



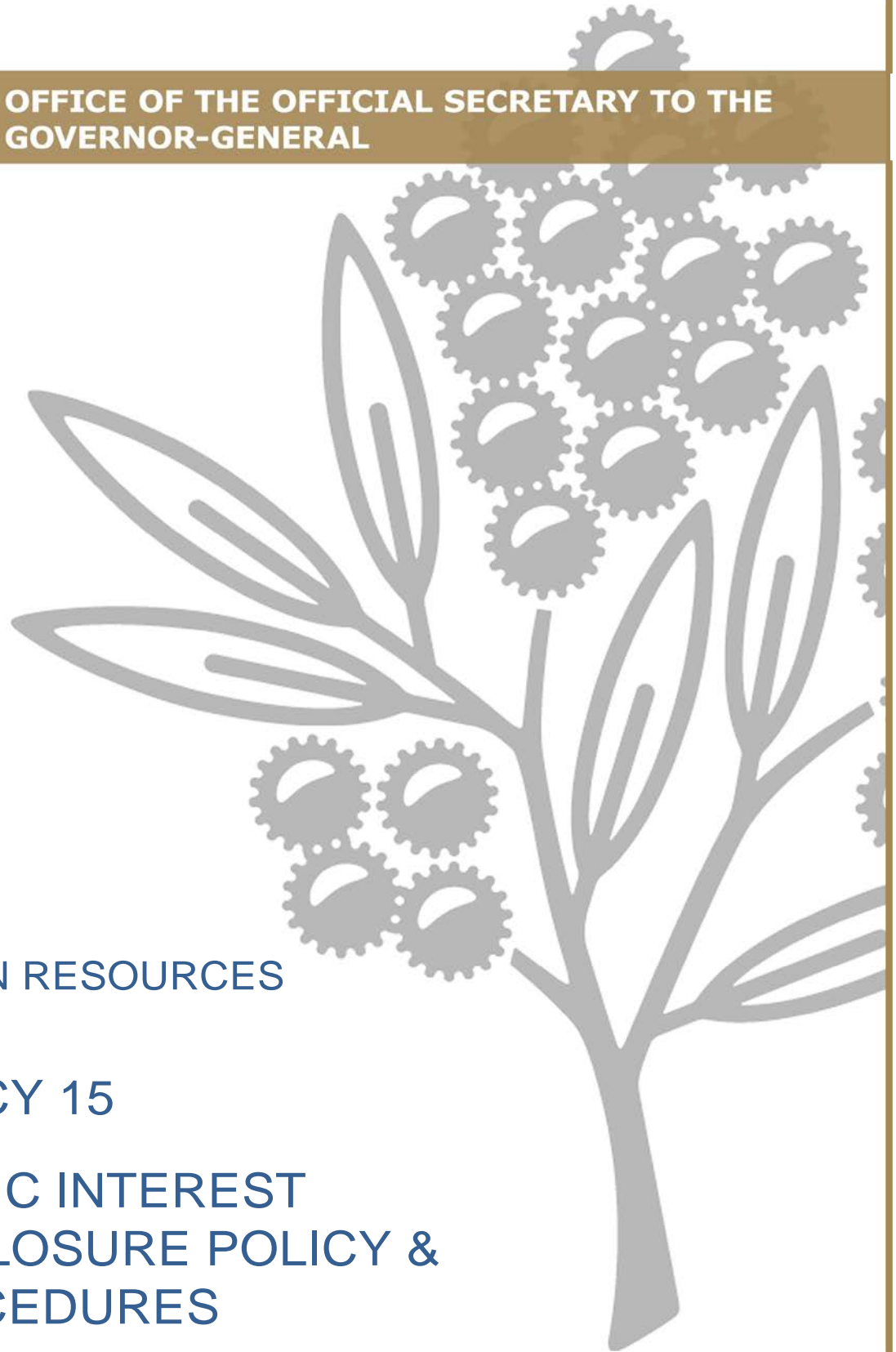
OFFICE OF THE OFFICIAL SECRETARY TO THE  
GOVERNOR-GENERAL

HUMAN RESOURCES

POLICY 15

PUBLIC INTEREST  
DISCLOSURE POLICY &  
PROCEDURES

JANUARY 2016



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# 1. BACKGROUND

The *Public Interest Disclosure Act 2013* (the Act) commenced on 15 January 2014 and builds on practices established to protect Office employees who 'blow the whistle' on suspected breaches of the Code of Conduct.

The Act is not intended to replace existing processes for dealing with workplace grievances and misconduct, such as bullying and harassment, but to supplement them.

## 1.1 Disclaimer

While every care has been taken to ensure the relevance and accuracy of these guidelines, in the event of any discrepancy between the guidelines and any relevant legislation, or with the entitlement in the Office Enterprise Agreement, then the spirit and intent of the latter two sources apply.

