



OFFICE OF THE OFFICIAL SECRETARY TO THE
GOVERNOR-GENERAL



PUBLIC INTEREST DISCLOSURE

Policy and Procedures

February 2024

Review February 2026

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INTRODUCTION

Policy Details

Policy owner

This policy is owned and updated by the Executive branch.

Release and review history

Version	Approved by	Description	Date
1.0		Original	2021
1.1	Deputy Official Secretary - Jeff Barnes	Update to include interactions with NACC Act.	February 2024

Purpose

There is a legislative requirement for the Office to establish procedures for facilitating and dealing with public interest disclosures (hereafter referred to as PIDs or 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 relating to the disclosure; and
- c. ensuring that disclosures by Office employees are properly investigated and dealt with.

Scope

This policy applies to all current and previous staff of the Office of the Official Secretary to the Governor-General, as well as any individual defined as a ‘public official’ within this policy.

Legislation and standards/principles

The *Public Interest Disclosure Act 2013* (the Act) commenced on 15 January 2014, was amended in July 2023, 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.

The *National Anti-Corruption Commission Act 2022* (NACC Act) established the National Anti-Corruption Commission (the NACC) – see the NACC website (www.nacc.gov.au) for further information.

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

- a. Fraud Control Plan;
- b. Breach of the Code of Conduct- Policy & Operational Guide;
- c. Work Health & Safety Management Arrangements & Policy; or
- d. 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.

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.

Refer to the *Public Interest Disclosure Act 2013* for full detail:

<https://www.legislation.gov.au/C2013A00133/latest/text>. Where conflicts exist between the content of this policy and the PID Act, the Act takes precedence.

Monitoring and review

This policy will be reviewed every two years or as required to reflect changes in the broader Australian Government legislative and regulatory environment, best practices standards, and to ensure currency and relevancy to the business of the Office.

Summary

The Office encourages and supports the reporting of wrongdoing by public officials in accordance with the PID Act, and will take active steps to support and to protect persons who make disclosures under the Act.

The Office recognises the importance of having 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.

GENERAL INFORMATION

Definition of a PID and disclosable conduct

A public interest disclosure is a disclosure of information, by a current or former public official, relating to disclosable conduct (see below) alleged to have occurred within a Commonwealth agency.

There are five types of public interest disclosures, defined in s26 of the PID Act:

- a. an internal disclosure (disclosed within an agency);
- b. an external disclosure (disclosed outside Government);
- c. an emergency disclosure;
- d. a legal practitioner disclosure; and
- e. a NACC disclosure.

Disclosable conduct is defined in s29 of the PID Act and includes conduct that:

- a. is illegal or corrupt; or
- b. results in a wastage of money or property; or
- c. results in unreasonable danger or risk to health and safety; or
- d. results in danger, or an increased risk of danger, to the environment.

Personal work-related conduct (for example, bullying or harassment) is not generally disclosable conduct. However, personal work-related conduct may be treated as disclosable conduct in some circumstances. See subsection 29(2A) and section 29A of the PID Act for more detail relating to personal work-related conduct.

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 current or former public official or a person who is deemed to be a public official (per section 69 of the PID Act);
- 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.

Disclosures can be made in writing (including via email) or verbally (including via phone) to a supervisor or Authorised Officer. The Office’s list of Authorised Officers is available on the Intranet.

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, 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. Information about the other types of disclosures is available in Attachment A, and the PID Act.

Investigation of internal disclosures

Internal disclosures may be made by current and former public officials to supervisors and Authorised Officers. Generally disclosable conduct is first investigated internally. How this occurs is explained in more detail in attachment C of this policy.

Disclosures can be made to supervisors and Authorised Officers of Commonwealth agencies, including in appropriate cases, an Authorised Officer of the Ombudsman and the IGIS. The responsibilities of supervisors, the Principal Officer, Authorised Officers and the Commonwealth Ombudsman are set out in section 5 of this policy and in the PID Act.

In some circumstances, an Authorised or Principal Officer may determine that the conduct disclosed would be more appropriately investigated under another law or power. In this case, that Officer must take reasonable steps to refer the conduct, or to facilitate its referral, for investigation under the other law or power.

During investigations, decisions relating to the allocation and investigation of disclosures must be reported to the discloser and to the Ombudsman. Reporting rules are set out in the PID Act.

Support and protections for public officials

Disclosers and witnesses (persons providing assistance in disclosure investigations and reviews) are protected from reprisals by the PID Act. Part 5 of the PID Act details responsibilities of Authorised Officers, the Principal Officer and the agency in protecting public officials from reprisals associated with public interest disclosures that have been or may be made. This includes providing for:

- a. immunity from liability related to disclosures and such assistance;
- b. criminal offences for such reprisals and for disclosing the identity of disclosers; and
- c. civil remedies for reprisals related to disclosures.

The Office will take reasonable steps to protect disclosers from detriment or threats relating to the disclosure; this may include providing a support person to assist the discloser, and/or referring them to the Employee Assistance Program.

The Office will also take reasonable steps to support employees who are the subject of a disclosure by ensuring the employee is aware of their rights and obligations under the PID Act, maintaining confidentiality of the employee's identity as far as reasonably practicable, referring them to the Employee Assistance Program, and/or advising the employee of their option to seek independent legal advice.

MAKING A PUBLIC INTEREST DISCLOSURE

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

- a. Australian Government public servants or Commonwealth employees;
- b. agency heads;
- c. Statutory Office holders;
- d. Parliamentary Service employees;
- e. members of the Defence Force;

- f. staff and directors of Commonwealth companies;
- g. Australian Federal Police appointees;
- h. contractors to the Commonwealth or prescribed authority;
- i. staff of Commonwealth contracted service providers; and
- j. persons deemed to be public officials.

Disclosures can be made in writing (including via email) or verbally (including via telephone) to a supervisor or Authorised Officer. The Office's list of Authorised Officers is available on the Intranet.

While an agency has an obligation to secure confidential information and ensure that it is not disclosed by staff publicly, a PID is an exception to the requirement to maintain confidentiality.

Advice for disclosers

The sooner a discloser raises a concern, the easier it is likely to be for the agency to take action to address the issue.

In making a disclosure, the discloser should include all relevant facts they have access to, while avoiding the use of expressive or emotional statements which could divert attention from the core issues of the disclosure. A disclosure should clearly explain the following:

- a. name and contact information of the discloser (unless the discloser wishes to make their disclosure anonymously – see section 4.2);
- b. the nature of the suspected wrongdoing;
- c. when and where the suspected wrongdoing occurred;
- d. who they believe has committed the suspected wrongdoing;
- e. whether the suspected wrongdoing has been reported to anyone else, and if so, what that individual/agency has done in response to the report or to resolve the issue;
- f. whether they are concerned about possible reprisals because of making the disclosure.

It is important that persons contemplating making a disclosure carefully review the contents of the PID Act and seek legal advice, where appropriate, to determine whether the disclosure can be made in a way that attracts the protections of the Act.

Anonymous disclosures

Disclosures may also be made anonymously however this may affect the ability of the Office to inform the discloser of the progress of the investigation of the disclosure. 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 PID Act.

Reprisals

The Office will not tolerate any reprisal action against a person who makes, assists in the investigation of, or is suspected to have made, a public interest disclosure.

Reprisal is broadly defined in the PID Act. Section 13 of the PID Act defines a reprisal as any conduct a person engages in which consists of, or results in, a threat to cause detriment to another person where that act or omission is because of a belief or suspicion that the person made, may have made, proposes to make or could make a PID. This definition means that the person experiencing detriment

may not be the discloser, but may instead be a witness assisting with the PID investigation, or someone who is suspected of making a disclosure.

Every allegation of reprisal will be taken seriously, recorded and responded to. All those involved in handling the public interest disclosure 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 who has the information for the purposes of the Act – will monitor the work environment for signs of detriment and if necessary, take corrective action.

