

PARLIAMENTARY COUNSEL

Procedure 2.4.2  
Public Interest Disclosures

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## Introduction

1 This document provides guidance to public officials about the procedures that FPC has established to facilitate and deal with internal public interest disclosures<sup>1</sup>. They have been developed following advice in the Commonwealth Ombudsman publication “Agency guide to the Public Interest Disclosure Act” available at [www.ombudsman.gov.au](http://www.ombudsman.gov.au). They will be made available on OPC’s intranet for current workers, and on OPC’s website<sup>2</sup> for public officials who are not current workers.

2 The purpose of the public interest disclosure scheme, including the *Public Interest Disclosure Act 2013* (PID Act) and the *Public Interest Disclosure Standard 2013* (PID Standard), is to promote the integrity and accountability of the Commonwealth public sector by:

- (a) encouraging and facilitating the making of disclosures of wrongdoing by public officials;
- (b) ensuring that public officials who make protected disclosures are supported and protected from adverse consequences relating to the making of a disclosure; and
- (c) ensuring that disclosures are properly investigated and dealt with<sup>3</sup>.

3 OPC is committed to the highest standards of ethical and accountable conduct. OPC encourages and supports the reporting of wrongdoing (disclosures), will act on disclosures as appropriate, and will support disclosers and protect them from both reprisals or threats of reprisals as a result of making a disclosure.

4 These procedures complement, and do not replace, OPC procedures relating to underperformance, suspected misconduct, and fraud investigation.

## Key terms

### ***Public Interest Disclosure***

5 An internal Public Interest Disclosure is when a public official discloses to an authorised internal recipient information about conduct which they reasonably believe tends to show disclosable conduct.

6 An external Public Interest Disclosure (which is made to any person other than a foreign public official) may be made only if the final report of an internal PID investigation has not been prepared within 90 days of allocation or as otherwise extended; or if the discloser believes the completed PID investigation or the response to it was inadequate<sup>4</sup>.

7 An emergency Public Interest Disclosure (which is made to any person other than a foreign public official) may be made only if the discloser has concerns about substantial and

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<sup>1</sup> Issuing procedures is a requirement of subsection 59(3) of the PID Act.

<sup>2</sup> This is consistent with the requirements of the Information Publication Scheme under the *Freedom of Information Act 1982*.

<sup>3</sup> PID Act section 6.

<sup>4</sup> For more information about making an external Public Interest Disclosure, refer to [www.ombudsman.gov.au](http://www.ombudsman.gov.au).

imminent danger, and if it does not include intelligence or sensitive law enforcement information<sup>5</sup>.

8 Disclosures made in the course of performing one's ordinary functions as a public official are not PIDs. This means that routine discussions in agencies where everyday functions involve investigation of wrongdoing do not constitute a PID and do not require referral to an authorised officer. The exclusion doesn't prevent such an official from making a PID, however they would need to make their intention clear when communicating to their supervisor, authorised officer, or principal officer.

9 For more information please refer to the Commonwealth Ombudsman's Agency Guide to the PID Act at [www.ombudsman.gov.au](http://www.ombudsman.gov.au).

## **Public Official**

10 In this procedure, a Public Official means a current or former:

- (a) Employee of OPC;
- (b) Individual or organisation that provides goods or services under a Commonwealth contract to OPC and their officers or employees;
- (c) Statutory Officer of OPC;
- (d) First Parliamentary Counsel<sup>6</sup>.

11 An individual may be deemed by an Authorised Officer to be a Public Official if the Authorised Officer:

- (a) reasonably believes the individual has information about wrongdoing and proposes to make a disclosure<sup>7</sup>; or
- (b) does not know, or cannot be certain whether the individual is a public official, for example if the individual is unwilling to provide identifying information for fear of reprisal.

## **Authorised recipients of internal disclosures**

12 To be covered by the protections of the PID Act, an internal disclosure must be made to:

- (a) The discloser's supervisor;
- (b) First Parliamentary Counsel; or
- (c) An Authorised Officer, either of OPC or another APS agency.

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<sup>5</sup> For more information about making an emergency Public Interest Disclosure, refer to [www.ombudsman.gov.au](http://www.ombudsman.gov.au).