# 2. PURPOSE

There is a legislative requirement for the Office to establish procedures for facilitating and dealing with public interest disclosures relating to the Office. The purpose of this Policy is to meet that statutory requirement and to promote the integrity and accountability of the Office by:

- (a) Encouraging and facilitating disclosure of information by Office employees about suspected wrongdoing in the Office;
- (b) Ensuring that Office employees who make public interest disclosures are supported and protected from adverse consequences; and
- (c) Ensuring that disclosures by Office employees are properly investigated and dealt with.

# 3. WHAT IS A PUBLIC INTEREST DISCLOSURE

A public interest disclosure is a disclosure of information, by a current or former public official, that is:

- (a) A disclosure within the Office, to an Authorised Officer, concerning suspected or probable illegal conduct or other wrongdoing (referred to as "disclosable conduct"); or
- (b) A disclosure to anybody, if an internal disclosure of the information has not been adequately dealt with, and if wider disclosure satisfies public interest requirements; or
- (c) A disclosure to anybody if there is substantial and imminent danger to health or safety; or
- (d) A disclosure to an Australian legal practitioner for purposes connected with the above matters.

It is important to note that not all disclosures of information that might be made to the Office will be a “public interest disclosure” for the purposes of the Act (“a PID”). A disclosure of information will only be a PID to which these procedures relate if it meets the following requirements:

- (a) it is made by a public official or a person who has been a public official;
- (b) the information tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of “disclosable conduct” as defined by the Act; and
- (c) the disclosure is made to an appropriate person

An overview of these key requirements, prepared by the Commonwealth Ombudsman, is set out at **Attachment A**.

Only if each of the above requirements has been met will the disclosure be covered by the Act and the discloser has the benefit of the protections that it confers. Accordingly, it is important that persons contemplating making a disclosure of information carefully review the contents of the Act and seek legal advice, where appropriate, in order to determine whether the disclosure can be made in a way that attracts the protections of the Act.

Internal disclosures made about the Office of the Official Secretary to the Governor-General are the focus of this policy and procedure.

## 4. WHO CAN MAKE A PUBLIC DISCLOSURE

A disclosure must be made by a ‘public official’ –this includes current and former:

- (a) Australian Government public servants or Commonwealth employees;
- (b) An agency head;
- (c) Statutory Office holders;
- (d) Parliamentary Service employees;
- (e) Members of the Defence Force;
- (f) Staff and Directors of Commonwealth companies;
- (g) An Australian Federal Police appointee
- (h) A contractor to the Commonwealth or prescribed authority
- (i) Staff of Commonwealth contracted service providers; and
- (j) Persons deemed to be public officials.

## 5. PROTECTION, SUPPORT AND REPRIALS

### 5.1 The Office encourages the making of reports of disclosable conduct

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

The Office will take active steps to support and to protect persons who make disclosures under the Act.

The Office recognises it is important to have an effective system for reporting and investigating disclosable conduct. Some of the potential benefits of such a system are reducing the work health and safety risks of our workers and making our processes more efficient. Another potential benefit is increasing the confidence of our workers in how the Office is managed.

### 5.2 Protecting confidentiality

The Authorised Officer and the Principal Officer and/or delegate will take all reasonable steps to protect the identity of a public official who has made a PID from the time the disclosure is made.

Only individuals directly involved in dealing with the PID (such as the Authorised Officer, the Principal Officer and/or delegate) may be advised of the details of the PID. These individuals must not disclose the identity of the discloser or any information which is likely to reveal the identity of the discloser without the consent of that person.

It is an offence for a public official to disclose information that is likely to enable the identification of a person as a person who has made a public interest disclosure other than in accordance with the Act.

Similarly, if a person discloses information to another person or uses information in a way that is not in accordance with the Act, the person commits an offence if the information was obtained by the person:

- a) in the course of conducting a disclosure investigation; or
- b) in connection with the performance of a function or the exercise of a power by the person under the Act.

Identifying information about a discloser will not be disclosed to a court or tribunal except where necessary to give effect to the Act.

An individual is not subject to any civil, criminal or administrative liability for making a public interest disclosure.

It is an offence to take a reprisal, or to threaten to take a reprisal, against a person because of a public interest disclosure (including a proposed or a suspected public interest disclosure).

It is an offence to disclose the identity of an individual who makes a public interest disclosure.

There may be circumstances where an individual is not protected, for example where the individual knowingly makes a statement that is false or misleading.

A person is not subject to any criminal or civil liability because the person (voluntarily or otherwise) gives information, produces a document or answers a question if:

- (a) The person does so when requested to do so by a person conducting a disclosure investigation; and
- (b) The information, document or answer is relevant to the investigation.

If the information, document or answer relates to the person's own conduct, this section does not affect the person's liability for the conduct.

Summaries of the rights and responsibilities of a discloser and a person who is the subject of a disclosure under this procedure are set out at Attachment B and Attachment C respectively.