Protections for public officials

Protections for disclosers

Once a disclosure has been considered a PID – that is, it satisfies the criteria of s26 of the PID Act as stated at 3.1 and in Attachment A – protections for the discloser may apply:

- a. an individual is not subject to any civil, criminal or administrative liability for making a public interest disclosure or providing assistance in relation to a public interest disclosure (s10(1)(a) of the PID Act).
- b. it is an offence to take a reprisal against a person because of a public interest disclosure (including a proposed or a suspected public interest disclosure) (s19 of the PID Act).
- c. the Federal Court or Federal Circuit and Family Court of Australia (Division 2) may make orders for civil remedies (including compensation, injunctions and reinstatement of employment) if a reprisal is taken against a person because of a public interest disclosure (including a proposed or a suspected public interest disclosure) (s14-17 of the PID Act).
- d. 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.

The Authorised Officer and Principal Officer will take reasonable steps to ensure that the discloser is protected from reprisal and given support through the PID process. This may include one or more of the following:

- a. appointing a support person to assist the discloser and to check on their wellbeing;
- b. advising the discloser about the availability of the Employee Assistance Program;
- c. liaising with the Office's health and safety officer if there are concerns about the health and wellbeing of the discloser; or
- d. transferring the discloser to a different area within the workplace and/or approving a remote work arrangement (with the discloser's consent; this would likely be appropriate only in cases of very major risk).

Additionally, the PID Act requires that the Office notify the discloser of key information and decisions through the PID process. A discloser will be notified of the following:

- a. a decision that a disclosure is not a disclosure within the meaning of the PID Act; or
 - b. allocation of the disclosure; and
 - c. should the Office decide not to investigate the disclosure, the reasons for that decision and any other actions that may be available to the discloser under Commonwealth laws; or
 - d. decision of the Office to investigate the disclosure; and
 - i. the estimated duration of the investigation into the disclosure;
 - ii. if an extension of time is granted by the Ombudsman, the progress of the investigation;
- and

- e. the outcome of the investigation, including provision of a copy of the investigation report except to the extent that it:
 - i. would be exempt for the purposes of Part IV of the Freedom of Information Act 1982;
 - ii. would require a national security or other protective security clearance;
 - iii. contains intelligence information; or
 - iv. contravenes a designated publication restriction as defined in the PID Act.

Protections for witnesses

A person is not subject to any criminal, civil or administrative liability because they give information, produce a document or answer a question that they have reasonable grounds to believe is relevant to:

- the making of a decision in relation to the allocation of a disclosure under s43 of the PID Act;
- the investigation (or proposed investigation) of a disclosure; or
- a review (or proposed review) of the handling of a disclosure, by the Ombudsman or IGIS under s55(3) of the PID Act.

A witness is not subject to protection from personal liability for:

- making a false or misleading statement;
- contravening a designated publication restriction;
- particular offences under the Criminal Code; or
- their own conduct – the protection from liability only relates to the act of providing assistance in relation to the public interest disclosure.

Please refer to Part 2, Division 1 of the PID Act for detailed information relating to protections to be extended to disclosers and witnesses.

Protections for employees who are the subject of a disclosure

Confidentiality of the identify of an employee who is the subject of a disclosure should be maintained as far as reasonably practicable. The Office will support an employee who is the subject of a disclosure by:

- a. ensuring the employee is aware of their rights and obligations under the PID Act;
- b. advising the employee about the availability of the Employee Assistance Program; and
- c. advising the employee of their option to seek independent legal advice.

RESPONSIBILITIES

Public officials

Public Officials must use their best endeavours to assist the Principal Officer of the Office in the conduct of investigations as detailed in Division 2 of Part 3 of the PID Act. They must also use their best endeavours to assist the Ombudsman, IGIS and any other public official, in the performance of that entity's functions under the PID Act.

Disclosers

Disclosers must comply with the requirements of the PID Act and the procedures set out in this policy when making a PID. They must:

- a. have regard to the Office's advice with respect to the making of disclosures;
- b. use their best endeavours to assist the Principal Officer in the conduct of an investigation;
- c. as applicable, use their best endeavours to assist the Ombudsman or IGIS in the performance of that entity's functions under the PID Act;
- d. report any detriment the discloser believes they have been subjected to as a result of making the disclosure to the Authorised Officer; and
- e. cooperate with actions proposed by the Authorised Officer to protect the discloser from reprisals or the threat of reprisals, or to address work health and safety risks. The discloser will be consulted regarding any proposed actions however such actions may be taken without the discloser's consent.

Persons who are the subject of a PID

An Office employee who is the subject of a disclosure must be aware that the outcome of an investigation may result in another, different investigation (for example, a Code of Conduct investigation) taking place. The Office may decide to take action in relation to the employee, for example temporarily transferring the employee to another work area without the employee's consent, in order to discharge its obligations including under the PID Act and work health and safety legislation.

Persons who are the subject of a PID must:

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

Supervisors

Supervisors are public officials who supervise or manage individuals who make PIDs. If the supervisor to whom a disclosure is made is also an Authorised Officer, refer to following section on Authorised Officer responsibilities. Supervisors must be aware of how the PID Act operates.

Responsibilities of supervisors

If a supervisor has reason to believe that a current or former public official under their supervision has provided information to them which could concern disclosable conduct, under s60A of the PID Act they must:

- a. inform the discloser that the disclosure could be treated as an internal disclosure for the purposes of the PID Act;
- b. explain the next steps in the PID process to the discloser, that is, referring the PID to an Authorised Officer, potential allocation of the PID and investigation;
- c. advise the discloser about the circumstances in which a PID must be referred to another body under another law of the Commonwealth; and

- d. explain the civil and criminal protections the PID Act provides to disclosers as well as those assisting with the handling of a PID.

Supervisors should adhere to the confidentiality requirements set out in the PID Act when handling disclosures, and should give the information to an Authorised Officer of the Office as soon as practicable.

Supervisors contribute to an environment in which the making of disclosures is encouraged; they should set an example through their own conduct, be approachable to staff wishing to raise concerns, and confront workplace prejudices about making disclosures. Should they be aware of any staff members who have made (or who they believe could make) a disclosure, they should support these staff and take available actions to protect disclosers and witnesses from risks of reprisal.

Authorised Officers

An Authorised Officer (AO) is defined in s36 of the PID Act. Authorised Officers are appointed by the Principal Officer (the Official Secretary) and a list is maintained on the gg.gov.au website and Intranet.

Authorised Officers receive and allocate PIDs relating to the Office in accordance with the PID Act and this policy.

Responsibilities of Authorised Officers

After an Authorised Officer receives a disclosure, either directly from a discloser or from the supervisor of a discloser to whom the disclosure has been made, the following steps must be taken:

1. consider whether the discloser understands the PID Act;
2. perform an assessment of the disclosure;
3. decide whether to allocate the PID to the Principal Officer for consideration; and
4. notify the discloser and the Commonwealth Ombudsman of the allocation.

The process for assessing and allocating a PID, and requirements for notifications, are set out in Attachment B.

Principal Officers

The Principal Officer for the Office of the Official Secretary to the Governor-General is the Official Secretary. Under the PID Act, some or all of the powers of Principal Officer may be delegated to other Office employees or other public officials who belong to the Office. Where PID Act powers have been delegated they are documented on the Intranet and Governor-General's website (www.gg.gov.au).

Responsibilities of Principal Officers

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

- a. 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. ensure that all staff are aware of the identify of the Authorised Officers for the Office, and that there are sufficient Authorised Officers to be readily available to public officials belonging to the Office.

The Principal Officer must consider any PIDs that are allocated to the Office by an Authorised Officer. In performing this task, the Principal Officer must follow a set process:

1. notify the discloser of the allocation and the next steps that will be taken (this may include the decision of whether or not to investigate the disclosure);
2. consider whether the disclosure warrants an investigation;
3. conduct the investigation, if one is required; and
4. comply with all notification requirements.

