



# Public Interest Disclosure Procedures

<b>Public Interest Disclosure Procedures</b>	
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# Preface

As a corporate Commonwealth entity, the Australian Institute of Health and Welfare (the Institute) is committed to the highest standards of ethical and accountable conduct in the administration of its functions and duties. Consistent with that commitment, the Institute encourages the disclosure of misconduct under the *Public Interest Disclosure Act 2013* (the Act) in all appropriate cases and will act on disclosures in a manner consistent with the requirements of the Act.

These procedures are designed to assist Authorised Officers and Delegates perform activities under the Act and reflect the Institute's commitment to:

- the highest standards of ethical and accountable conduct
- encouraging and investigating public interest disclosures
- ensuring that disclosures made under the Act or assigned to the Institute for investigation, are investigated in a transparent, systematic and timely manner
- ensuring that reports into disclosures made under the Act are comprehensive, evidence based and reach defensible findings
- ensuring persons making disclosures under the Act are supported and protected for reporting in good faith.

Adherence to the procedures described in this manual will help to ensure that the Institute's duties under the Act are administered in a consistent, lawful and transparent manner and that the important principles upon which the Act is based are given full force and effect in the interests of ethical public administration.

I, Robert Heferen, Chief Executive Officer and Principal Officer of the Australian Institute of Health and Welfare, establish these procedures under s.59 of the *Public Interest Disclosure Act 2013* (the Act). These procedures supersede any previous procedures and commence on 23 October 2023. These procedures may be amended from time to time to ensure their continued compliance with the Act.

Robert Heferen

Chief Executive Officer

23 October 2023



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# 1. INTRODUCTION

## 1.1 Purpose

The *Public Interest Disclosure Act 2013* (the **PID Act**) commenced on 15 January 2014. The objectives of the PID Act are to promote the integrity and accountability of the Commonwealth public sector by:

- a) encouraging and facilitating the making of public interest disclosures by public officials
- b) ensuring that public officials who make public interest disclosures, and persons who provide assistance in disclosure investigations and reviews, including witnesses are supported and protected from adverse consequences relating to the disclosures, and
- c) ensuring that disclosures by public officials are properly investigated and addressed.<sup>1</sup>

Section 59 of the PID Act requires the Chief Executive Officer (**CEO**) of the Institute, as the Principal Officer<sup>2</sup> to establish procedures for facilitating and dealing with public interest disclosures relating to the Institute.

## 1.2 Application of procedures

These procedures apply to internal disclosures that relate to the Institute and are made by a current or former public official. An internal disclosure may be made to an Authorised Officer of the Institute, an Authorised Officer of another agency, a supervisor or manager of the Institute, or the Ombudsman or the Inspector General of Intelligence and Security (IGIS) for intelligence related disclosures).

Where a disclosure has been allocated to the Institute from another agency and the Authorised Officer reasonably believes the disclosure relates to the Institute, the Authorised Officer will accept the allocation and action it in accordance with these procedures.

In certain circumstances, an Authorised Officer may deem a person to be a public official for the purposes of the PID Act.

Compliance with these procedures is mandatory when an Authorised Officer or a supervisor or manager receives a disclosure. Other legislative obligations may also apply (in addition to these procedures), for example: in relation to work health and safety (under the *Work Health and Safety Act 2011*), mandatory disclosure obligations (under the *National Anti-Corruption Commission Act 2022*), or the Code of Conduct (*Public Service Act 1999*).

A reference to the CEO or the Principal Officer is also a reference to a public official who has been delegated powers under section 77 of the PID Act. A person who has been delegated powers must not be a person with a direct or indirect interest in a matter, and they must be free of actual or apparent bias.

A disclosure made to a person who is authorised to receive it under these procedures will not in itself be a breach of the provisions relating to unauthorised disclosure of information.<sup>3</sup>

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<sup>1</sup> sections 6 and 7

<sup>2</sup> section 73

<sup>3</sup> section 70 of the *Crimes Act 1914* and *Public Service Regulation 2.1*



### 1.3 What is a public interest disclosure?

The PID Act is intended to remove barriers that prevent people who work in the public sector from reporting serious misconduct. It also ensures that disclosures are properly investigated and provides protection for those that report allegations.

There are 5 types of disclosures that constitute a 'public interest disclosure' under the PID Act:<sup>4</sup>

- a) internal disclosures (disclosed within an agency, such as the Institute)
- b) external disclosures (disclosed outside Government)
- c) emergency disclosures
- d) legal practitioner disclosures, and
- e) National Anti-Corruption Commission disclosures.

These procedures apply to internal disclosures only.

An internal disclosure must meet the following requirements:

- a) Be made by a 'public official' or a person who has been a 'public official' of the Institute (including contracted service providers)<sup>5</sup>
- b) Be made to an Authorised Officer of the Institute, or the Discloser's supervisor or manager.<sup>6</sup> In some limited circumstances, a disclosure can be made to an external party. The PID Act sets out strict requirements which must be met for such external disclosures to be afforded the protections contained in the PID Act,
- c) The information disclosed tends to show, or the Discloser believes on reasonable grounds the information tends to show, one or more instances of 'disclosable conduct' within the Institute, as defined by the PID Act.<sup>7</sup>

Not all disclosures of information made to the Institute will be a 'public interest disclosure' for the purposes of the PID Act. Only if each of the requirements referred to above have been met will the Discloser have the benefit of the protections conferred by the PID Act. Therefore, it is important that persons contemplating making a disclosure of information carefully review the contents of the PID Act, these procedures, and seek independent advice to determine whether the disclosure can be made in a way that attracts the protections of the PID Act.

It is important to be aware that Disclosers who, in making a disclosure under the PID Act, knowingly make a statement that is false or misleading may be subject to criminal or disciplinary action (or both) for doing so.

A summary of the rights and responsibilities of a Discloser and a person who is the subject of a disclosure under these procedures are set out at Appendix B and Appendix C respectively.

Links to key legislation and policies, including the PID Act, are at Part 9 of these procedures.

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<sup>4</sup> subsection 26(1)

<sup>5</sup> section 69

<sup>6</sup> sections 34 and 8

<sup>7</sup> sections 29 to 33



## 1.4 Who is a public official?

The term 'public official'<sup>8</sup> includes Australian Public Service employees, an individual who is a contracted service provider for a Commonwealth contract, and an officer or employee of a Commonwealth contract service provider. Accordingly, the people who can make an 'internal disclosure' relating to the Institute include:

- a) employees and former employees of the Institute
- b) contracted service providers and their employees who provide, or who have provided, services to the Institute under a contract with the Institute.

An Authorised Officer can also determine that an individual is deemed to be a public official for the purposes of the PID Act if:<sup>9</sup>

- a) they reasonably believe the individual has information that concerns disclosable conduct
- b) the individual has disclosed, or proposes to disclose, the information to an Authorised Officer.

If a person who is not, and has not been, a 'public official' wishes to make a disclosure relating to the Institute under the PID Act, they should contact an Authorised Officer of the Institute to request that the Authorised Officer consider making a determination under section 70.

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 of that decision. If the Authorised Officer's decision is to decline the request to make a determination under section 70, they must also give the Discloser the reason(s) for their decision.

## 1.5 Who is an Authorised Officer?

Authorised Officers at the Institute are:

- a) the CEO as the Principal Officer under the PID Act, and
- b) any officer appointed in writing by the CEO as an Authorised Officer for the purposes of the PID Act.

A list of position holders currently appointed as Authorised Officers by the CEO are at Appendix A.

Further details can be found on the on the Institute's internet sites at:

- a) [Public interest disclosure - Australian Institute of Health and Welfare \(aihw.gov.au\)](https://www.aihw.gov.au/about-us/public-interest-disclosure) [https://www.aihw.gov.au/about-us/public-interest-disclosure]
- b) [Governance Public Interest Disclosure \(aihw.gov.au\)](#) (internal only).