Further guidance material can also be obtained from the following website:  
<http://www.ombudsman.gov.au/pages/pid/>.

### **5.3 Reprisals**

The Office will not tolerate any reprisal action against a person who makes a public interest disclosure. A person who makes a public interest disclosure will be protected from reprisal in the following ways:

- a) it is a criminal offence to cause detriment to a person because it is suspected or believed that they have made or will make a public interest disclosure;
- b) a discloser has the right to apply for an injunction to prevent a reprisal; and
- c) a discloser has the right to apply for compensation for loss, damage or injury suffered from a reprisal.

Every allegation of reprisal will be taken seriously, recorded and responded to. All those involved in handling the public interest discloser and aware of the discloser's identity – which may include the Authorised Officer, Investigator, supervisor, manager and anyone else to whom the discloser has agreed to reveal their identifying information or has the information for the purposes of the Act will monitor the work environment for signs of detriment and if necessary, take corrective action early.

## Conduct a risk assessment

When the Principal Officer and/or delegate receive a PID that has been allocated to the Office, they will assess the risk that reprisals will be taken against the discloser.

In assessing the risk of reprisals, the Principal Officer and/or delegate may use the following risk matrix:

Likelihood of reprisal being taken against a discloser	Likely seriousness of reprisal			
	Minor	Moderate	Major	Extreme
Almost certain	Medium	High	High	High
Likely	Medium	Medium	High	High
Unlikely	Low	Low	Medium	Medium
Highly unlikely	Low	Low	Low	Medium

Examples of seriousness of reprisals

- Minor: Occasional or one-off action that is likely to have a relatively minor adverse effect on the person.
- Moderate: Repeated action which is likely to have an adverse effect on the person.
- Major: Sustained or one-off action which has a significant impact on the person.
- Extreme: Action which is likely to have a very severe impact on the person.

## Criteria for assessing likelihood of potential reprisals

When considering the likelihood of a reprisal being taken against a discloser, the Principal Officer and/or delegate should take into account all relevant factors, including to the extent relevant:

- a) the likelihood of the discloser being identified, which may involve a consideration of:
  - i) the size of the work area in which the discloser is located; and
  - ii) the number of people who are aware of the information leading to the disclosure;
- b) the number of people implicated in disclosure;
- c) the subject matter of the disclosure;
- d) the number of people who are aware of the disclosure or are likely to become aware of the disclosure (for example, through participation in the investigation as witnesses);
- e) the culture of the workplace;
- f) whether any specific threats against the discloser have been made;
- g) whether there are circumstances that will make it difficult for the discloser not to discuss the disclosure in the workplace;
- h) whether there are allegations about individuals in the disclosure;
- i) whether there is a history of conflict between the discloser and the subject of the disclosure; and
- j) whether the disclosure can be investigated while maintaining confidentiality.



## Criteria for assessing likely seriousness of potential reprisals

In considering the likely seriousness of any potential reprisal against a discloser, the Principal Officer and/or delegate should take into account all relevant factors, including, to the extent relevant:

- a) the significance of the issue being disclosed;
- b) the likely outcome if the conduct disclosed is substantiated;
- c) the subject matter of the disclosure;
- d) whether the discloser is isolated;
- e) whether the discloser is employed on a full-time, part-time or non-ongoing basis;
- f) whether the alleged wrongdoing that is the subject of the disclosure was directed at the discloser; and
- g) the relative positions of the discloser and the person whose alleged wrongdoing is the subject of the disclosure.

When conducting the risk assessment, where consistent with protecting the discloser's confidentiality, the Principal Officer and/or delegate may ask the discloser why he/she is reporting the wrongdoing and who he/she might fear a reprisal from, and may also speak to the discloser's supervisor/manager.

## Develop a risk mitigation strategy if necessary

Where the risk level is assessed as anything greater than low, the Principal Officer and/or delegate will develop a risk management strategy for mitigating the risk of reprisals being taken against the discloser. This strategy may include some or all of the support measures set out at 5.4 and, in appropriate circumstances could include raising the matter with employees by reminding them that taking or threatening to take a reprisal against a discloser is a criminal offence.

## Monitor and review risks

The Principal Officer and/or delegate should monitor and review the risk assessment as necessary throughout the investigation process.

## 5.4 Support for disclosers

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

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

- (a) appointing a support person to assist the discloser, who is responsible for checking on the wellbeing of the discloser regularly;
- (b) informing the discloser of the progress of the investigation;
- (c) advising the discloser of the availability of the Employee Assistance Program;
- (d) where there are any concerns about the health and wellbeing of the discloser, liaising with the Manager Human Resources; or
- (e) transferring the discloser to a different area within the workplace (with the consent of the discloser).

## 5.5 Support for a person against whom a disclosure has been made

The Principal Officer and/or delegate will also take steps to support any employee who is the subject of a PID.