An investigation report must be completed by the Principal Officer or their delegate within 90 days of the allocation of the PID; should additional time be required an application for extension must be made to the Ombudsman.

The detailed process for considering and investigating disclosures, and notification requirements, are set out in Attachment C.

The Commonwealth Ombudsman

The Commonwealth Ombudsman provides assistance to Office staff (the Principal Officer and/or delegate, Directors and public officials) in relation to the operation of their legislative obligations under the PID Act.

The PID Act states that the Ombudsman must be notified of:

- an allocation or reallocation of a disclosure
- a decision not to allocate a disclosure
- a decision not to investigate a disclosure or not further investigate
- an extension of time to investigate a PID
- a finalised investigation
- a stop action direction issued by the National Anti-Corruption Commission.

The Ombudsman has obligations to report on PID data; to enable this, the Office is required to assist with regular six-monthly reporting tasks.

ADDITIONAL PROCEDURES

Internal procedures

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 an 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'.

Monitoring and reporting

Each Authorised Officer must advise the Deputy Official Secretary of any public interest disclosures received by the Authorised Officer, including those allocated to the Office by another agency's Authorised Officer, and the nature of the disclosable conduct for each disclosure. The Deputy Official Secretary will advise Management Committee.

Interactions with other Office policies

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

- a. Fraud Control Plan;
- b. Breach of the Code of Conduct- Policy & Operational Guide;
- c. Work Health & Safety Management Arrangements & Policy; or
- d. 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.

Interactions with the NACC Act

The *National Anti-Corruption Commission Act 2022* (NACC Act) established the National Anti-Corruption Commission (the NACC) – see the NACC website (www.nacc.gov.au) for further information.

Staff members who are exercising powers or functions under Division 1 or 2 of Part 3 of the PID Act – including the Principal Officer, Authorised Officer and their delegates – must be aware of and consider their mandatory obligation under section 35 of the NACC Act.

Section 35 of the NACC Act provides that PID officers must refer a corruption issue to the NACC as soon as reasonably practicable upon becoming aware of a corruption issue that:

- a. concerns the conduct of a person who is or was a staff member of the Office while that person is or was a staff member; and
- b. the PID officer suspects could involve corrupt conduct that is serious or systemic.

The PID officer is not required to refer a corruption issue if they believe on reasonable grounds that the NACC has already been made aware of the issue. If the PID officer becomes aware of a corruption issue as a result of an internal disclosure they must, as soon as reasonably practicable, notify the discloser of the referral of the issue to the NACC under s35 of the NACC Act. Where a referral is made to the NACC, the Office must continue to handle the disclosure (see s39 of the NACC Act) unless a stop action direction has been issued under s43(1) of the NACC Act.

FURTHER RESOURCES

Additional guidance including fact sheets are available on the website of the Commonwealth Ombudsman (www.ombudsman.gov.au). For further information regarding the Office's Public Interest Disclosure policy or procedures, please contact the HR team, or the Authorised Officers listed online on the Intranet and on the Governor-General's website (www.gg.gov.au).

ATTACHMENTS LIST

Attachment A: Relevant extracts from the Commonwealth Ombudsman's agency guide to the Public Interest Disclosure Act 2013 – version 3, published July 2023

Attachment B: Authorised Officer responsibilities –assessing and allocating a PID, assessing and managing the risk of reprisal

Attachment C: Principal Officer responsibilities – considering and investigating PIDs

ATTACHMENT A

Relevant extracts from the Commonwealth Ombudsman's agency guide to the *Public Interest Disclosure Act 2013* – version 3, published July 2023

Who can make a public interest disclosure?

A person must be a current or former 'public official', as defined in ss69-70 of the PID Act, to make a public interest disclosure (s26(1)(a)).

In general, a person can make a disclosure if they belong, or previously belonged, to one of the agencies covered by the PID Act. This includes Commonwealth public servants, members of the Defence Force, appointees of the Australian Federal Police, Parliamentary Service employees, directors or staff of Commonwealth companies, statutory office holders or any 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 public officials for the purposes of the PID Act. This includes subcontractors who are responsible for providing goods or services, either directly or indirectly, to an agency covered by the PID Act for the purposes of a Commonwealth contract (s30(2)). The PID Act specifically excludes some individuals from being public officials under the Act. Public official does not include a Member of Parliament, staff employed under the Members of Parliament (Staff) Act 1984 (MOP(S) Act employees), a judicial officer, a member of a Royal Commission or grant recipients.

A public official whose ordinary functions include sharing information about wrongdoing in the agency with their supervisor or an Authorised Officer (for example, those working in internal fraud control, case management, or protective security) will not meet the requirements for making an internal disclosure if the disclosure is made in the course of performing the discloser's ordinary functions as a public official (s26(1)). If a public official in such a role intends to make a public interest disclosure, they will need to clearly express that intent when making the disclosure.

Deeming individuals to be public officials

An Authorised Officer may deem an individual to be a public official if they reasonably believe the individual has information about wrongdoing and proposes to make a disclosure (s 70). Authorised officers are the Principal Officer of an agency (i.e., the agency head) and officers that the Principal Officer appoints as Authorised Officers under the PID Act (s 36). It is not necessary for the disclosing individual to request that they be deemed a public official, but the Authorised Officer must provide the individual with a written notice of the determination.

An Authorised Officer might consider it appropriate to deem an individual to be a public official if the individual is not a public official, but nevertheless has 'inside information' about the agency's wrongdoing. Examples might include:

- a current or former volunteer with an agency
- a member of an advisory body to a Commonwealth agency (where the member's terms of engagement do not meet the definition of a public official)
- an employee of an organisation that receives grant funding from the Australian Government, or
- state and territory department officials who work alongside Commonwealth officials.

An Authorised Officer may also decide to deem a person to be a public official if they do not know, or cannot be certain, whether the person is a public official. For example, the person may be unwilling to provide identifying information for fear of reprisal. The relevant test is that the person was not a public official at the time the information they are disclosing was obtained (s70(1)(b)). If the

Authorised Officer is otherwise satisfied that the person is or has been a public official, then deeming is not required.

An Authorised Officer's power to deem a person to be a public official operates only for the purposes of allowing that person to make a disclosure under the PID Act (s 70). An Authorised Officer cannot extend the reach of the PID Act by deeming a person to be a public official for the purposes of allowing a second person to make a disclosure about that first person's conduct. Additionally, a judicial officer, member of Parliament, member of a Royal Commission or a person employed under the Members of Parliament (Staff) Act 1984 cannot be deemed a public official for the purposes of making a disclosure (s70(3A)).

What can be disclosed?

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

Disclosable conduct covered by the PID Act has to be conduct on the part of one of the following:

- 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

The kinds of conduct that a disclosure can be made about are listed in the table to s29(1) of the PID Act. They are conduct that:

- 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 (s29(1)).
- 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; or
 - could give reasonable grounds for disciplinary action resulting in the termination of the public official's engagement or appointment (s29(2)).

What is not disclosable conduct?

Personal work-related conduct

The PID Act provides that personal work-related conduct (s 29A) is not disclosable conduct. Personal work-related conduct is conduct engaged in by one public official in relation to another public official that has personal implications for the second official. The conduct must have occurred in relation to the second official's engagement or appointment and/or in the course of their employment or exercise of their functions and powers as a public official. It includes, but is not limited to, conduct relating to:

- interpersonal conflict, such as bullying or harassment

- changing a person's duties
- disciplinary action
- adverse decisions about promotion or temporary acting arrangements
- terms and conditions of employment or engagement
- suspension or termination
- actions that could be reviewed under s33 of the Public Service Act 1999, or comparable review processes relating to terms or conditions of engagement or appointment

Excluding personal work-related conduct from the scope of disclosable conduct recognises that personal work-related conduct is often dealt with more effectively under other frameworks, as distinct from the PID Act, which is focused on significant integrity wrongdoing.