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<sup>8</sup> section 69

<sup>9</sup> section 70



## 1.6 What is disclosable conduct?

Disclosable conduct is relevantly defined in section 29 of the PID Act to mean conduct:

- a) that is engaged in by:
  - i. an agency
  - ii. a public official in connection with their position as a public official
  - iii. a contracted service provider for a Commonwealth contract, in connection with entering into, or giving effect to that contract; and
- b) that:
  - i. contravenes a law of the Commonwealth, a State or a Territory
  - ii. 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
  - iii. perverts, or attempts to pervert, the course of justice or involves (or is engaged in for the purposes of) corruption of any other kind
  - iv. constitutes maladministration, including conduct that is based on improper motives, is unreasonable, unjust or oppressive, is negligent
  - v. is an abuse of public trust
  - vi. is fabrication, falsification, plagiarism or deception in relation to scientific research, or misconduct in relation to scientific analysis, evaluation or advice
  - vii. results in the wastage of public money or public property or of the money or property
  - viii. unreasonably results in, or increases the risk of, a danger to the health and safety of a person, or unreasonably results in, or increases the risk of a danger to the environment
  - ix. is prescribed by the PID Rules
  - x. is engaged in by a public official that:
    - involves abuse of the public official's position
    - could provide reasonable grounds for termination of the public official, if proved
    - would constitute reprisal action or is otherwise significant.<sup>10</sup>

Personal work-related conduct is disclosable conduct if it:

- a) would constitute a reprisal action or an offence under section 19 of the PID Act, or
- b) is so significant it would undermine public confidence in an agency or has other significant implications for an agency.<sup>11</sup>

The 'significant' exception may apply where the conduct shows:

- a) systemic discriminatory employment practices
- b) serious criminal conduct, or
- c) conduct that may substantially adversely affect the core functions of the Institute<sup>12</sup>.

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<sup>10</sup> subsection 29(2A)

<sup>11</sup> subsection 29(2A)

<sup>12</sup> section 5, *Australian Institute of Health and Welfare Act 1987*.



## 1.7 What is not disclosable conduct

Conduct is not 'disclosable conduct'<sup>13</sup> if it relates only to a disagreement with:

- a) a policy or proposed policy of the Commonwealth Government, or
- b) action that has, or is being, or is proposed to be, taken by a Minister, the Speaker of the House of Representatives, or the President of the Senate, or
- c) amounts, purposes or priorities of expenditure or proposed expenditure relating to such a policy or proposed policy, or such action or proposed action, or
- d) is personal work-related conduct unless an exception applies.

Disclosable conduct by a public official must be conduct in connection with their position as a public official. However, conduct outside the terms of employment that is incompatible with the person's position as a public official may meet the extended definition of disclosable conduct.<sup>14</sup>

Personal work-related conduct is:<sup>15</sup>

- a) an act or omission taken in relation to a public official's engagement or appointment and/or employment
- b) that has, or would tend to have, personal implications for that public official.

Personal work-related conduct includes:

- a) interpersonal conflict, bullying or harassment
- b) decisions about a person's employment
- 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.

It is not necessary for the actions to have personal implications for the Discloser for the exclusion to apply.

## 1.8 Time limits for making a disclosure

There are no time limits for making a disclosure under the PID Act. A disclosure can be made about conduct that occurred at any time, including before the PID Act commenced. It does not matter whether:

- the disclosable conduct occurred before or after 15 January 2014 (which is the date of the commencement of the PID Act), or
- 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.

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<sup>13</sup> section 31

<sup>14</sup> subparagraph 29(2)(b)

<sup>15</sup> section 29A



## 1.9 Who to contact if you need more information

The Ethics and Privacy Unit will:

- a) provide help and assistance with these procedures
- b) coordinate and manage disclosures received under the PID Act
- c) manage and maintain the Institute's PID Framework.

For more information on these procedures or the PID Framework, please contact:

Unit Head, Ethics and Privacy Unit via email at: [pid@aihw.gov.au](mailto:pid@aihw.gov.au)



## 2. THE DISCLOSURE PROCESS

### 2.1 Making a disclosure

All public officials and former public officials are entitled to make a disclosure under the PID Act, including:

- a) all employees of the Institute and former employees of the Institute
- b) all contracted service providers and their employees who provide, or provided, services to the Institute under a contract with the Institute.

A public interest disclosure may be made orally or in writing, anonymously or openly.

A disclosure of disclosable conduct may be made to an Authorised Officer, a supervisor or manager, or in certain circumstances, to the Commonwealth Ombudsman.

Disclosers are encouraged to make public interest disclosures to an Authorised Officer in the first instance. Where a disclosure is made to the Discloser's supervisor or manager, the supervisor or manager must forward the disclosure to an Authorised Officer, if the supervisor or manager has reasonable grounds to believe that the information disclosed concerns, or could concern, disclosable conduct.

The information contained in a disclosure should be clear and factual, and avoid speculation, personal attacks and emotive language. It should contain supporting evidence where that is available to the Discloser and where possible, identify any witnesses to the disclosable conduct.

A person making a disclosure should provide the following information:

- a) the Discloser's name and contact details (although this is optional)
- b) information that will assist the Authorised Officer to assess whether the Discloser is a 'public official'
- c) details of the following matters:
  - i. the conduct the Discloser believes amounts to the disclosable conduct
  - ii. who was involved in the conduct
  - iii. when and where the conduct occurred
  - iv. any relevant background information, including whether the conduct has been investigated in another forum
- d) whether anything has been done in relation to the conduct
- e) whether anyone else is aware of the conduct, and
- f) (if possible or practicable) the type of category of 'disclosable conduct' which the Discloser considers applies.<sup>16</sup>

Any discussion about the disclosure should be raised with an Authorised Officer, or supervisor or manager. A potential Discloser should not:

- a) investigate a matter themselves before making a disclosure, or
- b) discuss details of their disclosure with anyone, other than an Authorised Officer or their supervisor or manager.

If a Discloser provides their name and contact details, the Institute will take all reasonable steps to maintain the confidentiality of that information. Further information on confidentiality

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<sup>16</sup> section 29

and protecting the Discloser's identity is set out at paragraphs 3.2 and 3.5 of these procedures.

Once a public interest disclosure has been made, it cannot be withdrawn.

However, a Discloser may state that they do not wish the disclosure to be investigated and / or they may refuse to consent to their name and contact details being provided to the Principal Officer. In these circumstances, the Principal Officer will need to consider whether an investigation is impracticable<sup>17</sup>.

An Authorised Officer or supervisor or manager who receives a disclosure of disclosable conduct from a public official must deal with the disclosure in accordance with the PID Act, the PID Standard and these procedures.

A person who knowingly makes a false or misleading statement will not be protected under the PID Act.<sup>18</sup>

## 2.2 Anonymity

A person may choose to make a disclosure anonymously.

A disclosure is considered anonymous if the identity of the Discloser is not revealed and if no contact details for the Discloser are provided. A Discloser may also be considered anonymous if the Discloser does not disclose their name, but does provide anonymous contact details.

In deciding whether or not to make a disclosure anonymously, a potential Discloser should consider the following matters:

- a) It will be difficult for the Institute to protect the Discloser from reprisals if the Institute does not know the Discloser's identity.
- b) If an Authorised Officer is satisfied, on reasonable grounds, that there is no reasonable basis on which the disclosure could be considered an internal disclosure, the Authorised Officer is not required to allocate the disclosure for handling under the PID Act. If the Authorised Officer cannot contact the Discloser to seek further information about the disclosure, the disclosure may not be allocated, nor investigated.
- c) If an Authorised Officer is satisfied that the Discloser is not a public official, they may consider exercising their discretion under section 70 of the PID Act to determine that the PID Act has effect as if the individual were a public official. If the Discloser does not provide their contact details, no determination may be able to be made because the Authorised Officer must be able to give written notice of the determination to the Discloser.
- d) An Authorised Officer will seek the Discloser's consent prior to providing the Discloser's name and contact details to the Principal Officer. A Discloser may choose to provide their name and contact details to the Authorised Officer but not to the Principal Officer. Where this occurs, the disclosure will be handled as an anonymous disclosure from the point of allocation.
- e) Once a disclosure has been allocated for handling by the Institute, the Principal Officer may decide not to investigate the disclosure if they consider it impracticable to do so because the Discloser's name and contact details have not been disclosed.