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

- (a) advising the employee of their rights and obligations under the PID Act and about the Office's investigation procedures, including the employee's rights to procedural fairness;
- (b) informing the discloser of the progress of the investigation;
- (c) advising the employee of the availability of the Employee Assistance Program;
- (d) ensuring that the identity of the employee is kept confidential as far as reasonably practicable; or
- (e) where there are any concerns about the health and wellbeing of the employee, liaising with the Manager Human Resources; or
- (f) transferring the employee to a different area within the workplace (with the consent of the employee).

## 6. RESPONSIBILITIES

### 6.1 The Principal Officer

The Principal Officer and/or delegate must take reasonable steps:

- (a) To protect public officials who belong to the Office from detriment, or threats of detriment, relating to public interest disclosures by those public officials; and
- (b) To ensure that the number of Authorised Officers of the Office is sufficient to ensure that they are readily accessible by public officials who belong to the Office; and
- (c) To ensure that public officials who belong to the agency are aware of the identity of each Authorised Officer of the Office.

**Authorised Officers of the Office are the Branch Directors.**

### 6.2 Authorised Officers

The Office maintains a list of "Authorised Officers" for the purposes of the Act who have been appointed by the Official Secretary. A PID can be made to an Authorised Officer of the Office if the PID relates to the Office, or the discloser is a current or former 'public official' of the Office.

The list of Authorised Officers can be accessed at the [Office of the Official Secretary to the Governor-General website](#).

### **6.3 Disclosure to a team leader or manager**

If a public official discloses information to a team leader or manager and the team leader or manager has reasonable grounds to believe that the information concerns, or could concern, disclosable conduct, the team leader or manager must give the information to an Authorised Officer of the Office as soon as reasonably practicable.

Where such a disclosure is made to a team leader 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.

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

At the time a team leader or manager gives information to an 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 team leader or manager.

Where a team leader or manager has given information to an Authorised Officer and where the team leader or manager is able to contact the discloser, they must inform the discloser that they have given the information to an Authorised Officer in the Office and advise the discloser of the name and contact details of that Authorised Officer.

### **6.4 Public Officials**

A public official must use their best endeavours to assist:

- (a) The Principal Officer and/or delegate in the conduct of an investigation; and
- (b) The Ombudsman in the performance of the Ombudsman's functions.

### **6.5 Commonwealth Ombudsman**

The responsibilities of the Ombudsman include:

- (a) Assisting the Principal Officer and/or delegate, principal officer of an investigating agency, Directors and public officials in relation to the operation of their legislative obligations under the PID Act; and
- (b) Conducting educational and awareness programs relating to the Act to the extent to which it relates to the Office and public officials.

## 7. PROCEDURES FOR THE DISCLOSURE PROCESS

### 7.1 Making a disclosure under the Act

Where possible, an employee in the Office should make their public interest disclosure of disclosable conduct to an Authorised Officer rather than their team leader or manager.

Further information is provided at **Attachment A**.

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.

Where possible, a person making a public interest disclosure should cover as many of the following matters as possible in their disclosure so as to help the Office determine how to proceed:

- a) their name and contact details;
- b) the nature of the wrongdoing;
- c) who they think committed the wrongdoing;
- d) relevant events surrounding the issue;
- e) if they did anything in response to the wrongdoing;
- f) others who know about the wrongdoing and have allowed it to continue;
- g) whether they believe their information is a public interest disclosure under the Act (they do not have to describe it that way for it to be treated as a public interest disclosure); and
- h) if they are concerned about possible reprisal as a result of making a disclosure.

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

A person who knowingly makes a false or misleading disclosure will not have any protections under the Act.

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.

Once a public interest disclosure has been made, it cannot be withdrawn. But a discloser may state that they do not wish the disclosure to be investigated and they may refuse to consent to their name and contact details being provided to the Principal Officer and/or delegate. If the discloser request that a matter not be investigated, this should be a consideration that is taken into account in determining whether to exercise discretion not to investigate or not investigate further. It should be noted, however, that the Office may still investigate.

A person who has made a disclosure under the Act should not discuss the details of their disclosure with anyone who does not have a need to know about it. Discussions with these people will not be protected by the Act.

## 7.2 Anonymous Disclosures

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

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

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.

Merely because a team leader or manager or an Authorised Officer has received a disclosure of one of these kinds that concerns disclosable conduct does not mean that it cannot be treated as a disclosure for the purposes of the Act.

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

## 7.3 Initial consideration and allocation

**Step 1:** Consider whether a disclosure meets the requirements for a PID

When an Authorised Officer receives a disclosure of information, he or she will consider the information disclosed and determine whether there are reasonable grounds on which the disclosure could be considered to be an internal disclosure made in accordance with the Act.

If the Authorised Officer is so satisfied they will allocate the disclosure to one or more agencies for further handling and investigation in accordance with the process outlined at **Step 2**.