Personal work-related conduct will be disclosable conduct where the personal work-related conduct:

- amounts to reprisal action
- is of such a significant nature that it would undermine public confidence in an agency, or
- has other significant implications for an agency.

Personal work-related conduct that could be considered to be of a significant nature or have such significant implications for an agency as to affect public confidence in the agency, would depend on the circumstances of each case.

Disclosures of solely personal work-related conduct will not, unless an exception applies, constitute an internal disclosure for the purposes of the PID Act. Disclosures of information that tends to show both personal work-related conduct and disclosable conduct will still need to be allocated as an internal disclosure under the PID Act.

Conduct relating to courts, tribunals and the Parliament

The PID Act has limited application to courts and tribunals. The following aspects of court and tribunal operations are excluded from the categories of disclosable conduct in the PID Act (s32):

- the conduct of judicial officers (defined in s32(1))
- the judicial functions of court staff, tribunal staff or tribunal members
- the conduct of tribunal members or tribunal staff when exercising a power of the tribunal
- any other conduct related to a court or tribunal unless it is of an administrative nature and does not relate to the management or hearing of matters before the court or tribunal.

The conduct of members of parliament or of MOP(S) Act employees is not covered by the PID Act (because they are not 'public officials' as defined in s69). However, the departments of the Parliament and their employees are covered.

Disagreement with government policy or actions

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 (s31).

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 (s32).

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

Intelligence agencies

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 (s33).

Making a disclosure

In order to gain the protections available under the PID Act, a disclosure must be made to an authorised recipient (s26). The PID Act focuses on the reporting and investigating of wrongdoing within government (internal disclosures) but allows for reporting outside government in specified circumstances.

Making an internal disclosure

Under the PID Act, a public official can make an internal disclosure to their current supervisor or an Authorised Officer in:

- their current agency, or
- the agency to which they previously belonged, or
- the agency to which the disclosure relates.

Authorised officers are the Principal Officer of an agency (i.e. the agency head), and officers that the Principal Officer appoints as Authorised Officers under the PID Act (s36). If a public official has information about suspected wrongdoing in an agency other than the one in which they work, they can choose to make their disclosure directly to an Authorised Officer in that other agency. However, if the conduct disclosed relates to an intelligence agency, the public official must disclose it to an Authorised Officer in that agency (or the IGIS) and not to their own agency.

A public official can also make a disclosure to Authorised Officers of the Commonwealth Ombudsman, if they believe on reasonable grounds that it would be appropriate for the Ombudsman to investigate (ss26(1), 34). This could include, but would not be limited to, circumstances where the discloser believes that the agency will not take appropriate action to deal with the conduct disclosed.

If the matter involves an intelligence agency or agency with intelligence functions (see s8 definition), there are 2 options. Either the public official can make a disclosure to an Authorised Officer in the intelligence agency or, if they believe on reasonable grounds that it would be appropriate for the IGIS to investigate, the public official may make a disclosure to an Authorised Officer of the IGIS (see www.igis.gov.au).

The PID Act also allows for agencies with special investigative powers to be prescribed under PID rules. If the matter concerns their functions and powers, a disclosure may be made to those special investigative agencies. However, at the time of publication there are no prescribed investigative agencies.

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.

Making other disclosures

A public official must use one of the proper avenues to gain the protections available under the PID Act. This means that a public official will not receive these protections if they give the information to someone outside government, for example a journalist or union representative, unless the conditions for an external or emergency disclosure are met. If these conditions are not 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.

External disclosures

A public official who has already made an internal disclosure under the PID Act may in some circumstances subsequently make a disclosure to any person (except a foreign public official), if (s 26(1) item 2):

- the final report of the internal PID investigation has not been prepared within 90 days of allocation, or the extended investigation period approved by the Ombudsman or the IGIS (this condition does not apply to Ombudsman/IGIS investigations under their respective legislation)
- the PID investigation has been completed and the discloser believes on reasonable grounds that the investigation was inadequate
- an investigation has been completed (whether the investigation was conducted under the PID Act or under other legislation) and the discloser believes on reasonable grounds that the response to the investigation was inadequate.

Additional restrictions apply to external disclosures (s26):

- the public official must not disclose more information than is reasonably necessary to identify the wrongdoing
- all of the externally disclosed information must have been the subject of at least part of a prior internal disclosure
- on balance, making that external disclosure must not be contrary to the public interest.

The external disclosure must not include intelligence information, including sensitive law enforcement information, and none of the information disclosed can concern the conduct of an intelligence agency. Further, the definition of ‘disclosable conduct’ excludes conduct that an intelligence agency, or one of its officials, engages in as part of the proper exercise of the intelligence agency’s functions.

If the agency decides not to allocate or investigate the official’s disclosure (i.e., by making a decision under s 43 or s 48 of the PID Act, including a decision not to allocate or investigate because the conduct would be better investigated under another law or power), this will not meet the criteria for an official to make an external disclosure. The official may complain to the Ombudsman about the agency’s decision not to allocate or investigate their disclosure. If the disclosure relates to one of the intelligence agencies or the intelligence functions of the ACIC or AFP, the official may complain to the IGIS.

Emergency disclosure

If a public official believes on reasonable grounds that the information they have involves a substantial and imminent danger to the health or safety of one or more people or to the environment, they may make an emergency disclosure to any person except a foreign public official (s26(1) item 3), provided they meet certain requirements:

- The extent of the information they disclose must be only what is necessary to alert the recipient of the substantial and imminent danger.
- If they have not previously made an internal disclosure about the matter, or if they have done so and the investigation is not yet completed, there must be exceptional circumstances justifying their decision to make an external disclosure. This might include, for example, if the investigation was taking too long to complete having regard to the risk to a person’s health and safety.

An emergency disclosure must not include intelligence information, including sensitive law enforcement information.

Legal practitioner disclosure

An official may make an emergency or external disclosure to a legal practitioner (noting these disclosures may be made to any person other than a foreign public official in the circumstances discussed above).

There is also a specific category of public interest disclosure under the PID Act – ‘a legal practitioner disclosure’- which allows a public official to disclose information to an Australian legal practitioner for the purposes of seeking legal advice or professional assistance in relation to the official’s actual or

proposed disclosure elsewhere (i.e., an internal disclosure, an emergency disclosure or an external disclosure).

An Australian legal practitioner is an Australian lawyer admitted to the legal profession by a Supreme Court of an Australian State or Territory and who holds a practicing certificate under a law of an Australian State or Territory (s 8 PID Act). In order to make a 'legal practitioner disclosure', the disclosure by the public official to the lawyer must be made for the purpose of obtaining legal advice or professional assistance from the lawyer in relation to a disclosure that the discloser has made or proposes to make.

For a 'legal practitioner disclosure', the official must not disclose intelligence information including sensitive law enforcement information (s26(1) item 4).

Disclosures to the NACC

A public official may make a public interest disclosure directly to the NACC. The NACC Commissioner has discretion to investigate a corruption issue raised through a disclosure if they are of the opinion that the issue could involve serious or systemic corrupt conduct. If the disclosure is made to the NACC and the Commissioner decides not to investigate it, the Commissioner may refer it back to the relevant agency for consideration or investigation.

The NACC Act and the PID Act offer different protections to disclosers. The NACC Act protections are available to any person who provides information or evidence related to a corruption issue to the Commission. Importantly, a public official will be able to access protections under both schemes where the information or evidence disclosed to the Commission also constitutes disclosable conduct under the PID Act.

ATTACHMENT B

Authorised Officer responsibilities – assessing and allocating a PID, assessing and managing the risk of reprisal

Assessing and allocating a disclosure

After an Authorised Officer receives a disclosure, the following steps must be taken:

- a. consider whether the discloser understands the PID Act;
- b. perform an assessment of the disclosure;
- c. decide whether to allocate the PID to a Principal Officer for consideration; and
- d. notify the discloser and the Commonwealth Ombudsman of the allocation.