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<sup>17</sup> Section 48

<sup>18</sup> section 11



- f) If the Discloser maintains anonymity, the Institute will be unable to provide the Discloser with progress reports, and reprisal risk assessments, the investigation report, nor information about the outcome of the investigation.

A person who has made an anonymous public interest disclosure may come forward at a later stage to disclose their identity and seek the protections of the PID Act.

Where an Authorised Officer receives an anonymous disclosure and it is not clear whether the Discloser is a public official, the Authorised Officer must consider whether to exercise the power in section 70 of the PID Act to determine that a person who has disclosed information to them is a public official in relation to making the disclosure.

## **2.3 Assistance with making a disclosure to the Institute**

A public official may contact one of the Institute's Authorised Officers or the Unit Head, Ethics and Privacy Unit (via email at: [pid@aihw.gov.au](mailto:pid@aihw.gov.au)) to obtain further information on how to make an internal disclosure to the Institute.

## **2.4 Other types of public interest disclosures**

As set out at paragraph 1.3 above, the PID Act covers four other types of disclosures: external disclosures, emergency disclosures, legal practitioner disclosures and National Anti-Corruption Commission disclosures.

Strict limitations apply to the circumstances in which a person can make each of these disclosures. A person who is considering disclosing information about disclosable conduct that relates to the Institute to any person outside the Institute should review the provisions of the PID Act to consider whether the disclosure can be made in a way that attracts the protections of the PID Act.



## 3. SUPPORT, PROTECTED INFORMATION AND REPRISALS

### 3.1 Making a public interest disclosure

The Institute encourages and supports the reporting of suspected wrongdoing by public officials in accordance with the PID Act.

The Institute will take active steps to support persons who have made disclosures under the PID Act, and to protect them from detriment, or threats of detriment, relating to the disclosure as far as reasonably practicable.

The Institute recognises the importance of an effective system for reporting and investigating disclosable conduct. Some of the potential benefits are reducing the work health and safety risks to employees and making processes more efficient. Another benefit is the increasing confidence in employees in the way the Institute is managed.

The Institute also recognises that a decision not to deal with a disclosure under the PID Act, could be detrimental to the Discloser, and to the effective operation and reputation of the Institute.

### 3.2 Protecting the Discloser's identity

The PID Act provides protection for public officials from adverse consequences of disclosing information that, in the public interest, should be disclosed.

A person commits an offence under the PID Act if they disclose or use information that is likely to enable the identification of the Discloser as a person who has made a public interest disclosure unless the:

- a) Discloser consents to the disclosure of the information
- b) the same information has already been lawfully published
- c) disclosure or use is:
  - i. for the purposes of the PID Act
  - ii. required under another Commonwealth law, or a prescribed State or Territory law
  - iii. in connection with the Commonwealth Ombudsman's functions<sup>19</sup> or the IGIS's functions.<sup>20</sup>

The Institute will make every reasonable effort to protect a Discloser's identity. Steps the Institute may take to protect a Discloser's identity may include:

- a) limiting the number of people who are aware of the Discloser's identity or information that would tend to identify them
- b) reminding each person who has information about the disclosure or Discloser that they should keep it confidential and that an unauthorised disclosure may be a criminal offence
- c) assessing whether anyone who is aware of the Discloser's identity may have a motive to take reprisals against the Discloser or impede the progress of the investigation, and monitor accordingly, and

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<sup>19</sup> section 5A *Ombudsman Act 1976*

<sup>20</sup> section 8A of the *Inspector-General of Intelligence and Security Act 1986*



- d) ensuring the Discloser can communicate with a support person or the Authorised Officer without alerting other staff.

The Authorised Officer will take all reasonable steps to protect the identity of a public official who has made a public interest disclosure, or intends to make a public interest disclosure.

### **3.3 Support for Disclosers**

Support for Disclosers may include one or more of the following:

- a) appointing a support person to assist the Discloser, who will be responsible for regularly checking on the wellbeing of the Discloser (with the consent of the Discloser)
- b) providing the Discloser with information about their rights and responsibilities under the PID Act (see [Appendix B](#))
- c) providing the Discloser with information about the Institute's PID investigation procedures and any other relevant matter
- d) informing the Discloser of the progress of the investigation
- e) advising the Discloser of the availability of the Institute's Employee Assistance Program
- f) liaising with officers responsible for work health and safety in the Institute where there are concerns about the health and wellbeing of the Discloser
- g) transferring the Discloser to a different area within the workplace (with the consent of the Discloser and where reasonably practicable).

### **3.4 Support for person against whom a disclosure has been made**

Support will also be available to any employee who is subject to an allegation of disclosable conduct, which may include one or more of the following:

- a) providing the employee with information about their rights and responsibilities under the PID Act (see [Appendix C](#))
- b) providing the employee with information about the Institute's investigation procedures and any other relevant matter, including informing the employee of their right to procedural fairness
- c) ensuring the identity of the employee is kept confidential so far as reasonably practicable
- d) advising the employee of the availability of the Institute's Employee Assistance Program
- e) liaising with officers responsible for work health and safety in the Institute where there are concerns about the health and wellbeing of the employee
- f) transferring the employee to a different area within the workplace (with the consent of the employee).

### **3.5 Protection of information and confidentiality**

Confidentiality will be maintained so far as reasonably practicable in the handling of disclosures by the Institute. The Principal Officer and the Authorised Officer will take all reasonable steps to protect the identity of a public official who has made a public interest disclosure, or intends to make a public interest disclosure.

Only individuals directly involved in dealing with the public interest disclosure may be advised of the public interest disclosure. These individuals must not disclose the identity of the Discloser (if it becomes known to them) or any information which is likely to reveal the





identity of the Discloser, or any information about the disclosure, without the consent of the Discloser.

Any investigation of a disclosure must be conducted in a confidential manner, and in accordance with the PID Act.

Any interviews conducted with the Discloser should be conducted in private and should be arranged to avoid the identification of the Discloser by other staff of the Institute.

The PID Act also provides protections against the unauthorised use and/or disclosure of other information by certain people. If a person discloses information to another person or uses information otherwise than in accordance with the PID Act, that person commits an offence if the information was obtained by the person in:

- a) the course of conducting a public interest disclosure investigation
- b) connection with the performance of a function or the exercise of a power by a person under the PID Act.<sup>21</sup>

Disclosers should refrain from discussing the details of their disclosure under the PID Act with anyone who does not have a need to know. Misuse of information arising from these discussions is not governed and will not be protected by the PID Act.<sup>22</sup>

### **3.6 Immunity from liability**

A person who makes a public interest disclosure is not subject to any civil, criminal, or administrative liability (including disciplinary action) for making the disclosure. However, a Discloser is not protected from liability (including administrative action) for knowingly making a false or misleading statement, or knowingly making a disclosure that contravenes a designated publication restriction without reasonable excuse.<sup>23</sup>

Making a disclosure does not entitle a Discloser to protection from the consequences of their own wrongdoing.<sup>24</sup>

### **3.7 Protection against reprisal action**

The PID Act provides several protections to a person who makes a disclosure, if the disclosure meets the requirements of being a 'public interest disclosure'. A key protection is that it is an offence to take, or threaten to take, 'reprisal' action against a Discloser.<sup>25</sup>

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

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<sup>21</sup> section 65

<sup>22</sup> section 65

<sup>23</sup> sections 11 and 11A

<sup>24</sup> section 12

<sup>25</sup> section 13



### 3.8 What is a reprisal?

A reprisal occurs when someone causes, by act or omission, detriment to another person because they believe, or suspect, that person (or anyone else) may have made, or intends to make, a public interest disclosure.<sup>26</sup> This could include an act or omission, or threat of an act or omission, or detriment that results in:

- a) disadvantage to a person, including dismissal, injury in their employment,
- b) discrimination between them and other employees, or alteration of their position to their disadvantage
- c) a physical or psychological injury, including a stress-related injury
- d) intimidation, harassment, victimisation, loss, or damage to property
- e) a disadvantage to a person's career, for example denying them a reference or a promotion without appropriate reason
- f) harassment or intimidation
- g) harm or injury to a person
- h) any damage to a person (including property, reputation, business or financial position) in addition to the existing types of employment related harm including direct and indirect threats.