If the Authorised Officer is not so satisfied the disclosure will not be allocated and:

- (a) if contacting the discloser is reasonably practicable, the Authorised Officer must inform the discloser in writing of:
  - (ii) the reason/s why the disclosure will not be allocated to an agency; and
  - (iii) any other course of action that might be available to the discloser under other laws of the Commonwealth; and
- (b) if the disclosure relates to conduct that may need to be addressed under the Office:
  - (i) Fraud Control Plan;
  - (ii) Breach of the Code of Conduct - Policy & Operational Guide
  - (iii) Work Health & Safety Management Arrangements & Policy, or
  - (iv) any other Office policies or procedures;

the Authorised Officer may refer the matter to be dealt with in accordance with the relevant policy or procedure.

## **Step 2: Allocate the disclosure**

The Authorised Officer will use their best endeavours to decide the allocation within 14 days after the disclosure is made.

In deciding the agency or agencies to which a disclosure will be allocated, the Authorised Officer will have regard to:

- a) the principle that an agency – other than the Ombudsman, the Inspector-General of Intelligence and Security (IGIS) or an investigative agency prescribed by the Public Interest Disclosure Rules<sup>1</sup> – should only deal with disclosures that relate to that agency; and
- b) such other matters (if any) as the Authorised Officer considers relevant.

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

The Authorised Officer must not allocate a disclosure to another agency unless an Authorised Officer of that agency has consented to the allocation.

## **Step 3: Inform relevant persons of the allocation**

### **Informing the receiving agency**

When the Authorised Officer allocates the handling of a disclosure to an agency, the Authorised Officer will inform the principal officer of that agency of:

- a) the allocation to the agency;
- b) the information that was disclosed to the Authorised Officer;
- c) the suspected disclosable conduct; and
- d) if the discloser's name and contact details are known to the Authorised Officer, and the discloser consents to the principal officer being informed – the discloser's name and contact details.

### **Informing the discloser**

If contacting the discloser is reasonably practicable, as soon as reasonably practicable after the allocation has occurred, the Authorised Officer will also inform the discloser in writing of the allocation and of the information that has been provided to the principal officer of that agency.

### **Informing other relevant bodies**

If the Authorised Officer allocated a disclosure to an agency, including the Office itself, other than the Ombudsman, the IGIS or an intelligence agency, they will inform the Ombudsman of this in writing. If the disclosure is allocated to an intelligence agency, the Authorised Officer will inform the IGIS of this in writing.

#### **Step 4:** Make a record of the allocation decision

##### **Record of decision**

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

- the decision (including the name of each agency to which the disclosure is to be allocated);
- the reason/s for the decision; and
- the consent provided by the Authorised Officer of the agency to which the allocation is made.

##### **Record of communication of decision to discloser**

In addition, the Authorised Officer must keep appropriate records of whether the discloser was informed of the allocation decision and, 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.

These records should be kept confidential.

## **7.4 Consideration and investigation by Principal Officer**

### **Provide initial information to disclosers**

Within 14 days of the Office being allocated a PID, the Principal Officer and/or delegate will provide the discloser with the following information about their powers to:

- a) decide not to investigate the disclosure;
- b) decide not to investigate the disclosure further; or
- c) decide to investigate the disclosure under a separate investigative power.

### **Consider whether to investigate the disclosure**

If a PID is allocated to the Office, the Principal Officer and/or delegate will consider whether or not to investigate the PID.

The Principal Officer and/or delegate may decide not to investigate a disclosure if the Principal Officer and/or delegate consider that:

- i) the discloser is not and has not been a public official;
- ii) the information does not, to any extent, concern serious disclosable conduct;
- iii) the disclosure is frivolous or vexatious;
- iv) the information is the same or substantially the same as disclosable conduct that has been or is currently being investigated as part of another disclosure investigation;

- v) the information concerns disclosable conduct that is the same or substantially the same as disclosable conduct that is being investigated under a law of the Commonwealth or the executive power of the Commonwealth and:
  - i) it would be inappropriate to conduct another investigation at the same time; or
  - ii) the Principal Officer and/or delegate is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation;
- vi) the discloser has informed the Principal Officer and/or delegate that the discloser does not wish for the investigation of the disclosure to be pursued and the Principal Officer and/or delegate is reasonably satisfied that there are no matters concerning the disclosure that warrant investigation;
- vii) it is impracticable for the disclosure to be investigated because:
  - i) the discloser's name and contact details have not been disclosed;
  - ii) the discloser fails or is unable to give such information or assistance as the person who is or will be investigating asks the discloser to give; or
  - iii) the age of the information makes this the case.

If the above circumstances do not apply, the Principal Officer and/or delegate will conduct an investigation.

