct of a public official that constitutes, involves or is engaged in for the purpose of abuse of the person's office as a public official;

- d) any conduct of a public official, or former public official, that constitutes or involves the misuse of information or documents acquired in the person's capacity as a public official.
15. Conduct involving a public official may be corrupt conduct even if the conduct is not for the person's personal benefit.
  16. A person may engage in corrupt conduct alone, or with the agreement or participation of other persons (whether or not those other persons are public officials).
  17. Conduct comprising conspiracy or an attempt to commit or engage in conduct covered by paragraph 14 is itself corrupt conduct.

## **The Disclosure Process**

18. There are 5 kinds of public interest disclosure -internal, external, emergency, legal practitioner and NACC disclosure. These procedures address how the agency will handle internal disclosures under the PID Act.

## **Making an internal public disclosure under the PID Act**

19. All public officials and former public officials are entitled to make a disclosure under the PID Act.
20. A public interest disclosure may be made orally or in writing.
21. A public interest disclosure may be made anonymously.
22. 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.
23. Where a public official is considering making a public interest disclosure it is recommended that they, in the first instance, contact one of the agency's authorised officers to get information about making a public interest disclosure under the PID Act.
24. Public officials who wish to make an internal public interest disclosure must make the disclosure to one of the following:
  - a) an authorised officer of the agency to which they belong or last belonged (e.g. for current agency employees – this agency) or the agency to which the conduct related;
  - b) their supervisor or manager;
  - c) the Commonwealth Ombudsman
  - d) in relation to intelligence agencies and functions - the Inspector-General of Intelligence and Security (IGIS).
25. Contact details for authorised officers in this agency are available on the agency's intranet and external website.

26. Where possible, the agency prefers that its employees make public interest disclosures that relate to the conduct of the Office of the Fair Work Ombudsman to an authorised officer rather than their supervisor or manager.

Note: This clause does not prevent an employee in the agency from making a disclosure to their supervisor or manager.

27. 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.

28. A potential discloser should not investigate a matter themselves before making a disclosure.

29. A person who knowingly makes a false or misleading statement in a public interest disclosure will not have immunity from civil, criminal or administrative liability (including disciplinary action) under the PID Act.

30. 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.

31. 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 authorised officer or principal officer.

32. 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. A discloser's identity must not be used or disclosed except where authorised by the PID Act but the obligation to keep the identity of the discloser confidential does not apply if the discloser acts in a way that is inconsistent with the maintenance of confidentiality. For example, by discussing the fact they made a disclosure with a person not involved in the management of the disclosure.

## Procedures for supervisors and managers

33. A supervisor or manager or authorised officer who receives a disclosure of disclosable conduct from a public official must deal with the disclosure in accordance with the PID Act and in accordance with the *Public Interest Disclosure Standard 2013* and these procedures.

34. Where a public official in the agency discloses information to their supervisor or manager that is not an authorised officer and that supervisor or manager has reasonable grounds to believe that the information concerns, or could concern, disclosable conduct, the supervisor or manager must do the following:

- a) inform the discloser that the disclosure could be treated as an internal disclosure under the PID Act
- b) explain to the discloser the procedures under the PID Act which require:
  - i) the supervisor or manager to give the disclosure to an authorised officer
  - ii) the authorised officer to decide whether to allocate the disclosure to a principal officer in the agency or else-where; and
  - iii) if the disclosure is allocated, the principal officer must investigate it.

- c). inform the discloser about the circumstances (if any are applicable) where the disclosure must be referred to another agency or person under another law of the Commonwealth
  - d) inform the discloser of the civil and criminal protections under the PID Act.
  - e) seek the discloser's consent to provide the authorised officer with the discloser's identity, and
  - f) as soon as practicable, give the information to an authorised officer in the agency (if the discloser declines for their identity to be passed on, the supervisor or manager will need to provide the authorised officer with as much information as possible, without revealing the discloser's identity).
35. Where such a disclosure has been 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.
36. The supervisor or manager should ask the discloser to sign the record of the disclosure, where this is practicable.
37. At the time a supervisor or manager gives information to an authorised officer under paragraph 34, they must 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.
38. Where a supervisor or manager has given information to an authorised officer under paragraph 34, they must inform the discloser that they have given the information to an authorised officer in the agency and advise the discloser of the name and contact details of that authorised officer.

## **Procedures for authorised officers**

39. Where an internal disclosure is made to a supervisor. Manager or an authorised officer, the authorised officer must make a decision about whether or not to allocate the disclosure. They must also decide whether the disclosure concerns corrupt conduct that is required to be referred to the NACC. The authorised officer also has certain obligations in relation to advising discloser and potential disclosers. These issues are discussed further below.