Witnesses who assist with PID investigations have comparable protections to Disclosers, including protection against reprisal, and immunity from civil, criminal and administrative liability.

The Institute will not tolerate any reprisal action against a person who makes a public interest disclosure.

Every allegation of reprisal will be taken seriously and actioned as appropriate.

All those involved in handling the public interest disclosure and aware of the Discloser's identity for the purposes of the PID Act, will monitor the work environment for signs of detriment and if necessary, take early corrective action.

### 3.9 What is not a reprisal?

Reasonable administrative action to protect a Discloser from detriment is not a reprisal.

Supervisors and managers are not prevented from taking legitimate disciplinary or management action to address unsatisfactory performance in the workplace, where that action is unrelated to the Discloser having made a disclosure.

### 3.10 Managing the risk of reprisal

When a disclosure is received, the Authorised Officer must conduct a risk assessment that considers the risk of reprisal action against the Discloser, if the identity of the Discloser is readily ascertainable or is likely to become ascertainable during the conduct of an investigation. The reprisal risk assessment will assist in determining suitable strategies for controlling the risks and reasonable actions taken to protect public officials from detriment, or the threat of detriment, relating to the disclosure as far as reasonably practicable. Further information in relation to the risk assessment is included at paragraph 5.10 of these procedures.

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<sup>26</sup> section 13



### 3.11 Role of reprisal manager

Where an Authorised Officer conducts or updates a reprisal risk assessment which identifies a reprisal risk as either a complex matter or one requiring close monitoring and control, it may be deemed appropriate to appoint a Reprisal Manager.

A Reprisal Manager will generally be independent to the assessment and investigation of the public interest disclosure (that is: not the Principal Officer or Authorised Officer) and will be available to provide support and assistance to those at risk of reprisal.

If a Reprisal Manager is appointed, their key functions will generally include:

- a) assessing the risk of reprisal and workplace conflict in connection with a public interest disclosure on an ongoing basis
- b) identifying mitigation strategies and taking action to prevent harm
- c) assessing whether any conduct that has caused, or is alleged to have caused, detriment to the Discloser in fact constitutes a 'reprisal' within the meaning of the PID Act
- d) taking action to address harm and/or respond to any claims of reprisal on behalf of the Institute, if necessary.



## 4. SUPERVISORS AND MANAGERS

### 4.1 Role of supervisors and managers

Where:

- a) a public official in the Institute discloses information to their supervisor or manager and
- b) the supervisor or manager has reasonable grounds to believe that the information concerns, or could concern, disclosable conduct,

the supervisor or manager must:

- c) inform the Discloser that the matter could be treated as an internal disclosure
- d) explain to the Discloser the next steps in the disclosure process (referring the disclosure to an Authorised Officer, the potential allocation of the disclosure, and the investigation of the disclosure)
- e) advise the Discloser about the circumstances where a disclosure must be referred to an agency or other body under another law of the Commonwealth
- f) explain the civil and criminal protections the PID Act provides to Disclosers and those assisting with the handling of a disclosure, and
- g) give the information to an Authorised Officer in the Institute, as soon as practicable.<sup>27</sup>

Where such a disclosure is made to a supervisor, that person must make a written record of the disclosure. If the disclosure is not in writing, they must make a written record of the substance of the disclosure, and the time and date of the disclosure.

The person to whom the disclosure has been made must ask the Discloser to sign the record of the discussion, where this is practicable.

At the time the supervisor or manager gives information to the Authorised Officer, 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. Further information on how to conduct a risk reprisal assessment is provided at paragraph 5.10 of these procedures.

It is important to recognise that the obligation of the supervisor or manager to report the information to an Authorised Officer is not optional, nor is it contingent upon the Discloser's agreement to the information being passed to the Authorised Officer. Once the supervisor or manager receives information that they reasonably believe may constitute disclosable conduct, that information must be passed to an Authorised Officer.<sup>28</sup>

Where:

- a) a supervisor or manager has given the information to the Authorised Officer, and
- b) the supervisor or manager is able to contact the Discloser,

they must inform the Discloser:

- c) that they have given the information to the Authorised Officer in the Institute, and
- d) about of the name and contact details of that Authorised Officer.

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<sup>27</sup> section 60A

<sup>28</sup> section 60A



## 5. AUTHORISED OFFICERS

### 5.1 Authorised Officer duties

An Authorised Officer must:

- a) take reasonable steps to protect public officials within the Institute from reprisal, if the Authorised Officer suspects a disclosure has been, may have been, is proposed to be, or could be, made or given to the Authorised Officer
- b) consider whether a disclosure includes information of suspected serious or systemic corrupt conduct
- c) consider if a disclosure includes personal work related conduct and whether one of the exceptions to the exclusion of personal work related conduct applies
- d) consider whether disclosable conduct should be referred for investigation under another more appropriate mechanism
- e) refer suspected systemic or serious corrupt conduct to the National Anti-Corruption Commission<sup>29</sup>
- f) explain to a Discloser the circumstances in which a disclosure must be referred to another agency, person, or body under another law
- g) notify the Ombudsman of the allocation or reallocation of a disclosure
- h) notify the Ombudsman when a disclosure is not allocated for investigation under the PID Act
- i) notify the Ombudsman and the Discloser when a stop action direction from the National Anti-Corruption Commission prevents allocation of all or part of a disclosure.

An Authorised Officer may:

- a) obtain information and make enquiries as they see fit, for the purposes of deciding which agency a disclosure is to be allocated
- b) allocate for investigation under the PID Act a disclosure to an agency within the same portfolio if it would be better able to handle the disclosure
- c) decide not to allocate a PID for investigation under the PID Act, if satisfied on reasonable grounds that the conduct disclosed would be more appropriately investigated under another law or power.

### 5.2 Authorised Officer must provide PID Act advice

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 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, then

the Authorised Officer must:

- d) inform the person that the disclosure could be treated as an internal disclosure for the purposes of the PID Act, and

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<sup>29</sup> section 35 *National Anti-Corruption Commission Act 2022*



- e) explain to the person what the PID Act requires for a disclosure to be an internal disclosure, and
- f) advise the person of any orders or directions that may affect the disclosure of the information.

### **5.3 Receipt of disclosure**

Where a person makes a disclosure directly to an Authorised Officer, the Authorised Officer must make a written record of the disclosure including:

- a) the substance of the disclosure if the disclosure is not in writing
- b) the time and date of the disclosure.

The Authorised Officer should ask the Discloser to sign the written record of the disclosure, where this is practicable.

The Authorised Officer must contact the Unit Head, Ethics and Privacy Unit upon receiving a potential public interest disclosure, who will provide the relevant reference for storing the records on the official Institute file, track the progress of the public interest disclosure and the Institute's compliance with the PID Act.

### **5.4 Initial consideration and allocation**

When an Authorised Officer receives a disclosure, they must consider the information and determine if further information is required prior to deciding if the disclosure is a public interest disclosure that should be allocated, including for the purposes of deciding whether the disclosure is an internal disclosure.

The Authorised Officer must use their best endeavours to make a decision about the allocation of the disclosure within 14 days after the disclosure is received by the Authorised Officer.<sup>30</sup> In the event that a decision is unlikely to be made within this timeframe, the Discloser should be informed about this.