### ***Notify the discloser and Ombudsman***

#### **If the disclosure will not be investigated**

If the Principal Officer and/or delegate decide not to investigate a disclosure, they will:

- a) if reasonably practicable to contact the discloser, inform the discloser that they have decided not to investigate the disclosure, identifying:
  - i) the reason/s for the decision not to investigate (other than those reasons that would be exempt for the purposes of Part IV of the *Freedom of Information Act 1982*, have or be required to have a national security or other protective security classification or contain intelligence information); and
  - ii) any courses of action that might be available to the discloser under other laws of the Commonwealth; and
- b) inform the Ombudsman of the decision not to investigate and the reasons for that decision.

#### **If the disclosure will be investigated**

If the Principal Officer and/or delegate investigate the disclosure, they will, as soon as reasonably practicable, inform the discloser:

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



## Conduct an investigation

If the Principal Officer and/or delegate decide to investigate, the Principal Officer and/or delegate will investigate whether there are one or more instances of disclosable conduct.

### General principles

The following general principles will apply to the conduct of investigations:

- a) maintaining the confidentiality of the identity of the discloser will be paramount when conducting the investigation;
- b) the investigation will be carried out with as little formality as a proper consideration of the matter allows;
- c) the investigation will be carried out in accordance with the principles of procedural fairness;
- d) a decision whether evidence is sufficient to prove a fact will be determined on the balance of probabilities; and
- e) a person who is the subject of the investigation will be provided with a reasonable opportunity to respond or to provide evidence in relation to the allegations.

Aside from compliance with these principles, the Principal Officer and/or delegate are free to conduct the investigation as they see fit. The way in which the investigation is conducted may vary depending on the alleged conduct which is being investigated. In particular, in circumstances where the Principal Officer and/or delegate considers that the nature of the disclosure is such that the outcome of the investigation is likely to be referral of the matter for investigation under another process or procedure, the investigation under these procedures may appropriately be conducted in a circumscribed way.

### Additional procedures required in particular circumstances

If a disclosure relates to conduct that would require the Office to take steps under the Office's:

- (i) [\*Fraud Control Plan\*](#);
- (ii) [\*Breach of the Code of Conduct - Policy & Operational Guide\*](#)
- (iii) [\*Work Health & Safety Management Arrangements & Policy\*](#), or
- (iv) any other Office policies or procedures;

the processes set out in those procedures and policies must be complied with in the conduct of an investigation under these procedures.

If the Principal Officer and/or delegate consider that information disclosed in the course of a PID may be appropriately dealt with under another policy or procedure of the Office, they may recommend in the investigation report that this occur and refer the matter to the relevant part of the Office.

## Obtaining information

Instances of disclosable conduct may relate to information that is disclosed or information obtained in the course of the investigation rather than information provided in the initial disclosure.

During the investigation, the Principal Officer and/or delegate may, for the purposes of the investigation, obtain information from such persons and make such inquiries as the Principal Officer and/or delegate sees fit.

When being interviewed as part of an investigation, an interviewee will be informed of the following:

- a) the identity and function of each individual conducting the interview;
- b) the process of conducting an investigation;
- c) the authority of the Principal Officer and/or delegate under the Act to conduct the investigation; and
- d) the protections provided to witnesses under section 57 of the Act.

The Principal Officer and/or delegate will ensure:

- a) an audio or visual recording of the interview is not made without the interviewee's knowledge;
- b) when the interview ends, the interviewee is given an opportunity to make a final statement or comment or express a position; and
- c) any final statement, comment or position by the interviewee is included in the record of the interview.

In conducting the investigation, the Principal Officer and/or delegate may adopt findings set out in reports of investigations or inquiries under other Commonwealth laws or executive powers, or other investigations under the Act.

## Referral of information to police and others

If, during the course of the investigation, the Principal Officer and/or delegate suspects on reasonable grounds that some of the information disclosed or obtained in the course of the investigation is evidence of the commission of an offence against a law, the Principal Officer and/or delegate may disclose the information to a member of an Australian police force. If the information relates to an offence that is punishable for a period of at least two years, the Principal Officer and/or delegate must disclose the information to a member of an Australian police force.

The investigation may also include consideration of whether a different or further investigation should be conducted by the Office or another body under another law of the Commonwealth.

## Prepare investigation report

Once the Principal Officer and/or delegate have completed the investigation, they will prepare a report of the investigation.

The Principal Officer and/or delegate must complete the investigation report within 90 days after the disclosure was allocated to the Principal Officer and/or delegate, unless this period is extended by the Ombudsman. If the period is extended, the Principal Officer and/or delegate will inform the discloser of the progress of the investigation.

## Content of report

The report must set out:

- a) the matters considered in the course of the investigation;
- b) the duration of the investigation;
- c) the Principal Officer and/or delegate's findings (if any);
- d) any regulations, rules, administrative requirements or similar matters to which the disclosable conduct relates;
- e) the action (if any) that has been, is being or is recommended to be taken; and

to the extent relevant:

- a) the steps taken to gather evidence;
- b) a summary of the evidence; and
- c) any claims made about and any evidence of detrimental action taken against the discloser, and the agency's response to those claims and that evidence.