### **Authorised officers must refer corrupt conduct**

40. Where, as a result of an internal disclosure made under the PID Act, the authorised officer becomes aware of a corruption issue that:

a) concerns the conduct of a person who is, or was, a staff member of the agency while that person is, or was, a staff member; and

b) the authorised officer suspects it could involve corrupt conduct that is serious or systemic

the corruption issue must be referred to the National Anti-Corruption Commissioner (the Commissioner) as soon as reasonably practicable after the authorised officer becomes aware of the issue and the discloser must be notified of the referral as soon as reasonably practicable after the referral.



41. The authorised officer's referral must include all information relevant to the issue that is in their possession or control at the time the referral is made. The authorised officer must provide any further relevant information they become aware of to the Commissioner as soon as reasonably practicable.
42. The authorised officer is not required to provide information to the Commissioner if:
  - a) the authorised officer has reasonable grounds to believe that the Commissioner is already aware of the information; or
  - b) the Commissioner has advised the authorised officer that the provision of information about the corruption issue is not required.
43. The authorised officer is not required to refer a corruption issue to the Commissioner if they believe on reasonable grounds that the Commission is already aware of the issue or the Commissioner makes a determination that referral is not required because of the kind of corruption issue involved or the circumstances in which it arises.
44. The referral of a corruption issue does not prevent a Commonwealth agency from continuing to take any action in relation to the disclosable conduct unless the Commissioner gives a direction to stop taking action or affect the agency's obligations in relation to disclosable conduct under any other law.

## **Authorised officer must advise discloser and potential discloser about the PID Act**

45. 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, and
  - b) the authorised officer has reasonable grounds to believe that the person may be unaware of the consequences of making the disclosurethe authorised officer must:
  - c) inform the person that the disclosure could be treated as an internal disclosure for the PID Act, and
  - d) explain to the person what the PID Act requires for a disclosure to be an internal disclosure, and
  - e) inform the person about the circumstances (if any) in which a public interest disclosure must be referred to an agency, or other person or body, under the law of the Commonwealth, and
  - f) explain to the person the protections provided by the PID Act to persons who make disclosures under the PID Act, and
  - g) advise the person of any orders or directions that may affect disclosure of the information.

## **Authorised officer must decide whether or not to allocate a disclosure**

46. 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:
- a) 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.
  - b) ask the discloser to sign the written record of the disclosure, where this is practicable.
  - c) 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

### **Criteria for assessing whether the disclosure should be allocated**

47. An authorised officer who receives a disclosure must allocate the disclosure to a principal officer unless:
- 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.
  - b) the conduct would be more appropriately investigated under another law or power.
48. The bases on which an authorised officer could be satisfied of this include that the:
- a) disclosure has not been made by a person who is, or was, a public official;
  - b) disclosure was not made to an authorised internal recipient or supervisor or manager;
  - c) disclosure is not about instances of disclosable conduct;
  - d) information disclosed does not tend to show, or the discloser could not believe on reasonable grounds that it tends to show, instances of disclosable conduct;
  - e) 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
  - f) disclosure is not otherwise a public interest disclosure within the meaning of the PID Act.
49. 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.
50. Where an authorised officer decides that a disclosure that has been made to them is not to be allocated, they must:
- a) where the discloser's contact details are known to the authorised officer, provide the discloser with written notice that the disclosure is not to be allocated, the reasons what actions the authorised officer has taken or proposes to take to have the disclosure investigated under another law. A record must be kept of how the notice was transmitted to the discloser, and if not, the reason why the notice was not provided, and
  - b) give written notice to the Commonwealth Ombudsman of the decision not to allocate, the reasons, what actions the authorised officer has taken or proposes to take.

51. Where an authorised officer decides that a disclosure will be allocated to a principal officer, they must keep a record of:
- a) whether the notice of the allocation decision was given to the discloser (or a record that they were unable to notify the discloser because they were anonymous)
  - b) if notice was given, the day and time the notice was transmitted and by what means
  - c) if the disclosure is subject to a stop-action direction from the NACC, whether the principal officer considers it is reasonably practicable or appropriate to give the discloser notice of the allocation decision.
52. Where the authorised officer is aware of the contact details of the discloser they must, 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
  - b) wishes the disclosure to be investigated.
53. The authorised officer must make a written record of the discloser's responses (if any) to the questions referred to in paragraph 52.
54. Where a discloser does not respond within 7 days to the question referred to:
- a) in paragraph 52.a – the discloser is taken to have consented to the disclosure of their name and contact details to the principal officer; and
  - b) in paragraph 52.b – the discloser is taken to wish the disclosure to be investigated.