The Authorised Officer should consider whether the personal work-related exclusion may apply, and if so, whether the conduct is an exception to disclosable conduct. Disclosures that contain both disclosable conduct and personal work-related conduct should be allocated as an internal disclosure, unless the conduct disclosed would be more appropriately investigated under another law or power.

The Authorised Officer may allocate a disclosure investigation to another agency within the portfolio if that agency is better able to handle the disclosure.

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<sup>30</sup> subsection 43(11)



## 5.5 Deciding not to allocate a disclosure

The Authorised Officer may decide not to allocate a disclosure if satisfied,<sup>31</sup> for example, 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 the Discloser's supervisor or manager
- c) information disclosed does not tend to show, and the Discloser does not have reasonable grounds to believe, that the information tends to show one or more instances of disclosable conduct and/or
- d) disclosure would be more appropriately investigated under another Commonwealth law or power, and if so, then facilitate the referral of the matter for investigation under that law or power.

Where an Authorised Officer decides that a disclosure is not to be allocated, they must, as soon as reasonably practicable, advise the Discloser (where it is reasonably practicable to do so) in writing of:

- a) the reasons why the disclosure has not been allocated, and
- b) any other course of action that may be available under other law of the Commonwealth.<sup>32</sup>

The Authorised Officer must keep appropriate records of whether the Discloser was informed of the decision not to allocate the disclosure and, if so, of:

- a) the day and time the Discloser was notified, and
- b) the means by which the Discloser was notified, and
- c) the content of the notification.

If it is not reasonably practicable to provide the notification to the Discloser, the Authorised Officer must keep a record of the matters set out above.

## 5.6 Deciding to allocate a disclosure

If the Authorised Officer is satisfied that there is a reasonable basis on which the disclosure could be considered an internal disclosure under the PID Act, they must:

- a) allocate the disclosure for handling by an agency<sup>33</sup> or
- b) decide not to allocate it.

The Authorised Officer must decide whether to allocate all or part of the disclosure to either the Institute and/or another agency.<sup>34</sup>

An Authorised Officer must obtain the consent of an Authorised Officer in another agency before allocating an internal disclosure for handling by that agency.<sup>35</sup>

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<sup>31</sup> sections 26 and 43

<sup>32</sup> subsection 44(3)

<sup>33</sup> section 43

<sup>34</sup> subsection 43(3)

<sup>35</sup> subsection 43(9)



## 5.7 Requesting consent from Discloser

Where the Authorised Officer is aware of the contact details for the Discloser, they must ask the Discloser whether the Discloser consents to the Authorised Officer giving the Discloser's name and contact details to the Principal Officer. The Discloser must respond, in writing, within 7 days of the date of the request to the disclosure.

The Authorised Officer must make a written record of the Discloser's response, if any, to those questions. Where a Discloser does not respond within 7 days, the Discloser is taken not to have consented to the disclosure of their name and contact details to the Principal Officer, and will be treated as an anonymous disclosure.

## 5.8 Informing relevant persons of allocation

### 5.8.1 Informing the receiving agency

Where an Authorised Officer in the Institute allocates a disclosure to an agency (including to the Institute), they must inform the Principal Officer of that agency about:

- a) the allocation to that agency
- b) the information that was disclosed to the Authorised Officer
- c) the suspected disclosable conduct, and
- d) the Discloser's name and contact details, if those details are known to the Authorised Officer and the Discloser has consented to the Principal Officer being informed of those details.<sup>36</sup>

### 5.8.2 Informing other relevant bodies

If the Authorised Officer allocates a disclosure to an agency (including the Institute) that is not the Ombudsman, the IGIS or an intelligence agency, the Authorised Officer must inform the Ombudsman of the allocation in writing. If the disclosure is allocated to an intelligence agency, the Authorised Officer must inform the Inspector General of Intelligence and Security (IGIS) of that allocation in writing. The discloser's name and contact details will only be included if the discloser provides their consent.

### 5.8.3 Informing the Discloser

As soon as reasonably practicable after the allocation, the Authorised Officer must inform the Discloser<sup>37</sup> (where it is reasonably practicable to do so) in writing, of:

- a) the allocation
- b) the information that has been provided to the Principal Officer of the relevant agency
- c) if the disclosure has been allocated to the Institute, that the Principal Officer has the power, in certain circumstances, to decide:
  - i) not to investigate the disclosure
  - ii) not to investigate the disclosure further.<sup>38</sup>

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<sup>36</sup> section 44

<sup>37</sup> subsection 44(2)

<sup>38</sup> subsection 44(3)





## 5.9 Record of allocating the handling of a disclosure

When an Authorised Officer allocates the handling of a disclosure to one or more agencies, the Authorised Officer must keep an appropriate record of:

- a) the decision (including the name of each agency to which the disclosure is to be allocated)
- b) the reasons for the decision
- c) the consent provided by the Authorised Officer of the agency to which the allocation is made.

The Authorised Officer must also keep appropriate records of whether the Discloser was informed of the allocation decision, and if so, of:

- a) the date and time the Discloser was notified
- b) the means by which the Discloser was notified
- c) the content of the notification.

Further information on record keeping is at [Part 7](#) of these procedures.

## 5.10 Reprisal risk assessment

### 5.10.1 Conducting a reprisal risk assessment

Where an Authorised Officer allocates a disclosure for handling by the Institute, they must conduct a risk assessment on the likelihood that reprisals may be taken against the Discloser.

The reprisal risk assessment must be undertaken based on a checklist of risk factors, and having regard to any assessment of risk provided under these procedures by the Discloser's supervisor or manager. A checklist of relevant risk factors includes:

- a) the likelihood of the Discloser being identified
- b) the number of people implicated in the disclosure
- c) the subject matter of the disclosure
- d) the number of people who are aware, or likely to become aware, of the disclosure
- e) the culture of the workplace
- f) the positions of the parties
- g) the likely outcome if the conduct disclosed is substantiated
- h) whether any specific threats against the disclosure have been made
- i) whether there is a history of conflict between the parties
- j) whether the disclosure can be investigated while maintaining confidentiality
- k) whether the Discloser is isolated
- l) whether the Discloser is employed on a full time, part time, or casual basis.

In conducting the risk assessment, Authorised Officers will adopt the following risk identification and management framework:

- a) Identify – are reprisals or related workplace conflict problems in the workplace, or do they have the potential to be problems?
- b) Assess – what is the likelihood and consequences of reprisals or related workplace conflict?
- c) Control – what strategies should be put in place to prevent or contain reprisals or related workplace conflict?



d) Monitor and review – have the strategies been implemented and were they effective?

### **5.10.2 Developing a reprisal risk mitigation plan**

Where the reprisal risk level is assessed as anything greater than low, a risk management plan must be developed for mitigating the risk of reprisals being taken against the Discloser.

The risk management strategy will generally be developed by the Authorised Officer who made the allocation decision. However, an Authorised Officer may consider it more appropriate for a strategy to be developed by a separate Reprisal Manager, having regard to the assessed risk rating.

This strategy may include some, or all, of the support measures detailed at paragraph 3.3 of these procedures. In some cases, where there is a serious risk of reprisal action, it may be appropriate to adjust the working and supervision arrangements to protect the Discloser or any other person who are at risk of reprisal action where this is reasonably practicable.

### **5.10.3 Monitoring and reviewing reprisal risks**

The Authorised Officer or Reprisal Manager (as applicable) should monitor and review the reprisal risk assessment and any mitigation plan as necessary throughout the investigation process.

The investigator may be able to provide useful information about the reprisal risk environment over the course of the investigation.