<sup>6</sup> PID Act section 69

<sup>7</sup> PID Act section 70

13 In addition, in some circumstances a disclosure may be made to the Commonwealth Ombudsman or the Inspector-General of Intelligence and Security<sup>8</sup>.

## **OPC's Authorised Officers**

14 Authorised Officers are senior officers who are authorised to receive reports of disclosable conduct and have a range of decision-making, notification and other responsibilities under the PID Act.

15 OPC's Authorised Officers are the two Second Parliamentary Counsels. Contact details for the Authorised Officers are on OPC's website at <https://www.opc.gov.au/corporate-information/foi-ips-pid/public-interest-disclosure>.

## ***Disclosable conduct***

16 The full definition of disclosable conduct is set out in sections 29 and 29A of the PID Act. That definition applies for the purposes of these procedures.

17 In summary, disclosable conduct is conduct by an agency, a public servant or a government contractor that:

- contravenes an Australian 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, 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 property;
- unreasonably endangers health and safety;
- endangers the environment;
- is prescribed by the PID Rules;
- involves abuse of the public official's position that would, if proven, provide reasonable grounds for termination of the public official's employment;

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<sup>8</sup> PID Act section 34

- is personal work-related conduct (see paragraph 19) that could constitute reprisal; or
- is personal work-related conduct (see paragraph 19) that is so significant it would have adverse consequences for the agency, which raises or tends to show serious misconduct, corruption, or other serious integrity issues.

This could include, for example, personal work-related conduct that tends to show:

- Systemic discriminatory employment practices, nepotism, or other conduct that seriously calls into question the impartiality and independence of the agency.
- Serious criminal conduct, particularly if it relates to management of the agency.
- Conduct that may substantially adversely affect the core functions of the agency.

18 Conduct that is not disclosable conduct includes:

- Government policy, action or expenditure that an individual disagrees with;
- Judicial, ministerial and parliamentary conduct and the proper activities of intelligence agencies;
- Individual grievances or workplace conflicts, which would generally be appropriately dealt with by other internal mechanisms<sup>9</sup>;
- Conduct that is wholly private and has no bearing on the position as a public official; or
- Personal work-related conduct (unless it could constitute reprisal or is otherwise significant).

19 Personal work-related conduct is an action or omission taken in relation to a public official's engagement or appointment and/or employment (i.e. a work-related action) that has, or would tend to have, personal implications for that public official (i.e. the action personally affects that person). It includes:

- (a) interpersonal conflict, including bullying or harassment.
- (b) decisions about a person's employment, engagement, transfer, or promotion – including decisions to suspend, terminate, or discipline a person, or the terms and conditions of a person's employment or engagement.
- (c) conduct in relation to which the public official has or had review rights under section 33 of the *Public Service Act 1999* or comparable review process.

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<sup>9</sup> Refer to Policy 5.10 Resolution of disputes and grievances

## **Making an internal Public Interest Disclosure**

### ***Encouragement for disclosers, including potential disclosers***

20 A disclosure should occur as soon as possible. The sooner a disclosure is made, in relation to the disclosable conduct, the easier it is for the conduct to be investigated and addressed.

21 A potential discloser should not investigate a matter themselves before making a disclosure, as this may hinder a future investigation.

22 If a potential discloser wishes to make a disclosure about another agency or department, the potential discloser is encouraged (but not required) to make that disclosure to the authorised officer of the relevant agency or department.

23 Potential disclosers are encouraged (but not required) to use less formal mechanisms than the PID scheme for resolving issues relating to their employment. Please refer to OPC Policy 5.10 Complaint resolution.

24 A potential discloser can, in the first instance, seek advice from People Services or from the Commonwealth Ombudsman.

25 Potential disclosers are encouraged (but not required) to make the disclosure to one of OPC's Authorised Officers, as they are well-placed to ensure the appropriate protection and response is made.

26 A potential discloser should be aware that making a disclosure does not entitle them to protection from the consequences of their own wrongdoing, including where they have been involved in the misconduct they are reporting. Further, if a potential discloser's performance in the workplace is unsatisfactory, making a public interest disclosure does not prevent supervisors from addressing the unsatisfactory performance.