## **Where an authorised officer allocates an internal disclosure**

55. When considering allocating an internal disclosure to another agency an authorised officer must obtain the consent of an authorised officer in the external agency before allocating the.
56. Where an authorised officer allocates a disclosure, they must:
- a) provide the principal officer of the agency to whom the disclosure is allocated (i.e. the FWO or another agency) with written notice that they have done so
  - b) provide the Commonwealth Ombudsman with written notice of the allocation (or the IGIS if the disclosure is allocated to an intelligence agency or to the Australian Criminal Intelligence Commission or the Australian Federal Police in relation to those agency's intelligence functions).
57. The Director, People Services will collate information and report to the Commonwealth Ombudsman's office about disclosures made in the agency. The authorised officer must send a copy of the written notice to the Commonwealth Ombudsman's Office via the Director, People Services.

58. Where the authorised officer is aware of the contact details of the discloser the authorised officer must provide the discloser with written notice of the allocation. A record must be kept of how the notice was transmitted to the discloser, and if not, the reason why the notice was not provided.
59. Where an authorised officer in the agency allocates a disclosure, they must conduct a risk assessment, having regard to any risks of reprisals identified by the discloser's supervisor or manager in accordance with paragraph 37. The authorised officer must take reasonable steps to protect the discloser and any other public officials who belong to the agency against reprisals that have been, or may be taken in relation to a disclosure.

## **Anonymous disclosures**

60. All persons, including public officials, persons who have been public officials and others, can make disclosures in an anonymous way if they wish to do so. Providing a de-identified email address for correspondence will allow the authorised officer, principal officer or investigating officer to contact the discloser anonymously.

## **Where the discloser provides no name and no contact details or where the discloser provides no name but provides anonymous contact details**

61. 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.
62. Merely because a supervisor or manager or authorised officer has received a disclosure of one of these does not mean that it cannot be a disclosure for the purposes of the PID Act. The PID Act specifically provides that anonymous disclosures can be made.
63. An authorised officer may be satisfied based on the information disclosed that the discloser is a public official, despite their anonymity. If not, they can consider whether to exercise the power in s70 of the PID Act to determine on their own initiative that a person who has disclosed information to them is a public official. They must also consider whether to exercise this power if requested by the discloser. 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 s70(1)).
64. It is anticipated that an authorised officer would make this decision having regard to whether it is in the public interest, in the agency's interest and in the discloser's interest to have a disclosure dealt with as a disclosure under the PID Act.
65. 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. If the authorised officer's decision is to decline the request to make a determination under s70, they must also give the discloser reasons for their decision.
66. A copy of the written notice of the determination should also be given to the principal officer.

## Deciding whether or not to investigate

67. If the Commissioner issues a stop action direction that prevents the agency from investigating, or further investigating, the disclosure, the principal officer must inform the Commonwealth Ombudsman of the stop action direction.
68. Where an authorised officer allocates an internal disclosure to the principal officer and the principal officer has been given the contact details of the discloser, the principal officer must give the discloser an initial written notification of the principal officer's powers to, within 14 days after the disclosure was allocated to the agency decide not to investigate the disclosure, or not to investigate further, or to investigate under a separate investigative power.
69. The principal officer should consider whether to exercise the discretion under s48 of the PID Act not to investigate the disclosure under the PID Act.
70. The principal officer 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 s70 of the PID Act), or
  - b) the information does not to any extent concern serious disclosable conduct, or
  - c) the disclosure is frivolous or vexatious, or
  - d) the disclosure is substantially the same as a disclosure that has been investigated under the PID Act and a decision was previously made under the PID Act not to investigate, or the earlier disclosure is or has been investigated, or
  - e) conduct disclosed, or substantially the same conduct, is being investigated under another law or power, and the principal officer is satisfied, on reasonable grounds, that it would be inappropriate to conduct an investigation under the PID Act at the same time
  - f) the conduct disclosed, or substantially the same conduct, has been investigated under another law or power, and the principal officer is satisfied, on reasonable grounds, that there are no further matters concerning the conduct that warrant investigation
  - g) the principal officer is satisfied on reasonable grounds, that the conduct disclosed would be more appropriately investigated under another law or power
  - h) both:
    - i) the principal officer of the agency has been informed by the discloser, an authorised officer of the agency, or a principal officer or authorised officer of another agency that the discloser does not wish the investigation of the disclosure to be pursued, and
    - ii) the first-named principal officer is satisfied, on reasonable grounds, that there are no matters concerning the disclosure that warrant investigation
  - i) it is impracticable to investigate the disclosure because:
    - i) the discloser has not revealed their name and contact details, or
    - 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.