The Authorised Officer is also responsible for conducting a risk assessment (see below).

Step 1: Receipt of information

Where an individual discloses, or proposes to disclose, information to an Authorised Officer and the Authorised Officer has reasonable grounds to believe that the information concerns, or could concern, disclosable conduct, and the individual may be unaware of the consequences of making a disclosure under the PID Act, the Authorised Officer must:

- a. advise the person that their disclosure could be considered an internal disclosure under the PID Act;
- b. explain what is required in order for the disclosure to be considered an internal disclosure;
- c. advise the individual about the circumstances (if any) in which a public interest disclosure must be referred to any agency, or other person or body, under another law of the Commonwealth; and
- d. advise the person of any designated publication restrictions that may affect disclosure of the information.

Step 2: consider whether or not to allocate the disclosure

An Authorised Officer may receive a disclosure from a discloser, or from the discloser's supervisor. They must use their best endeavours to make a decision about the allocation of a disclosure within 14 days of receiving the disclosure. They must consider the information disclosed and allocate the disclosure to one or more agencies (which may or may not be the Office) unless the Authorised Officer is satisfied on reasonable grounds that:

- a. there is no reasonable basis on which the disclosure could be considered to be an internal disclosure; or
- b. the conduct disclosed would be more appropriately investigated under another law or power (this ground cannot be satisfied only because the conduct disclosed raises a corruption issue).

Before making a decision, the Authorised Officer must ensure they have satisfied their obligations under the PID Act, to provide information to disclosers (refer to s60 the PID Act for full detail).

If the Authorised Officer suspects that the disclosure involves serious and systemic corrupt conduct and satisfies the criteria in s35 of the PID Act, it must be referred to the NACC.

Decision to allocate

If the Authorised Officer decides to allocate a disclosure, it must be allocated to the Principal Officer of the Office (and/or to the Principal Officer of another other agency) for investigation – see Step 3.

Decision not to allocate

If the Authorised Officer decides not to allocate a disclosure, they must:

- a. give written notice to the discloser (if reasonably practicable):

- i. notifying of the decision not to allocate the disclosure and the reasons why the disclosure has not been allocated;
 - ii. if the Authorised Officer is satisfied on reasonable grounds that the conduct disclosed would be more appropriately investigated under another law or power: the details of the other law or power; the agency or other person/body to which the conduct has been or will be referred; the steps taken or proposed to be taken to refer or to facilitate the referral of the conduct disclosed for investigation; and/or any other course of action that might be available to the discloser under another law or power.
- b. give written notice to the Ombudsman (or the Inspector-General of Intelligence and Security (IGIS) if the conduct disclosed relates to an intelligence agency, ACIC or the AFP in relation to their intelligence functions) of:
 - i. the reasons why the disclosure has not been allocated; and
 - ii. whether the Authorised Officer has taken, or proposes to take, action to refer the conduct disclosed, or to facilitate its referral, for investigation under another law or power, and if so, details of: the other law or power; to whom the conduct has been referred; the agency or other person/body to which the conduct has been or is to be referred; and the steps taken or proposed to be taken to refer the conduct disclosed or investigation.
- c. if the Authorised Officer is satisfied on reasonable grounds that the conduct disclosed would be more appropriately investigated under another law or power, they must take reasonable steps as soon as reasonably practicable to refer the conduct disclosed, or facilitate its referral, for investigation under the other law or power.

An appropriate written record must be kept by the Authorised Officer of:

- a. the decision and the reasons for the decision;
- b. whether notice was given to the discloser, and if not, why not;
- c. if notice was given, a copy of the notice given to the discloser must be retained, which includes confirmation of the day and time the notice was given and how the notice was given.

Interactions with the NACC

If the Authorised Officer has reasonable grounds to suspect that the disclosure involves serious and systemic corrupt conduct and satisfies the criteria in s35 of the PID Act, it must be referred to the NACC.

- a. If a stop action direction under the NACC Act prevents the Authorised Officer from allocating a disclosure, the Authorised Officer must give written notice to the Ombudsman or IGIS (if the disclosure concerns conduct relating to an intelligence agency, IGIS, ACIC or AFP in relation to their intelligence functions), of
 - i. the information that was disclosed to the Authorised Officer;
 - ii. the conduct disclosed; and
 - iii. if the discloser's name and contact details are known to the Authorised Officer, and the discloser consents to the Principal Officer and the Ombudsman/IGIS being informed – the discloser's name and contact details; and
 - iv. the stop action direction under the NACC Act that prevents allocation of some or all of the disclosure.
- b. The Authorised Officer must also notify the discloser of the referral to the NACC as soon as reasonably practicable.
- c. If a stop action direction is received under the NACC Act, the Authorised Officer must consider whether it is appropriate to notify a discloser that a stop action direction has prevented the allocation of the disclosure. The Authorised Officer must carefully consider the terms of any stop action direction and consult with the Principal Officer (who may also consult with the NACC) prior to notifying a discloser.
- d. If a stop action direction prevents the allocation of a disclosure to an agency, a written record must be kept of the details of the direction, including when the direction was made and when

the stop action direction no longer applies. The written record must also indicate whether the Principal Officer of the relevant agency considers that it is reasonably practicable or appropriate for the discloser to be given a copy of the notice.

Step 3: allocation of the disclosure

If the Authorised Officer decides to allocate the disclosure, the Authorised Officer must determine which agency it is appropriate to allocate the PID to. Generally, it is likely that PIDs that are made to the Office and relate to the Office should be investigated by the Office. To determine where to allocate a PID, the Authorised Officer may obtain information in the manner they see fit. In determining where to allocate a PID, the Authorised Officer must have regard to:

- a. the principle that an agency should not handle the PID unless some or all of the suspected disclosable conduct relates to that agency; and
- b. any other matters as the Authorised Officer considers relevant to their decision where to allocate a PID, including:
 - i. whether another agency in the same portfolio as the Office would be better placed to handle the disclosure; and
 - ii. any recommendation from the Ombudsman or ISIG about the allocation of the disclosure following a review under s55 of the PID Act.

An Authorised Officer may not allocate the PID to another agency unless the Authorised Officer of that agency has consented to the allocation.

Step 4: notification

Before notifying an agency or the Ombudsman/IGIS of the allocation of a disclosure, the Authorised Officer must ask the discloser (if the discloser's identity is known) whether they consent to their name and contact details being disclosed to the agency and the Ombudsman/IGIS.

The Authorised Officer must give written notice to the Principal Officer of each agency to which the handling of the PID is allocated (including where relevant, the Office) and the Ombudsman (unless the Authorised Officer allocated the disclosure to the Ombudsman, the IGIS, an intelligence agency or the ACIC or AFP in relation to their intelligence functions) or the IGIS (if the Authorised Officer allocated the disclosure to the an intelligence agency, the ACIC or AFP in relation to their intelligence functions) of:

- a. the allocation;
- b. the information that was disclosed to the Authorised Officer;
- c. the conduct that was disclosed; and
- d. if the discloser's name and contact details are known to the Authorised Officer, and the
- e. discloser consents to the Principal Officer and the Ombudsman/IGIS being informed – the
- f. discloser's name and contact details.

If reasonably practicable, the Authorised Officer must give a copy of the notice to the discloser as soon as reasonably practicable.

Where the Authorised Officer has allocated a PID to an agency, they must keep written records of:

- a. the decision (including the name of the agency/agencies to which the handling of the PID has been allocated);
- b. the reasons for the decision to allocate the handling of the PID in that way;
- c. if the handling of the PID has been allocated to an agency other than the Office, a record of the consent of the Authorised Officer of that agency to the allocation; and
- d. any consent provided by the discloser.

In addition, the Authorised Officer must keep written records of:

- (a) whether the notice (or a copy of the notice) was given to the discloser, and if not, why not; and

- (b) if the notice was given to the discloser: the day and time that the discloser was given the notice, the means by which the discloser was given notice, and the matters included in the notice.