## Provide report to discloser

If it is reasonably practicable to contact the discloser, the Principal Officer and/or delegate will provide the discloser with a copy of the report within a reasonable time after preparing the report. However, the Principal Officer and/or delegate 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) would be exempt for the purposes of Part IV of the *Freedom of Information Act 1982*, would require a national security or other protective security clearance, contains intelligence information or contravenes a designated publication restriction as defined in the Act.

# 8. RECORD-KEEPING, MONITORING AND REPORTING

## 8.1 Record keeping

Where an Authorised Officer is required to keep a record under these procedures, the record may be kept in hard copy or in an electronic form or in both. Access to these records must be restricted to the Authorised Officers, delegates (including investigators) or other employees in the Office who require access in order to perform some function under the Act or for the purposes of another law of the Commonwealth (for example, under the Work Health and Safety Act 2011).

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

All records made for the purposes of the Act in accordance with these procedures must be marked as 'in-confidence' and hard copies stored in the appropriate storage container.

Any email messages sent by Authorised Officers or delegates that contain identifying information must be clearly marked 'to be read by named addressee only'.

## 8.2 Monitoring

Each Authorised Officer must provide a quarterly report to the Manager Human Resources specifying the number of public interest disclosures received by the Authorised Officer and the nature of the disclosable conduct for each disclosure. The report must also include any disclosures that have been allocated to the Office by another agency's Authorised Officer. The Manager Human Resources will present this report to Management Committee in the format required in para 8.3.

## 8.3 Information and assistance required by the Ombudsman

Under s 14 and s 15 of the *PID Standards 2013* the principal officer of the Office must provide the following information for the purpose of preparation, under s 76 of the Act, of an annual report by the Ombudsman:

- a) The number of public interest disclosures received by the Authorised Officers of the agency during the relevant financial year;
- b) the kinds of disclosable conduct to which those public interest disclosures related
- c) the number of disclosure investigations that the principal officer of the agency conducted during the relevant financial year;
- d) the actions that the principal officer and/or delegate has taken during the relevant financial year in response to recommendations in reports relating to those disclosure investigations;
- e) any other information requested by the Ombudsman.

The principal officer must provide the information within a time requested by the Ombudsman or as otherwise agreed with the Ombudsman.

## 9. CONFIDENTIALITY OF INFORMATION

It is a criminal offence to inappropriately use or disclose any information obtained through processes connected with this Policy and the Act.

## 10. REVIEW

This policy will be reviewed periodically through established consultative processes.

## 11. FURTHER INFORMATION

Further information may be obtained by contacting the Manager Human Resources on 6283 3624.

## 12. RELEVANT DOCUMENT/LINKS

The following documents relate to this policy

- a) [Commonwealth Ombudsman website](#)
- b) [Australian Government Solicitors \(AGS\) website](#)
- c) [GG website](#)
- d) [GH intranet](#)



Mark Fraser LVO OAM  
Official Secretary  
to the Governor-General  
14 January 2016

# ATTACHMENT A – EXTRACTS FROM THE COMMONWEALTH OMBUDSMAN'S AGENCY GUIDE TO THE PUBLIC INTEREST DISCLOSURE ACT 2013

## Who can make a public interest disclosure?

A person must be a current or former 'public official', as defined in s 69 of the Act, to make a public interest disclosure. This is a broad term which includes a Commonwealth employee, member of the Defence Force, appointee of the Australian Federal Police, Parliamentary Service employee, director or staff member of a Commonwealth company, statutory office holder or other person who exercises powers under a Commonwealth law. Individuals and organisations that provide goods or services under a Commonwealth contract (defined in s 30(3)) and their officers or employees are also included. This includes subcontractors who are responsible for providing goods or services for the purposes of the Commonwealth contract (s 30(2)).

## What can be disclosed?

A public official can disclose information that they believe, on reasonable grounds, tends to show 'disclosable conduct'. Disclosable conduct is conduct by:

- an agency
- a public official in connection with their position
- a contracted Commonwealth service provider in connection with entering into or giving effect to the contract

if that conduct:

- contravenes a Commonwealth, State or Territory law
- in a foreign country, contravenes a foreign law that applies to the agency, official or service provider
- perverts the course of justice
- is corrupt
- constitutes maladministration, including conduct that is based on improper motives or is unreasonable, unjust, oppressive or negligent
- is an abuse of public trust
- involves fabrication, falsification, plagiarism or deception relating to scientific research, or other misconduct in relation to scientific research, analysis or advice
- results in wastage of public money or public property
- unreasonably endangers health and safety
- endangers the environment
- is prescribed by the PID rules (s 29(1)).

Without limiting any of those grounds, disclosable conduct also includes conduct by a public official that involves or is engaged in for the purposes of abusing their position as a public official, and conduct that could give reasonable grounds for disciplinary action against the public official (s 29(2)).