## Notification of decision not to investigate

71. At any time after the investigation has commenced, where the principal officer decides under s48 of the PID Act not to investigate a disclosure, the principal officer must, as soon as reasonably practicable, provide written notice to:
- a) the Director, People Services of the decision not to investigate, and the reasons for that decision. The Director, People Services must send this to the relevant contact in the Commonwealth Ombudsman's Office.
  - b) the discloser (if their contact details are available) provide the reasons for the decision and any action, or action the principal officer proposes to take to refer the conduct disclosed elsewhere for investigation under another law or power.

## Procedures for investigation

72. Where the principal officer has decided to commence an investigation into an internal disclosure, they may conduct the investigation as they think fit.
73. The principal officer must be independent and unbiased in the matter. They must ensure that they do not have an actual or perceived conflict of interest.
74. The principal officer may, for the purposes of the investigation, obtain information from such persons, and make such inquiries as they think fit.
75. When conducting an investigation, the principal officer must ensure that a decision whether evidence is sufficient to prove a fact is made on the balance of probabilities. A finding of fact must be based on logically probative evidence. Evidence relied on must be 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.
76. Despite paragraphs 70 and 72, the principal officer, in conducting an investigation under these procedures, must comply with:
- a) the Commonwealth Ombudsman's Standard; and
  - b) the Commonwealth Fraud Control Guidelines to the extent they are relevant to this investigation; and
  - c) this procedure.

## Interviewing witnesses

77. Subject to any restrictions imposed by a law of the Commonwealth other than the PID Act, the principal officer 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, and

- b) the process of conducting an investigation, and
- c) the authority of the principal officer under the PID Act to conduct an investigation, and
- d) the protections provided to the person by s57 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 principal officer in the conduct of an investigation under the PID Act (subject to the public official's privilege against incriminating themselves in a criminal offence), and
  - 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.

78. If the principal officer is considering using audio or visual recording in an interview, the principal officer must ensure that an audio or visual recording of the interview is not made without the interviewee's knowledge.

79. Where the principal officer 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 principal officer must include any final statement, comment or position in the record of the interview.

### **Mandatory reporting during investigation – corruption issues**

80. At any time during the course of an investigation, if a principal officer or an investigator assisting the principal officer, becomes aware of a corruption issue that:

- a) concerns the conduct of a person who is, or was, a staff member of the agency while that person is, or was, a staff member; and
- b) the PID officer suspects could involve corrupt conduct that is serious or systemic they must refer the corruption issue to the NACC Commissioner (the Commissioner), or in the case of an intelligence agency to the IGIS.

81. The principal officer must notify the discloser that the principal officer has referred the disclosure to the Commissioner, as soon as reasonably practicable, after the referral.

82. The principal officer is not required to refer a corruption issue to the Commissioner if they believe on reasonable grounds that the NACC is already aware of the issue or the Commissioner makes a determination that referral is not required because of the kind of corruption issue involved or the circumstances in which it arises. The referral of a corruption issue does not prevent a Commonwealth agency from continuing to take any action in relation to the disclosable conduct unless the Commissioner gives a direction to stop taking action, or affect the agency's obligations in relation to disclosable conduct under any other law.

### **Mandatory reporting during the investigation – criminal conduct**

83. At any time during the course of the investigation, if the principal officer suspects on reasonable grounds that the information in the PID or any other information obtained in the course of the investigation is evidence of the commission of an offence against a law of the Commonwealth, State or Territory:

- a) they may give the information to a member of an Australian police force responsible for the investigation of the offence, and
- b) they must give the information to a member of an Australian police force responsible for the investigation of the offence if the offence is punishable by imprisonment for life or by imprisonment for a period of at least years, unless (relevantly) the information raises a corruption issue that has already been referred or of which the Commissioner/IGIS is already aware.

## Procedural fairness

84. Procedural fairness principles apply to disclosure investigations.

85. Where the principal officer 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 principal officer must give that person a copy of the evidence that is relevant to the proposed finding or opinion and must give the person a reasonable opportunity to comment on it.

Note: This 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.

## Time limits

86. The principal officer has 90 days from the date the disclosure was allocated (from an authorised officer or from an external agency), or from the day on which the principal officer becomes aware that a stop action direction under the NACC Act preventing the investigation no longer applies, in which to complete the investigation.