## 6. PROCEDURES FOR THE PRINCIPAL OFFICER

### 6.1 Principal Officer responsibilities

The Principal Officer must:

- a) where it is reasonably practicable to do so, within 14 days after a disclosure is allocated to the Institute, inform the Discloser in writing of a decision to investigate the disclosure<sup>39</sup> or not to investigate (or not to further investigate) the disclosure<sup>40</sup>
- b) take steps as soon as reasonably practicable to refer the conduct disclosed, or facilitate referral, for investigation under another law or power
- c) take reasonable steps to protect public officials who belong to the Institute against reprisals in relation to disclosures that have been, may have been, are proposed to be, or could be, made to the Institute
- d) take reasonable steps to encourage and support Disclosers, including potential Disclosers, and those who provide assistance in relation to disclosures
- e) prepare an investigation report and take appropriate action in response to the recommendations in the report, as soon as reasonably practicable
- f) notify the Discloser and the Ombudsman of the completion of an investigation
- g) provide the Discloser and the Ombudsman with a copy of the investigation report
- h) take reasonable steps to provide ongoing training and education to public officials about the PID Act, and any training necessary to support officials to carry out their functions under the Act.

### 6.2 Deciding whether to investigate

In broad terms, the Principal Officer may decide not to investigate if:<sup>41</sup>

- 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 that such a person is taken to be a public official
- b) the information does not concern serious disclosable conduct
- c) the disclosure is frivolous or vexatious
- d) the information is the same, or substantially the same, as a disclosure that has been investigated under the PID Act
- e) the information concerns disclosable conduct that is the same, or substantially the same, as disclosable conduct that has already been investigated, or is currently being investigated, under another law of the Commonwealth or the executive power of the Commonwealth, and:
  - i. it would be inappropriate to conduct another investigation at the same time
  - ii. the Principal Officer is reasonably satisfied that there are no matters that warrant further investigation
  - iii. the Discloser has informed the Principal Officer that they do not wish the disclosure to be pursued and the Principal Officer is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation
- f) it is impracticable to investigate the disclosure because:

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<sup>39</sup> section 50

<sup>40</sup> section 48

<sup>41</sup> section 48



- i. the Discloser's name and contact details have not been disclosed
- ii. the Discloser has refused, has failed, or is unable to provide the information or assistance requested
- iii. the age of the information.

If none of the above grounds apply, the Principal Officer is required to conduct an investigation.<sup>42</sup>

## 6.3 Notifying the Discloser and the Ombudsman

### 6.3.1 Decision not to investigate

Where the Principal Officer decides not to investigate a disclosure<sup>43</sup> they must:

- a) as soon as reasonably practicable, inform the Discloser that:
  - i. they have decided not to investigate the disclosure<sup>44</sup> and
  - ii. give the reasons for that decision (other than those reasons that may be deleted in accordance with subsection 50(3) of the PID Act) and
  - iii. any other course of action that may be available to the Discloser under other laws of the Commonwealth,<sup>45</sup> and
- b) inform the Ombudsman of the decision not to investigate and the reasons for that decision.<sup>46</sup>

### 6.3.2 Where the disclosure is investigated

Where a disclosure is investigated, the Principal Officer must:

- a) inform the Discloser as soon as reasonably practicable, that they must investigate the disclosure<sup>47</sup>
- b) inform the Discloser of the estimated length of the investigation<sup>48</sup>
- c) prepare an investigation report and take appropriate action in response to recommendations in the report, as soon as reasonably practicable
- d) inform the Discloser and the Ombudsman whether action has been taken, or is proposed to be taken, to refer the conduct disclosed for investigation under another law or power<sup>49</sup>
- e) notify the Discloser and the Ombudsman of the completion of an investigation under the PID Act and provide a copy of the report
- f) provide the Ombudsman with notice of action taken, or proposed to be taken, of any recommendation made by the Ombudsman in response to the report, and
- g) advise the Ombudsman why no action is proposed to be taken.

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<sup>42</sup> section 47

<sup>43</sup> section 48

<sup>44</sup> section 50

<sup>45</sup> subsection 50(2)

<sup>46</sup> section 50A

<sup>47</sup> sections 47 and 50

<sup>48</sup> subsection 50(1A)

<sup>49</sup> sections 50, 50AA, 50A



If during the investigation the Principal Officer decides not to investigate the disclosure further, the Principal Officer must:<sup>50</sup>

- a) as soon as reasonably practicable, inform the Discloser:
  - i. that they have decided not to investigate the disclosure further<sup>51</sup> and
  - ii. about the reasons for the decision<sup>52</sup> and
  - iii. about any other courses of action that may be available to the Discloser under other laws of the Commonwealth, and
- b) inform the Ombudsman of the decision not to investigate the disclosure further and the reasons for that decision.<sup>53</sup>

## 6.4 Conducting the investigation

If the Principal Officer proceeds to investigate a disclosure, the Principal Officer will investigate whether one or more instance of disclosable conduct has occurred.

The Principal Officer may conduct the investigation as they see fit. This may include appointing an investigator to assist them conduct the investigation.

### 6.4.1 General principles

An investigation under the PID Act is an administrative investigation.

The following general principles apply to the conduct of investigations:

- a) Maintaining the confidentiality of the identity of the Discloser is paramount when conducting the investigation (see paragraph 3.5 of these procedures for further information on confidentiality)
- b) A decision whether evidence is sufficient to prove a fact must be determined on the balance of probabilities
- c) The Principal Officer must be independent and unbiased in investigating the matter and ensure they do not have an actual or perceived conflict of interest and
- d) The Principal Officer may, for the purposes of the investigation, obtain information from such persons, and make such enquiries, as they think fit.

The formality of the investigation should be commensurate with the seriousness and nature of the alleged disclosable conduct and the importance of the particular evidence.

### 6.4.2 Additional procedures required in particular circumstances

When the Principal Officer is conducting an investigation, they must comply with:

- a) these procedures
- b) the PID Act, *PID Rules 2019* and the PID Standard 2013
- c) Australian Government Investigation Standards 2022 (**AGIS**)
- d) if relevant, any rules relating to fraud that are made for the purposes of the *Public Governance, Performance and Accountability Act 2013* and the Australian Government Investigation Standards (AGIS) (if relevant to the matter being investigated)

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<sup>50</sup> section 48

<sup>51</sup> section 50

<sup>52</sup> subsections 50(2) and 50(3)

<sup>53</sup> section 50A



- e) if relevant, the Institute’s procedures for determining breaches of the APS Code of Conduct, established under subsection 15(3) of the *Public Service Act 1999* (if relevant to the matter being investigated); and
- f) if relevant, the mandatory reporting obligations to the National Anti-Corruption Commission<sup>54</sup> and
- g) if relevant, any notice to stop work issued by the National Anti-Corruption Commission.<sup>55</sup>

As part of the investigation, the Principal Officer may consider whether a different investigation should be conducted by the Institute or another body under another law of the Commonwealth.<sup>56</sup> The Principal Officer has mandatory reporting obligations to the National Anti-Corruption Commission if the suspected disclosable conduct raises issues of suspected systemic or serious corrupt conduct.

If the Principal Officer considers that the nature of the disclosure is such that the outcome of the investigation is likely to be a referral of the matter for a separate investigation under another process or procedure, the investigation under these procedures may appropriately be conducted in a circumscribed way. Once the Principal Officer is satisfied that one or more instances of disclosable conduct may have occurred, the Principal Officer may conclude their investigation and recommend in the investigation report that the information disclosed be referred to another part of the Institute for investigation under another process or procedure. In particular, if the suspected disclosable conduct:

- a) relates to fraud, the disclosure should be referred to the Institute’s Financial and Commercial Services Unit for investigation under the Commonwealth Fraud Control Policy,<sup>57</sup>
- b) relates to alleged breaches of the APS Code of Conduct, the disclosure should be referred to the Institute’s People and Facilities Unit for investigation under the Institute’s Code of Conduct procedures<sup>58</sup>
- c) raises issues of suspected systemic or serious corrupt conduct, the matter must be referred to the National Anti-Corruption Commission.<sup>59</sup>

### 6.4.3 Interviewing witnesses

Subject to any restrictions imposed by any other law of the Commonwealth, the investigator must ensure that, if a person is interviewed as part of the investigation of a public interest disclosure, that person is informed of the following matters:

- a) the identity and function of each person conducting the interview
- b) the process of conducting the investigation
- c) the authority of the investigator under the PID Act to conduct an investigation
- d) the protections provided to witnesses<sup>60</sup>
- e) the interviewee’s duty to:

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<sup>54</sup> section 35 *National Anti-Corruption Commission Act 2022*

<sup>55</sup> section 43 *National Anti-Corruption Commission Act 2022* and sections 44B and 47 PID Act

<sup>56</sup> subsection 47(3)

<sup>57</sup> subsection 53(4)

<sup>58</sup> section 50AA

<sup>59</sup> section 35 *National Anti-Corruption Commission Act 2022*

<sup>60</sup> section 12A



- i. use their best endeavours to assist the Principal Officer in the conduct of an investigation under the PID Act if they are a public official, subject to the public official's privilege against self-incrimination or exposing themselves to a penalty
- ii. not to take or threaten to take reprisal action against the Discloser
- iii. not to disclose the identity of the person who made the disclosure, subject to the PID Act.