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

It is not disclosable conduct just because a person disagrees with:

- a government policy or proposed policy
- action or proposed action by a minister, the Speaker of the House of Representatives or the President of the Senate
- expenditure or proposed expenditure related to such policy or action (s 31).

Disclosable conduct also does not include judicial conduct, that is, the conduct of judicial officers, the judicial functions of court staff, tribunal staff or tribunal members, or any other conduct related to a court or tribunal unless it is of an administrative nature and does not relate to matters before the court or tribunal (s 32).

The conduct of members of Parliament is not covered by the Act. However, the Offices of the Parliament and their employees are covered.

Disclosable conduct also does not include the proper performance of the functions and proper exercise of the powers of an intelligence agency or its officials (s 33).

A disclosure must be made to an appropriate person in order to gain the protections available under the Act (s 26). The Act focuses on the reporting and investigating of wrongdoing within government, but allows for reporting outside government in specified circumstances.

### **Making an internal disclosure**

Public officials can report suspected wrongdoing either to their current team leader/manager in an agency, or to an Authorised Officer of their agency or the agency to which they previously belonged. Authorised Officers are the principal officer (i.e. the agency head) and officers that the principal officer appoints under the Act (s 36).

Making a disclosure internally gives the agency the chance to investigate the matter and remove any danger or correct any wrong practices as quickly as possible.

A public official must use one of the proper avenues to gain the protections available under the Act. This means that a public official will not receive these protections if they give the information to someone outside government like a journalist or union representative, unless the conditions for an external or emergency disclosure are met. They may be in breach of their duty to maintain appropriate confidentiality in relation to official information they have gained in the course of their work, or be subject to other civil, criminal or disciplinary action.

## ATTACHMENT B – RIGHTS AND RESPONSIBILITIES OF DISCLOSERS

### Rights

A discloser has a right to the protections set out in the Act, including protection from reprisals, from civil and criminal liability, and from the disclosure of his or her 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 the misconduct that they are reporting.

During the PID 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 Act;
  - ii) the allocation of their disclosure;
  - iii) the decision of the Office to investigate their disclosure;
  - iv) the estimated duration of the investigation into their disclosure;
  - v) if the Office decides not to investigate their disclosure, the reasons for that decision and any action that may be available to the discloser under other Commonwealth laws;
  - vi) if an investigation is conducted under the Act and an extension of time is granted by the Ombudsman or IGIS, the progress of the investigation; and
  - vii) the outcome of the investigation (including provision of a copy of the investigation report except to the extent that it would be exempt for the purposes of Part IV of the *Freedom of Information Act 1982*, would require a national security or other protective security clearance, contains intelligence information or contravenes a designated publication restriction as defined in the Act).
- b) given support in accordance with paragraph 5.4 of the procedures.
- c) able to seek assistance from the Ombudsman in relation to the operation of the Act.

### Responsibilities

A discloser must:

- a) comply with the Act requirements and the procedures set out in this document when making a PID;
- b) use his or her best endeavours to assist the principal officer of any agency in the conduct of an investigation;
- c) use his or her best endeavours to assist the Ombudsman in the performance of the Ombudsman's functions under the Act;
- d) use his or her best endeavours to assist the IGIS in the performance of the IGIS's functions under the Act; and



- e) report to the Principal Officer and/or delegate any detriment the discloser believes he or she has been subjected to as a result of making the disclosure.

## **ATTACHMENT C – RIGHTS AND RESPONSIBILITIES OF PERSONS WHO ARE THE SUBJECT OF A PID**

### **Rights**

An employee of the Office who is the subject of a disclosure will be:

- a) given support in accordance with paragraph 5.4 of the procedures; and
- b) able to seek assistance from the Ombudsman in relation to the operation of the Act.

### **Responsibilities**

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

- a) use his or her best endeavours to assist the Principal Officer and/or delegate of any agency in the conduct of an investigation;
- b) use his or her best endeavours to assist the Ombudsman in the performance of the Ombudsman's functions under the Act;
- c) use his or her best endeavours to assist the IGIS in the performance of the IGIS's functions under the Act;
- d) comply with action taken by the Office to address risks or concerns in relation to the PID.

An employee who is the subject of a disclosure should also be aware that the outcome of an investigation under the Procedures set out in this document may result in another, different investigation (for example, a Breach of the Code of Conduct investigation) taking place.

## **ATTACHMENT D – AUTHORISED OFFICERS FOR THE OFFICE OF THE OFFICIAL SECRETARY TO THE GOVERNOR-GENERAL**

The names of the Authorised Officers within the Office are as follows:

- Deputy Official Secretary – Stephen Murtagh
- Director Honours and Awards – Sharon Prendergast

The Authorised Officers may be contacted by phoning the Office on (02) 6283 3533