### ***Anonymity and pseudonymity***

27 Public officials can make anonymous disclosures if they wish to do so. However, if a disclosure is made anonymously and no contact details are provided, it may prevent investigation of the disclosure. A disclosure is considered anonymous if:

- (a) the identity of the discloser is not revealed and if no contact details for the discloser are provided; or
- (b) the discloser does not disclose their name but does provide anonymous contact details.

28 A discloser may wish to use a pseudonym. This may be appropriate in circumstances where the discloser is identifiable to their supervisor or an Authorised Officer, but decides to hide their identity to others.

29 There are several reasons why disclosers should consider identifying themselves to an Authorised Officer, or at the very least providing a means of contact:

- (a) the PID Act requires OPC to keep a discloser's identity confidential, subject to limited exceptions including the discloser's consent. The person's identity may nonetheless become apparent if an investigation is commenced;
- (b) it is more difficult to ensure protection from reprisal if OPC does not know the discloser's identity;
- (c) the Authorised Officer who receives an anonymous report must have reasonable grounds to suspect the disclosable conduct has occurred in order to allocate the matter for investigation. If the Authorised Officer cannot contact the discloser to seek necessary further information, the matter may not proceed;
- (d) FPC has the discretion not to investigate, or investigate further, if it is impracticable to investigate because the discloser has not provided their name and contact details or is unable to give the investigators further information or assistance if needed; and
- (e) a discloser who does not provide a means of contact cannot be updated on the progress of the matter, including the outcome of the investigation.

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

### ***Disclosure format and content***

31 There is no required format for the making of a disclosure to an internal authorised recipient. A disclosure can be made:

- (a) orally or in writing;
- (b) openly or anonymously;
- (c) without stating that the disclosure is made under the PID Act.

32 Information contained in the disclosure should:

- (a) be clear and factual, and may describe:
  - (i) the nature of the disclosable conduct and how the discloser became aware of it;
  - (ii) who it is believed committed the suspected wrongdoing;
  - (iii) when and where the suspected wrongdoing occurred;
  - (iv) whether the disclosable conduct has been reported to anyone else, and if so, what response occurred;
- (b) so far as possible, avoid speculation, personal attacks and emotive language;

- (c) contain supporting evidence where that is available to the discloser, including where possible identifying any witnesses to the disclosable conduct.

## ***Considerations following making a disclosure***

33 A public official should advise the internal authorised recipient whether they are concerned about possible reprisals as a result of making a disclosure. Public officials will receive OPC's full support and protection from recrimination, victimisation or discrimination as a result of making a disclosure.

34 There is a corresponding obligation on the part of the public official that disclosures are made in good faith, and are not frivolous, vexatious, false, fabricated or malicious. A person who knowingly makes a false or misleading disclosure will not receive protections under the PID Act<sup>10</sup>.

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

36 Once a public interest disclosure has been made, it cannot be withdrawn. However, a discloser may advise the authorised recipient that they no longer wish the disclosure to be investigated. They may withdraw consent for their name and contact details being provided to an Authorised Officer or investigator.

## **Protection for disclosers**

37 The PID Act provides for:

- (a) protection of the discloser's identity<sup>11</sup>.
- (b) immunity from civil, criminal or administrative liability<sup>12</sup>.
- (c) support and protection from reprisal, and recourse to court for remedies for reprisal action<sup>13</sup>.

## ***Protection of the discloser's identity***

38 OPC will make every reasonable effort to protect the discloser's identity, unless the discloser wishes to be identified as the source of the disclosed information and consents in writing to forego protection of their identity. It is a criminal offence for a public official to use or disclose any information likely to enable the identification of a person as a discloser in any other circumstance<sup>14</sup>.

39 However, the PID Act does not, and cannot absolutely protect a discloser's identity in all situations. There are exceptions in the PID Act that would allow identifying information to be used or disclosed<sup>15</sup>. Furthermore, other workers may guess who made the disclosure once

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<sup>10</sup> PID Act section 11

<sup>11</sup> PID Act section 20.

<sup>12</sup> PID Act paragraph 10(1)(a)

<sup>13</sup> PID Act paragraph 59(2)(a) and Subdivision B of Division 1 of Part 2

<sup>14</sup> PID Act subsection 20(1).