At the end of any interview, the interviewee must be given an opportunity to make a final statement or comment or express any opinion. Any final statement, comment or opinion in the record of interview must be included in the report.

Any interviews conducted with the Discloser should be conducted in private and should be arranged to avoid the identification of the Discloser by the other staff at the Institute.

#### **6.4.4 Procedural fairness**

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

Procedural fairness may require that the Discloser's identity be revealed to the person who is subject of the disclosure so that the person can meaningfully understand the allegations being made against them.

Where the Principal Officer proposes to make a finding of fact or express an opinion that is adverse to the Discloser, or to a public official who is a subject of the disclosure, the Principal Officer must:

- a) advise the person who is the subject of the proposed finding or opinion of the adverse material that is relevant to that proposed finding or opinion, and
- b) give the person a reasonable opportunity to respond to it.

Where the Principal Officer does not make substantive findings or express adverse opinions, but instead simply recommends that further investigation action should or should not be taken, no advice to the person referred to above is required.

If it appears that the proposed finding or opinion would adversely affect the rights or interests of someone other than the Discloser or a public official who is the subject of the disclosure, then the investigator or Principal Officer should consider whether that person should be given the opportunity to comment.

#### **6.4.5 Timeframe**

The Principal Officer has 90 days from the date the disclosure was allocated in which to complete the investigation. The investigation is completed when the Principal Officer has prepared the report of the investigation.<sup>61</sup>

It is possible to seek one or more extensions of time from the Ombudsman.<sup>62</sup> Extension applications to the Ombudsman must be made at least 10 days before the 90-day period expires (or the previously extended date). The Ombudsman cannot grant an extension after the 90-day deadline has passed. If an extension is granted, the Ombudsman will inform the Discloser and give reasons for the extension. This does not apply if contacting the Discloser is not reasonably practicable.

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<sup>61</sup> subsection 52(2)

<sup>62</sup> subsection 52(3)



This timeframe may also be affected where the National Anti-Corruption Commission issues a stop work notice.<sup>63</sup>

The Principal Officer or Authorised Officer should let the Discloser know before they apply for an extension, and take the opportunity to explain why it is required and the steps that need to be taken to complete the investigation.

## 6.5 Report of investigation

The Principal Officer must comply with the PID Act, the PID Standard and these procedures in preparing the investigation report. A report of an investigation conducted under the PID Act must set out the following:<sup>64</sup>

- a) the matters considered in the course of the investigation
- b) the duration of the investigation
- c) the Principal Officer's findings (if any)
- d) the action (if any) that has been, is being, or is recommended to be taken
- e) any claims made about, and any evidence of, reprisal action taken against the Discloser
- f) the Institute's response to those claims and that evidence
- g) The report must also:
  - i. identify, where relevant, whether there have been one or more instances of disclosable conduct
  - ii. identify, where relevant, any regulations, rules, administrative requirements or similar matters to which the disclosable conduct (if any) relates
  - iii. explain the steps taken to gather evidence
  - iv. set out a summary of the evidence used to make a finding or recommendation, as well as any findings and recommendations made based on that evidence.

Where the Principal Officer has completed a report of an investigation under the PID Act, the Principal Officer must give a copy of the report to the:

- a) Discloser within a reasonable time after preparing the report and where reasonably practicable to do so,<sup>65</sup> and
- b) Commonwealth Ombudsman.

The following material may be deleted from the copy of the report given to the Discloser:<sup>66</sup>

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

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<sup>63</sup> section 43 *National Anti-Corruption Commission Act 2022* and sections 44B and 47

<sup>64</sup> section 51

<sup>65</sup> subsection 51(4)

<sup>66</sup> subsection 51(5)



## 7. RECORDS MANAGEMENT, MONITORING AND EVALUATION

### 7.1 Records management

The Ethics and Privacy Unit maintains the PID records management structure including digital containers for Authorised Officers and the Principal Officer.

The Principal Officer and Authorised Officers are to contact the Unit Head, Ethics and Privacy Unit when dealing with a public interest disclosure. A digital folder will be allocated for the storing of confidential records relating to the public interest disclosure.

Where an Authorised Officer is required to keep a record under these procedures, the record will be in an electronic form and stored in the relevant digital container.

Access to these records must be restricted to the Authorised Officer and other employees in the Institute who require access in order to perform a function under the PID Act, or for the purposes of another law of the Commonwealth, for example the *Public Service Act 1999*, the *Work Health and Safety Act 2011*, or the *National Anti-Corruption Commission Act 2022*.

Where a form or notification is required to be sent under these procedures, a copy of the form or notification must be kept.

Any emails sent to any person in connection with a disclosure must be clearly marked '*for addressees eyes only*'.

Where a person ceases to be an Authorised Officer in the Institute (including because of resignation or movement to another agency), their public interest disclosure records must be transferred to another Authorised Officer in the Institute before their departure.

Authorised Officers should, where they are aware of the fact, ensure they maintain records of:

- a) any claims made about, and evidence of, reprisal or threatened reprisal, and
- b) any actions taken by the Institute to address such claims.

There must be due regard to confidentiality in the collection, storage and use of records relating to a public interest disclosure.

### 7.2 Monitoring and evaluation

For the purposes of assurance and tracking that the Institute is complying with its obligations under the PID Act, regular updates on the progress of public interest disclosures will be provided to the Unit Head, Ethics and Privacy Unit.

Authorised Officers are required to provide regular updates on the progress of their assessments or investigations to the Unit Head, Ethics and Privacy Unit.

Authorised Officers are required to inform the Unit Head, Ethics and Privacy Unit as soon as reasonably practicable, when they receive a potential public interest disclosure.

Authorised Officers are also required to notify the Unit Head, Ethics and Privacy Unit when they make a decision regarding the public interest disclosure and the outcome of that decision.

The Principal Officer and Authorised Officers are required to inform the Unit Head, Ethics and Privacy Unit when they are notified that a public interest disclosure has been allocated to the Institute.



### 7.3 Information and assistance to the Ombudsman

The Principal Officer must provide a report on disclosures received by the Institute for the purposes of preparing the Ombudsman's annual report under the PID Act.

The Unit Head, Ethics and Privacy Unit will prepare a report on behalf of the Institute on all disclosures made during the financial year. For this purpose, when required to do so:

- a) Authorised Officers must provide a report to the Unit Head, Ethics and Privacy Unit 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 in section 29 of the PID Act.
- b) The report must also include any disclosures that have been allocated to the Institute by another agency's Authorised Officer.
- c) The Principal Officer and Authorised Officers within the Institute must advise the Ethics and Privacy Unit EPLU of all decision made not to investigate a disclosure, or not to investigate a disclosure further, during a financial year<sup>67</sup>.
- d) Reports must be provided to the Ethics and Privacy Unit EPLU specifying the number of investigations completed or are in the process of conducting. For completed investigations, the report must include whether a finding of disclosable conduct was made and what recommendations were made, if any, in response to such findings.
- e) Reports must also be made to the Unit Head, Ethics and Privacy Unit where action in response to a recommendation made in an investigation report is taken.