Step 5: reprisal risk assessment

As soon as practicable after receiving a disclosure, the Authorised Officer must assess the risk that reprisals will be taken in relation to the disclosure. Further information regarding the completion of reprisal risk assessments is included below.

Assessing and managing the risk of reprisal

Excerpts sourced from Commonwealth Ombudsman (www.ombudsman.gov.au)¹

Robust and well-publicised procedures are an important part of encouraging a pro-disclosure culture. Almost a quarter of people who have witnessed but not reported wrongdoing claim that fear of reprisal prevented them doing so.² For many disclosers, the protections inherent in the PID process can provide confidence and certainty that their concerns are being taken seriously.³

Reprisal is broadly defined in the PID Act. Section 13 of the PID Act defines a reprisal as any conduct a person engages in which consists of, or results in, a threat to cause detriment to another person where that act or omission is because of a belief or suspicion that the person made, may have made, proposes to make or could make a PID.

The definition means that the person who experiences detriment may not be the discloser. They may be, for example, a witness assisting with a PID investigation, or someone suspected of making a disclosure or of being capable of making a disclosure. Similarly, the person who engages in reprisal action may not be the subject of a disclosure. What matters is that they took action against someone because they believed that person made or could make a disclosure.

Reprisal could occur in the form of:

- bullying and harassment
- negative professional consequences such as being passed over for promotion or not having contracts for services renewed and
- threats of physical violence.

It is important to note that reasonable administrative action taken to protect a person from detriment, such as moving them or someone else to a different work area, is not reprisal. Additionally, disciplinary action taken against disclosers or suspected disclosers will not be reprisal unless it is motivated by the fact that someone has, may have, proposes to make, or could make a PID.

Responsibilities

While the Principal Officer of an agency has a responsibility to take reasonable steps to protect public officials who belong to their agency from reprisals,⁴ Authorised Officers also have a duty to protect public officials against reprisals. They must take reasonable steps to protect public officials who belong to the agency against reprisals in relation to public interest disclosures which are received by the

¹Full document is available at: [PID-Bill-Guidance-Assessing-and-managing-the-risk-of-reprisal-December-2023-V1.0-A2382362.pdf \(ombudsman.gov.au\)](https://www.ombudsman.gov.au/publications/PID-Bill-Guidance-Assessing-and-managing-the-risk-of-reprisal-December-2023-V1.0-A2382362.pdf)

² AJ Brown (ed) *Whistleblowing in the Australian Public Sector: Enhancing the Theory and Practice of Internal Witness Management in Public Sector Organisations* (2008) ANU E Press, 72.

³ Review of the Public Interest Disclosure Act 2013 / an independent statutory review conducted by Mr Philip Moss AM. P.17

⁴ Ibid s59(9)(a)

Authorised Officer or when they suspect on reasonable grounds that someone has, may have, proposes to, or could make a PID.

Preparing the reprisal risk assessment

A reprisal risk assessment and mitigation plan should be drafted by the Authorised Officer, where appropriate seeking input from HR. HR may need to manage relationships between staff members involved and be aware that there may be a period of tension in the workplace, as well as enact the practical aspects of any risk management plans, such as organising staff leave or enabling secondments to different areas. It may also be necessary for the Authorised Officer to obtain information from other people involved in the discloser’s workplace; in obtaining this information the Authorised Officer must ensure confidentiality is maintained at all times.

Subject matter

A reprisal risk assessment should include a list of potential risks against which the individual discloser’s situation is assessed.

A list of common risk factors can be found at Table 1. The risk of reprisal assessment and mitigation plan will should also include risks specific to the Office and the individual to be protected. As the relationship between the discloser and the subject of the disclosure can be particularly important, the assessment should consider:

- whether the discloser and the subject work together
- whether they are in each other’s reporting lines or have managers or staff in common
- whether they are physically located in the same office and
- whether they socialise outside of work.

Quantifying risk

In conducting risk assessments in relation to the risk that reprisals will be taken against a discloser, the following matrix should be used:

		Likely seriousness of reprisal			
		Minor	Moderate	Major	Extreme
Likelihood of reprisal being taken	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 (for example, occasional exclusion of the person from a social activity).
- Moderate: repeated action which is likely to have an adverse effect on the person (for example, routinely failing to copy in the person on work-related emails which the person has a genuine business need to know about).
- Major: sustained or one-off action which has a significant impact on the person (for example, consistently excluding the person from team discussions or imposing a negative performance assessment on the person without reasonable cause and supporting evidence).
- Extreme: action which is likely to have a very severe impact on the person (for example, physical violence).

Criteria for assessing the likelihood of potential reprisals

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

- the likelihood of the discloser being identified, which may involve a consideration of:
 - the size of the work area in which the discloser is located; and
 - the number of people who are aware of the information leading to the disclosure;
- the number of people implicated in the disclosure;

- the subject matter of the disclosure;
- 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).

Mitigations

The reprisal risk assessment supports the development of a risk mitigation plan containing strategies to mitigate the identified risks of reprisal, for any risks that have been assessed as greater than low. This might include separating the officers in question, finding alternate work for one or both parties, and making sure the subject of the disclosure is aware of the serious criminal penalties and possible civil action for taking reprisal action. Any solution must be compatible with the confidentiality requirements, noting that these will not usually provide any impediment to actions taken to assist the discloser or the subject of the disclosure.

Note that if a discloser has been moved to protect them from reprisal, documentation of this as a response to the risk of reprisal is important to safeguard against the discloser subsequently alleging that the move was reprisal. Reprisal risk mitigation plans should also document actions taken to provide support and protect against risk, such as providing counselling or access to a support person.

Important considerations

Timeliness

Risk assessments should be conducted, and mitigation plans developed, as soon as possible after a public interest disclosure is made. It is also worth noting that, while the PID Act contains timeframes for allocation and investigation of PIDs, there are no limits on the timeframe in respect of which a PID may be made. This means a discloser may make a PID about a situation that has been ongoing for some time, in which they are involved and in which they are at risk of reprisal. This makes it important that plans are developed and responses implemented as soon as possible.

Change over time

Reprisal risk assessments and mitigation plans should be treated as living documents – that is, they are regularly referred to and updated as circumstances change. Figure 1 demonstrates how this may occur in practice. Reviews should occur whenever circumstances change, such as upon commencing and finalising any investigation.