87. It is possible to seek one or more extensions of time from the Commonwealth Ombudsman.

88. An investigation that is not completed within time does not become invalid.

## Reports of investigations

89. In preparing a report of an investigation under the PID Act the principal officer must comply with the PID Act, *Public Interest Disclosure Standard 2013* and these procedures.

90. A report of an investigation under the PID Act must set out:

- a) the matters considered in the course of the investigation, and



- b) the duration of the investigation, and
- c) the principal officer's findings (if any), and
- 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 or any other person, that relates to the matters considered in the course of the investigation, and the agency's response to those claims and that evidence,

and, where relevant, a report must:

- f) identify whether there have been one or more instances of disclosable conduct, and
- g) identify any regulations, rules, administrative requirements or similar matters to which the disclosable conduct (if any) relates, and
- h) explain the steps taken to gather evidence, and
- i) set out a summary of the evidence, and
- j) set out any recommendations made based on that evidence.

91. The principal officer 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 Commonwealth Ombudsman.

92. The principal officer may delete from the copy of the report given to the discloser any material:

- a) that is likely to enable the identification of the discloser or another person, or
- b) the inclusion of which would result in the copy being a document:
  - that is exempt for the purposes of Part IV of the *Freedom of Information Act 1982*, or
  - having, or being required to have, a national security or other protective security classification, or
  - containing intelligence information

the inclusion of which would contravene a designated publication restriction as defined in s8 of the PID Act.

93. The Principal Officer (or delegate) may delete from a copy of the report given to the Commonwealth Ombudsman any material:

- a) that is likely to enable the identification of the discloser or another person, or
- b) the inclusion of which would contravene a designated publication restriction.

## Confidentiality

94. 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).

95. Any interviews conducted by a principal officer should be conducted in private.
96. Any interviews with the discloser should be arranged so as to avoid the identification of the discloser by other staff of the agency.

## Record-keeping

97. Where an authorised officer or principal officer is required to keep a record under these procedures, the record must be kept in hard copy or electronic form or both. Access to these records must be restricted to the authorised officers or principal officers or other employees in the agency 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*).
98. Where written notice is required to be provided under these procedures, a copy of the written notice must be kept on the hard copy file.
99. All records made for the purposes of the PID Act in accordance with these procedures must be marked as 'OFFICIAL sensitive – Personal Privacy' and when all action is completed in relation to a disclosure, all hard copies must be returned in the appropriate file for storage to the monitoring delegate. Any email messages sent by authorised officers or principal officers that contain identifying information must be clearly marked 'to be read by named addresses only'.
100. Where a person will cease being an authorised officer or principal officer in the agency (including because of resignation or movement to another agency), their PID records must be transferred to another authorised officer or principal officer in the agency, although the monitoring delegate will continue to store the file.

## Monitoring and evaluation

101. Each authorised officer must provide a monthly report to the principal office through the Director, People Services specifying the number of public interest disclosures received by the authorised officer and the nature of the disclosable conduct for each disclosure (by reference to the relevant item or paragraph in the definition). The report must also include any disclosures that have been allocated to the agency by another agency's authorised officer.
102. Where a principal officer takes action in relation to investigating a disclosure or in response to a recommendation made in an investigation report, they must make a report of this action to the Director, People Services.
103. The Director, People Services must prepare the agency's report to the Commonwealth Ombudsman within the time requested by the Commonwealth Ombudsman or as otherwise agreed with the Commonwealth Ombudsman.

## Training

104. The principal officer must take reasonable steps to provide ongoing training and education to public officials belonging to the agency about the PID Act.
105. Similarly, the principal officer must take reasonable steps to ensure that a public official belonging to the agency who is appointed to a position that requires, or could require, the public official to perform the functions or duties of an authorised officer or supervisor or manager are given training and education appropriate for the position.
106. Further information on training and resources is available from WHS & People Support.

## Obligations of public officials

107. Public officials have obligations under the PID Act. They include:
- a) using their best endeavours to assist the principal officer of an agency in the conduct of an investigation. This might include but is not limited to by providing information or documents, or participating in an interview
  - b) using their best endeavours to assist the Commonwealth Ombudsman in the performance of their function under the PID Act
  - c) using their best endeavours to assist any other public official to exercise a right or perform a duty or function under the PID Act.
110. Further information about a public official's obligations is available on the FWO intranet.

Document particulars	
Title	Procedures for Handling Public Interest Disclosures
Contact Officer	Shannon Needham Assistant Director, WHS & People Support
Approving Authority	Executive Director, People
Approving Officer	Simon Delamont
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