The Principal Officer will give the Ombudsman such information and assistance as the Ombudsman reasonably requires<sup>68</sup> in order to prepare the annual report.<sup>69</sup>

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<sup>67</sup> section 48

<sup>68</sup> subsection 61(2)

<sup>69</sup> section 76



## 8. GLOSSARY

### Acronyms and abbreviations

<b>Acronym/Abbreviation</b>	<b>Description</b>
Authorised Officer	means officers appointed by the Principal Officer under section 36 of the PID Act
CEO	means the Chief Executive Officer of the Australian Institute of Health and Welfare
Discloser	means a public official making a disclosure
IGIS	means the Inspector-General of Intelligence and Security
Institute	means the Australian Institute of Health and Welfare, a corporate Commonwealth entity established by the <i>Australian Institute of Health and Welfare Act 1987</i>
Investigator	means a person appointed by the Principal Officer to conduct an investigation under the PID Act
Ombudsman	means the Commonwealth Ombudsman
PID	Public interest disclosure
PID Act	<i>Public Interest Disclosure Act 2013</i>
PID Rules	<i>Public Interest Disclosure Rules 2019</i>
PID Standard	<i>Public Interest Disclosure Standard 2013</i> , published by the Ombudsman and made under section 74 of the PID Act
Prescribed Authority	means an entity within the meaning of section 72 of the PID Act
Principal Officer	means the Chief Executive Officer and includes delegates appointed under section 77 of the PID Act



## 9. KEY LEGISLATION AND POLICY

The following documents directly relate to these procedures and must be reviewed in context to this document:

### Australian Government Federal Register of Legislation:

- [Australian Institute of Health and Welfare Act 1987](https://www.legislation.gov.au/Details/C2018C00474)  
[https://www.legislation.gov.au/Details/C2018C00474]
- [Crimes Act 1914](https://www.legislation.gov.au/Details/C2023C00182)  
[https://www.legislation.gov.au/Details/C2023C00182]
- [Freedom of Information Act 1982](https://www.legislation.gov.au/Details/C2023C00079)  
[https://www.legislation.gov.au/Details/C2023C00079]
- [Inspector-General of Intelligence and Security Act 1986](https://www.legislation.gov.au/Details/C2023C00168)  
[https://www.legislation.gov.au/Details/C2023C00168]
- [National Anti-Corruption Commission Act 2022](https://www.legislation.gov.au/Details/C2023C00132)  
[https://www.legislation.gov.au/Details/C2023C00132]
- [Ombudsman Act 1976](https://www.legislation.gov.au/Details/C2023C00177)  
[https://www.legislation.gov.au/Details/C2023C00177]
- [Public Interest Disclosure Act 2013](https://www.legislation.gov.au/Details/C2023C00111)  
[https://www.legislation.gov.au/Details/C2023C00111]
- [Public Interest Disclosure Standard 2013](https://www.legislation.gov.au/Details/F2014C00919)  
[https://www.legislation.gov.au/Details/F2014C00919]
- [Public Governance, Performance and Accountability Act 2013](https://www.legislation.gov.au/Details/C2017C00269)  
[https://www.legislation.gov.au/Details/C2017C00269]
- [Public Governance, Performance and Accountability Rule 2014](https://www.legislation.gov.au/Details/F2023C00674)  
[https://www.legislation.gov.au/Details/F2023C00674]
- [Public Service Act 1999](https://www.legislation.gov.au/Details/C2019C00057)  
[https://www.legislation.gov.au/Details/C2019C00057]
- [Public Service Regulations 1999](https://www.legislation.gov.au/Details/F2023L00368)  
[https://www.legislation.gov.au/Details/F2023L00368]





**Attorney-General's Department:**

- [Australian Government Investigations Standards \(2022\)](https://www.ag.gov.au/sites/default/files/2022-12/Australian-Government-Investigations-Standard-2022.pdf)  
<https://www.ag.gov.au/sites/default/files/2022-12/Australian-Government-Investigations-Standard-2022.pdf>
- [Commonwealth Fraud Control Framework 2017](https://www.ag.gov.au/integrity/publications/commonwealth-fraud-control-framework)  
[<https://www.ag.gov.au/integrity/publications/commonwealth-fraud-control-framework>]

**Australian Institute of Health and Welfare:**

- [Fraud control plan](#)  
[internal use only]
- Procedures for Determining Breaches of the [APS Code of Conduct](#)  
[internal use only]

**Commonwealth Ombudsman:**

- [Agency Guide to the \*Public Interest Disclosure Act 2013\*](#)



## 10. REVISION HISTORY

Revisions to this procedure are recorded below in order of most recent first.

<b>Version No.</b>	<b>Date</b>	<b>Parts/Sections</b>	<b>Details</b>
2	October 2023	All	Second issue
1	June 2022	All	First issue



# 11. APPENDICES

## Appendix A

### Authorised Officers

Authorised Officers at the Institute appointed by the CEO as the Principal Officer hold the following positions:

- Head, Data Governance & Integration Group
- Head, Ethics & Privacy Unit.

The Authorised Officers may be contacted by email at [pid@aihw.gov.au](mailto:pid@aihw.gov.au)





## Appendix B

### Rights and responsibilities of a Discloser

A Discloser has a right to the protections under the PID Act, including protection from reprisals, civil and criminal liability, and from the disclosure of identity where the disclosure is made anonymously. However, a disclosure does not protect the Discloser from the consequences of their own wrongdoing, including where they have been involved in misconduct that they are reporting. During the process, a Discloser will be:

- a) advised of the following:
  - i. any decision that a disclosure is not a disclosure within the meaning of the PID Act
  - ii. the allocation of their disclosure
  - iii. the decision to investigate their disclosure
  - iv. the estimated timeframe of the investigation into their disclosure
  - v. if a decision is made not to investigate the disclosure, the reasons for that decision and any action that may be available to the Discloser under other Commonwealth laws
  - vi. if an investigation is conducted under the PID Act and an extension of time is granted by the Ombudsman or IGIS, the progression of the investigation; and
  - vii. the outcome of the investigation (including a copy of the investigation report, except to the extent that it would be exempt for the purposes of Part IV of the *Freedom of Information Act 1982*, would require a national security or other protective security clearance, contains intelligence information, or contravenes a designated publication restriction as defined by the PID Act)
- b) offered support in accordance with Part 3 of these procedures
- c) able to seek assistance from the Ombudsman in relation to the operation of the PID Act.

A Discloser must:

- a) comply with the PID Act requirements and these procedures when making a public interest disclosure
- b) use their best endeavours to assist the Principal Officer of the Institute in the conduct of an investigation
- c) use their best endeavours to assist the Ombudsman in the performance of the Ombudsman's functions under the PID Act
- d) use their best endeavours to assist the IGIS in the performance of the IGIS's functions under the PID Act
- e) report to the Principal Officer any detriment the Discloser believes they may have been subjected to as a result of making the disclosure.



## Appendix C

### **Rights and responsibilities of a person who is the subject of a disclosure**

A person who is the subject of a disclosure will be:

- a) offered support in accordance with Part 3 of these procedures
- b) able to seek assistance from the Ombudsman in relation to the operation of the PID Act.

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

- a) use their best endeavours to assist the Principal Officer of the Institute in the conduct of an investigation
- b) use their best endeavours to assist the Ombudsman in the performance of the Ombudsman's functions under the PID Act
- c) use their best endeavours to assist the IGIS in the performance of the IGIS's functions under the PID Act
- d) comply with action taken by the Institute to address risks or concerns in relation to the public interest disclosure.

An employee who is the subject of a disclosure should also be aware that the outcome of an investigation under these procedures may result in another, different investigation (for example: a Code of Conduct investigation).