Access and recording

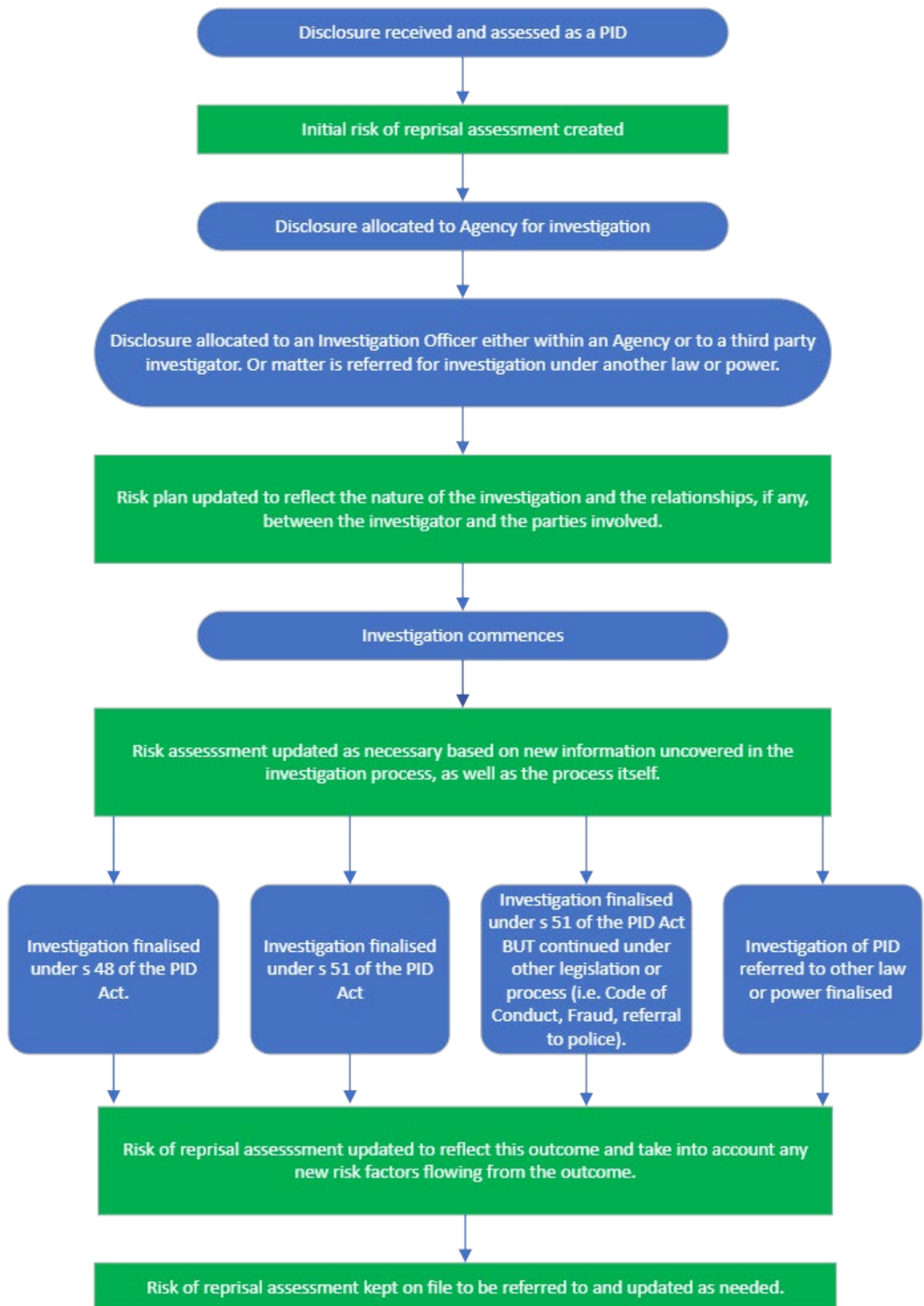
Assessments and mitigation plans should be recorded in writing and accessible to relevant stakeholders to ensure that the situation is monitored and mitigation strategies are implemented. It is important to note that confidentiality requirements continue to apply to this information.

Table 1: Indicators of a higher risk of reprisal or workplace conflict

Threats or past experience	<p>Has a specific threat been made against the discloser?</p> <p>Is there a history of conflict between (two or more of) the discloser, management, supervisors or colleagues?</p> <p>Is there a history of reprisals or other conflict in the workplace? If so, is it likely that the disclosure will exacerbate this?</p>
Confidentiality unlikely to be maintained	<p>Who knows that the disclosure has been made or was going to be made?</p> <p>Has the discloser already raised the substance of the disclosure or revealed their identity in the workplace?</p> <p>Who in the workplace knows the discloser’s identity?</p> <p>Is the discloser’s immediate work unit small?</p> <p>Are there circumstances, such as the discloser’s stress level, which will make it difficult for them not to discuss the matter with people in their workplace?</p>

	<p>Will the discloser be identified or suspected when the existence or substance of the disclosure is made known or investigated?</p> <p>Can the disclosure be investigated while maintaining confidentiality?</p>
Significant reported wrongdoing	<p>Are there allegations about individuals in the disclosure?</p> <p>Who are the subject's close professional and social associates within the workplace?</p> <p>Is there more than one wrongdoer involved in the matter? Is the reported wrongdoing serious?</p> <p>Is or was the reported wrongdoing occurring frequently?</p> <p>Is the disclosure particularly sensitive or embarrassing for any subjects of the disclosure, senior management, the agency or the government?</p> <p>Will these people be motivated to take reprisals – for example, because they have a lot to lose?</p> <p>Are these people able to take reprisals – for example, because they have power over the discloser?</p>
Vulnerable discloser	<p>Is or was the reported wrongdoing directed at the discloser? Are there multiple subjects of the disclosure?</p> <p>Is the disclosure about a more senior official?</p> <p>Is the discloser employed part-time or on a casual basis?</p> <p>Is the discloser isolated – for example, geographically or because of shift work?</p> <p>Are the allegations unlikely to be substantiated – for example, because there is a lack of evidence?</p> <p>Is the disclosure being investigated outside your organisation?</p>

Figure 1: Creating and updating a risk of reprisal plan – flowchart
 From Commonwealth Ombudsman (www.ombudsman.gov.au)



ATTACHMENT C

Principal Officer responsibilities – considering and investigating a PID

The Official Secretary is the Office of the Official Secretary to the Governor-General's Principal Officer for the purposes of the PID Act. The Principal Officer may delegate some or all of their powers to other Office employees or other public officials who belong to the agency. Throughout this procedure, any reference to the Principal Officer should be understood to include any persons to whom powers have been delegated.

Considering and investigating a PID

After an Authorised Officer allocates a disclosure to the Office, the Principal Officer must take the following steps:

- a. notify the discloser of the allocation;
- b. consider whether an investigation is required;
- c. if an investigation is required, conduct the investigation; and
- d. comply with the relevant post-investigation notification requirements.

The Principal Officer has 90 days from the allocation date in which to complete an investigation report in relation to a PID allocated to them. An extension of time may be granted by application to the Ombudsman; this application must be made prior to the expiry of the 90 day investigation period. Refer to the Ombudsman website (www.ombudsman.gov.au) for the appropriate forms to apply for an extension of time for the completion of an investigation of a disclosure.

Step 1: Notify the discloser

Notification may occur either after the Principal Officer has reached a decision at Step 2, or as a first action in Step 3. As soon as is reasonably practicable after a PID has been allocated to the Principal Officer, typically within 14 days, the Principal Officer must inform the discloser that the Principal Officer may:

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

Step 2: Consider if an investigation is required

Section 48 of the PID Act details the discretion available to a Principal Officer to not investigate a disclosure. The Principal Officer may exercise this discretion should any of the grounds listed in s48 apply, including:

- a. the discloser is not and has not been a public official; or
- b. the information does not concern serious disclosable conduct; or
- c. the disclosure is frivolous or vexatious; or
- d. the information is the same or is substantially the same as information previously disclosed under the PID Act, and:
 - i. a decision had previously been made under s48 not to investigate; or
 - ii. the earlier disclosure has been, or is being investigated as a disclosure investigation.
- e. the conduct disclosed (or substantially the same conduct) is being investigated under another law or power and the Principal Officer is satisfied on reasonable grounds that it would be inappropriate to conduct a PID investigation at the same time; or

- f. the conduct disclosed (or substantially the same conduct) has been investigated under another law or power and the Principal Officer is reasonably satisfied that there are no further matters concerning the conduct that warrant investigation; or
- g. the Principal Officer is satisfied, on reasonable grounds, that the conduct disclosed would be more appropriately investigated under another law or power (unless this view is reached because the conduct disclosed raises a corruption issue); or
- h. the disclosure, an Authorised Officer of the agency, or a Principal or Authorised Officer of another agency, has informed the Principal Officer that the discloser does not wish investigation of the internal disclosure to be pursued, and the Principal Officer is satisfied on reasonable grounds that there are no matters concerning the disclosure that warrant investigation; or
- i. it is impracticable for the disclosure to be investigated:
 - i. because the discloser's name and contact details have not been disclosed; or
 - ii. because the discloser refuses, fails, or is unable to give the information or assistance required by the person(s) conducting the investigation; or
 - iii. because of the age of the information.