<sup>15</sup> Refer to PID Act subsection 20(3).



an investigation is under way, particularly if the discloser has previously complained about the issue to colleagues or flagged their intention to disclose.

40 In order to protect a discloser's identity, OPC will:

- (a) limit the number of people who are aware of the discloser's identity or information that would tend to identify them;
- (b) remind each person who has the information that they should keep it confidential and that unauthorised disclosure may be a criminal offence;
- (c) require that email correspondence between supervisors, Authorised Officers, FPC and delegates include in the subject line For Addressee Eyes Only – Public Interest Disclosure. This alerts any support staff who may have access to emails that this email is not to be opened.
- (d) require that supervisors and Authorised Officers who seek further advice from the People Services or the Commonwealth Ombudsman regarding a disclosure de-identify the information. For example, when referring to involved parties they should be referred to as the 'discloser' and the 'subject person'.
- (e) assess whether anyone who is aware of the discloser's identity may have a motive to take reprisals against them or impede the progress of the investigation, and monitor the situation;
- (f) ensure that the discloser can communicate with a support person, the Authorised Officer or investigator without alerting other staff.

### ***Immunity from civil, criminal or administrative liability***

41 A person who makes a public interest disclosure is not subject to any civil, criminal or administrative liability (including disciplinary action) for disclosing information in accordance with the provisions of the PID Act, except in specific circumstances that are in the discloser's control<sup>16</sup>.

42 OPC will:

- (a) Not raise allegations of an offence against the secrecy provisions of the *Criminal Code* in relation to making a disclosure in accordance with the PID Act;
- (b) Not bring proceedings for defamation in respect of the information disclosed in making a public interest disclosure;
- (c) Not seek to enforce a contractual or other remedy, or exercise a contractual or other right against a person on the basis of them having made a public interest disclosure;

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<sup>16</sup> Refer to PID Act sections 11, 11A and 65.

- (d) Not terminate a contract to which the discloser is a party on the grounds of them having disclosed information if that disclosure of information was made in accordance with PID Act.

## ***Support and protection from reprisal***

43 FPC will take reasonable steps to protect public officials who belong to their agency against reprisals in relation to PIDs that have been, may have been, are proposed to be, or could be made to the agency, as well as witnesses and other officials who may be suspected to have made a disclosure, and officials who are the subject of allegations.

44 A person who makes, or is suspected of making a disclosure under the PID Act is protected from reprisal in the following ways:

- (a) it is a criminal offence for anyone 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 person who believes they are suffering or have been threatened with reprisal has the right to apply to court for an injunction to stop or prevent it;
- (c) a person has the right to apply for compensation for loss, damage or injury suffered from a reprisal.

## **Reprisal risk assessment and mitigation strategy**

45 When a disclosure is made, OPC will conduct a risk assessment that considers the risk of reprisal action being taken against any person in relation to a disclosure (for example, the discloser or witnesses).<sup>17</sup> For more detail on the risk assessment process see Appendix 1.

46 The risk assessment will be conducted by the Authorised Officer to whom the disclosure has been made or referred. The Authorised Officer may seek the assistance of another officer with requisite skills and experience to conduct the risk assessment. The Authorised Officer will make records of their assessment.

47 Where the risk of reprisals is greater than 'low' the Authorised Officer will develop and implement actions to mitigate that risk.

48 The risk assessment should be monitored and reviewed as necessary, including by checking with the discloser to see if reprisals have been made or threatened. Records should be made whenever the risk assessment is reviewed or revised.

## **Support for disclosers**

49 A discloser who feels supported and sees OPC's procedures as fair is more likely to accept the OPC's decision about their disclosure, even if the outcome is not what they wished.

50 Regardless of the outcome of the risk assessment, OPC will take all reasonable steps to protect disclosers (including potential disclosers) and those who provide assistance in

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<sup>17</sup> PID Act paragraph 59(1)(a)

relation to PIDs (including witnesses) from detriment or threats of detriment relating to the disclosure.