If the Principal Officer decides not to investigate or further investigate the disclosure

If the Principal Officer decides not to investigate (or further investigate) a disclosure under the PID Act, they must:

- a. if reasonably practicable, give written notice to the discloser that the Principal Officer has decided not to investigate (or further investigate) the disclosure, identifying:
 - i. the reasons for the decision not to investigate; and
 - ii. if the Principal Officer decides that the disclosure would be more appropriately investigated under another law or power, details of the other law or power; the agency or other person or body to which the conduct has been or will be referred; and the steps taken or proposed to be taken for the conduct to be referred or to facilitate referral.

The Principal Officer may delete from the reasons any reasons that would cause the document to be exempt for the purposes of Part IV of the Freedom of Information Act 1982; to have or be required to have a national security or other protective security classification; or to contain intelligence information.

- b. give written notice to the Ombudsman of the decision not to investigate (or further investigate) and the reasons for that decision. If the Principal Officer decides that the disclosure would be more appropriately investigated under another law or power, the Principal Officer must provide the Ombudsman with details of: the other law or power; the agency or other person or body to which the conduct has been or will be referred; and the steps taken or proposed to be taken for the conduct to be referred or to facilitate referral.

If the Principal Officer decides to investigate the disclosure

If the Principal Officer decides that the discretion of s48 of the PID Act does not apply to this PID, they are required to commence an investigation and should proceed to Step 3, unless there is a stop action direction under the NACC Act.

If the disclosure cannot be investigated because of a stop action direction

If the disclosure cannot be investigated (or cannot be investigated further) because of a stop action direction under the NACC Act, the Principal Officer must give written notice of the stop action direction to the discloser and the Ombudsman as soon as reasonably practicable.

The Principal Officer must, as soon as reasonable practicable, inform the discloser if the Principal Officer investigates, or further investigates, a disclosure that is no longer the subject of a stop action direction under the NACC Act.

Step 3: Conduct the investigation

When the Principal Officer decides to investigate a disclosure, if reasonably practicable they must give written notice to the discloser that they are required to investigate the disclosure, and that the discretion to cease investigating (in s48 of the PID Act) remains available. They must also provide an estimate of the length of time required for the investigation.

The Principal Officer may conduct the disclosure investigation in any manner they see fit, but must investigate whether there are one or more instances of disclosable conduct. This may result in the Principal Officer conducting the investigation themselves, or referring the matter to an investigator to assist in determining whether there are one or more instances of disclosable conduct.

The Principal Officer can obtain such information and make such enquiries as they consider appropriate in conducting an investigation. Public officials are required to use their best endeavours to assist the Principal Officer, Ombudsman or the IGIS in the conduct of an investigation under the PID Act.

An investigation must be conducted in a manner consistent with the Public Interest Disclosure Standards 2013 (Cth) and follow the general principles:

- a. maintaining the confidentiality of the discloser's identity unless consent to disclose their identity has been provided;
- b. documentation of actions, conversations and decisions relating to a disclosure should be kept;
- c. a decision about whether evidence is sufficient to prove a fact will be determined on the balance of probabilities;
- d. a finding of fact will be based on logically probative evidence;
- e. the evidence relied on in an investigation must be relevant to the investigation;
- f. the investigation will be conducted in accordance with the principles of procedural fairness;
- g. a person who is the subject of the investigation will have an opportunity to respond or provide information;
- h. if an interview is to be conducted as part of the investigation:
 - i. the person being interviewed is offered the opportunity to bring a support person with them to the interview; and
 - ii. it complies with the requirements set out in the PID Standard 2013 including:
 1. informing the interviewee of the identity and function of the interviewer/s;
 2. informing the interviewee of the process of conducting an investigation;
 3. informing the interviewee about the Principal Officer's authority and role in the investigation under the PID Act;
 4. informing the interviewee about the protections in Part 2 of the PID Act;
 5. ensuring no audio or visual recording of the interview is made without the interviewee's knowledge;
 6. providing the interviewee with a final opportunity to make a statement at the conclusion of an interview; and
 7. ensuring any such final statement made by an interviewee is included in the record of the interview.
- i. a decision on whether there is sufficient evidence to prove a fact will be determined on the balance of probabilities; and
- j. findings will be made on the basis of relevant and logically probative evidence.

The Principal Officer may, as part of their investigation into a PID allocated to them, adopt findings contained in a report of an investigation or inquiry under another law or power, or the PID Act.

During an investigation of a disclosure, the Principal Officer should continue to consider whether one or more of the discretionary grounds in s48 of the PID Act applies to the disclosure. If the Principal Officer forms the view that one or more grounds apply to the PID, the Principal Officer should cease investigating and follow the appropriate process in Stage 2 (including with respect to notification and record keeping).

Notifying police

If, during an investigation into a PID, the Principal Officer suspects on reasonable grounds that some or all of the information disclosed or obtained during the investigation is evidence of an offence against a law of the Commonwealth, a State or a Territory, the Principal Officer has the following notification obligations:

- a. if the offence is punishable by a period of imprisonment of at least two years, they must notify a member of the appropriate police force responsible for investigating the offence unless the investigator suspects on reasonable grounds that the relevant information raises a corruption issue and the corruption issue has already been referred to the NACC or IGIS (as relevant) or that agency is already aware of the issue; or
- b. if the offence is punishable by a period of imprisonment of less than two years, the Principal Officer may notify a member of the appropriate police force.

However, the Principal Officer's power to notify police is not limited by the PID Act.

Procedural fairness

The requirements of procedural fairness may vary depending on the circumstances. Generally, it requires:

- a. the decision-maker to act fairly and without bias;
- b. at the point of an investigation where an adverse finding is likely to be made about a person's conduct:
 - i. the person has a right to know the substance of the allegations and any evidence against them; and
 - ii. the person is entitled to have a reasonable opportunity to respond to the allegations and any evidence against them.

Investigation report

The Principal Officer must complete the investigation, by preparing a report of the investigation, within 90 days after:

- a. the initial allocation or reallocation of the disclosure to the department;
- b. in the case of a re-investigation, the day on which the Principal Officer decides to reinvestigate the disclosure; or
- c. to the extent that a stop action direction under the NACC Act prevented the investigation, the day on which the Principal Officer becomes aware that a stop direction under the NACC Act which prevented the investigation no longer applies.

The Ombudsman may extend, or further extend, the 90 day period by such period as the Ombudsman considers appropriate on application by the Principal Officer. If the Ombudsman grants an extension, the Principal Officer will, as soon as reasonably practicable, inform the discloser of the progress of the investigation.

When an investigation is completed, the Principal Officer must prepare a report of the investigation.

This report must set out:

- a. the matters considered in the course of the investigation;
- b. an explanation of the steps taken to gather evidence;
- c. the duration of the investigation;
- d. a summary of the evidence;
- e. the Principal Officer's findings (if any) including whether there have been one or more instances of disclosable conduct established;
- f. if disclosable conduct is established, the report must set out the regulations, rules, administrative requirements or similar matters to which the disclosable conduct relates;
- g. the action (if any) that has been, is being, or is recommended to be, taken; and
- h. claims of any reprisal action taken against the discloser, or any other person, that relates to the matters considered in the course of the investigation, together with any related evidence, and the Office's response to those claims and that evidence.

Step 4: Post-investigation

Within a reasonable time after completing an investigation, the Principal Officer must give a copy of the report to the discloser and the Ombudsman. The Principal Officer may delete from the copy of the report given to the discloser any material:

- a. that is likely to enable the identification of the discloser or another person;
- 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 PID Act.

The Principal Officer may delete from a copy of the report given to the Ombudsman any material:

- a. that is likely to enable the identification of the discloser or another person; or
- b. contravenes a designated publication restriction as defined in the PID Act.

The PID Act sets out particular information which may be removed from a copy of a report given to a discloser and the Ombudsman. Please see the PID Act for more information.

If an investigation report contains recommendations, the Principal Officer should ensure that they provide the recommendations to a person within the Department who would be able to consider and address those recommendations.