51 OPC will provide active support for the discloser and for witnesses, which may include taking one or more of the following actions:

- (a) acknowledgement for having come forward with a report of wrongdoing, and an assurance that OPC will take all reasonable steps necessary to protect them;
- (b) appointing a support person to assist the discloser and/or witness, who is responsible for checking on the wellbeing of the discloser/witness regularly;
- (c) informing the discloser of the progress of the investigation;
- (d) where there are any concerns about the health and wellbeing of the discloser and/or witness, liaising with People Services team; or
- (e) transferring the discloser and/or witness to a different area within the workplace or approving working from home arrangements (with the consent of the discloser/witness). This is only likely to be appropriate in cases involving very major or extreme risk.

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

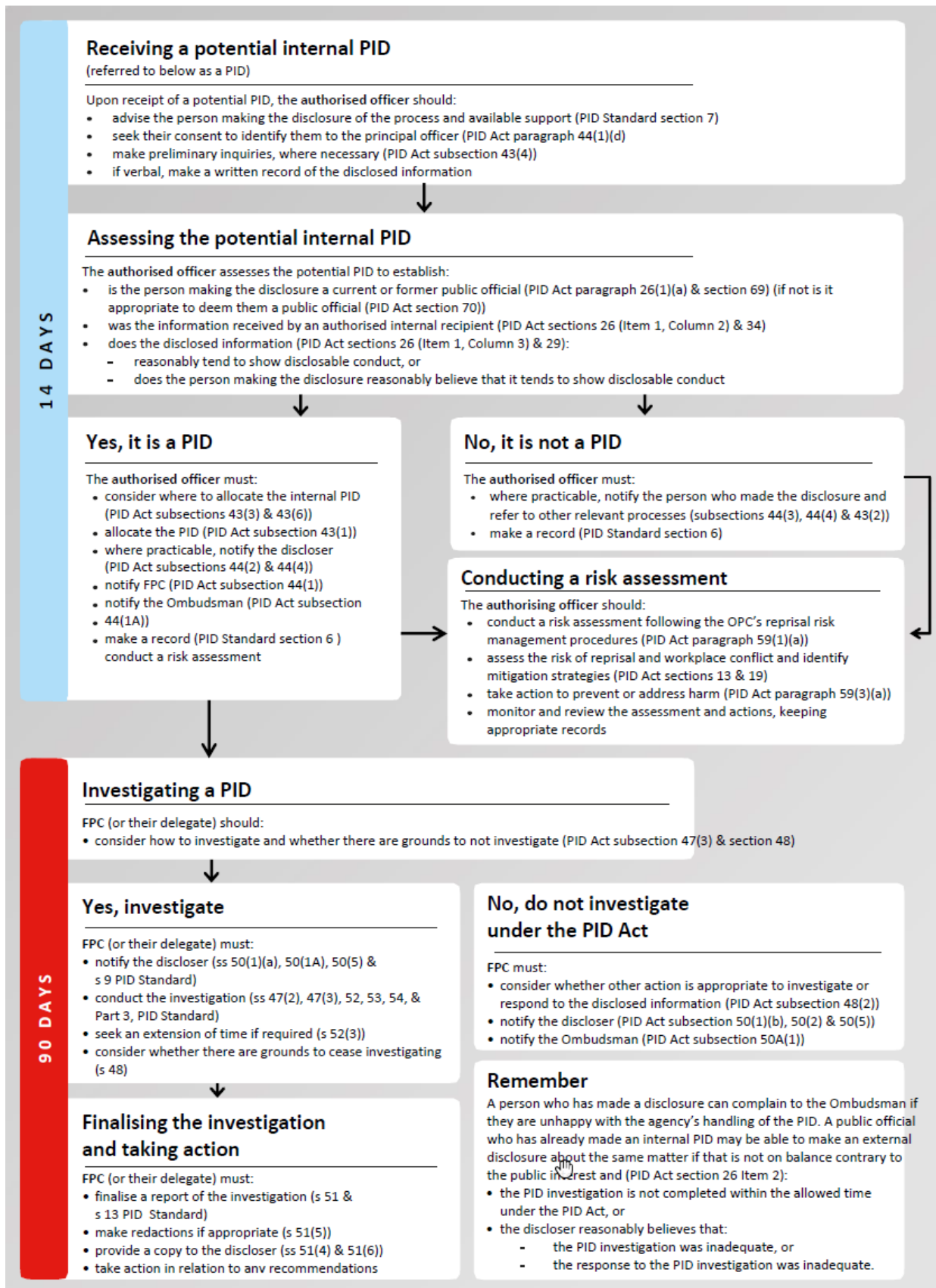
52 OPC will also take steps to support any employee who is the subject of a PID. This may include taking one or more of the following actions:

- (a) advising the employee of their rights and obligations under the PID Act and about OPC's investigation process, including the employee's rights to procedural fairness;
- (b) informing the employee of the progress of the investigation;
- (c) ensuring that the identity of the employee is kept confidential as far as reasonably practicable;
- (d) where there are any concerns about the health and wellbeing of the employee, liaising with People Services team;
- (e) transferring the employee to a different area within the workplace or approving working from home arrangements (with the consent of the employee). This is only likely to be appropriate in cases involving very major or extreme risk; or
- (f) advising the employee that they should seek their own independent legal advice on the impact of the PID Act and their rights and responsibilities.

## **Handling public interest disclosures**

53 OPC's process for handling an internal public interest disclosure is outlined in Figure 1 below.

Figure 1: Process for handling an internal PID



54 Both First Parliamentary Counsel (the principal officer described in the PID Act) and OPC's Authorised Officers have particular responsibilities. More information about these may be found at [www.ombudsman.gov.au](http://www.ombudsman.gov.au).

### **Information for supervisors**

55 Under the PID Act, supervisors are able to receive public interest disclosure reports and have specific obligations in dealing with disclosures. Supervisors play a key role in ensuring that OPC's workplace culture supports the making of public interest disclosures in a safe environment. The PID Standard describes a supervisor as any public official who supervises or manages the discloser<sup>18</sup>.

56 Supervisors may meet their responsibilities under the PID Act by:

- (a) having good general awareness of the PID Act and agency procedures, particularly in relation to what is 'disclosable conduct' and their obligation to inform an authorised officer.
- (b) being careful to observe confidentiality requirements.
- (c) knowing who the authorised officers are in their agency.
- (d) being approachable to staff who wish to raise concerns.
- (e) holding awareness sessions or discussion forums for their staff.
- (f) ensuring staff undergo available training.
- (g) confronting any workplace prejudices about making a disclosure.
- (h) supporting employees who they know have made or believe could make a disclosure.
- (i) taking actions available to protect relevant people from risks of reprisal.
- (j) paying close attention to interactions in the workplace where necessary (for example, if workplace conflict occurs after a disclosure is made or while it is being investigated).
- (k) ensuring identified problems in the workplace are corrected.
- (l) setting an example for staff through their own conduct.

57 If a public official discloses to a supervisor and the supervisor has reasonable grounds to believe that the information concerns, or could concern, disclosable conduct, the supervisor must:

- (a) inform the discloser that their disclosure could be treated as an internal disclosure.

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<sup>18</sup> PID Standard section 8.

- (b) explain to the discloser the next steps in the PID process - referring their disclosure to the AO, the potential allocation of the PID, and investigation of the PID.
- (c) advise the individual about the circumstances in which a PID must be referred to an agency, or other person or body, under another law of the Commonwealth.
- (d) explain the civil and criminal protections the PID Act provides to disclosers, and those assisting with the handling of a PID.

58 If a public official discloses to a supervisor and the supervisor has reasonable grounds to believe that the information concerns, or could concern, disclosable conduct, the supervisor must give the information to an appropriate Authorised Officer as soon as reasonably practicable<sup>19</sup>. Supervisors or managers should make their assessment of whether the information concerns disclosable conduct by exercising common sense, having regard to the definition of disclosable conduct in the PID Act section 29.

59 Before referring a disclosure to an Authorised Officer, the supervisor should:

- (a) if the disclosure was received orally, document the disclosure including the time and date of the receiving the disclosure, and ask the discloser to confirm the record of disclosure, where this is practicable.
- (b) if the disclosure was received in writing, document the time and date of the receiving the disclosure; and any actions that the supervisor took (for example, seeking clarifying information).
- (c) seek consent from the discloser to include the discloser's name and contact details in the written record.
- (d) seek the discloser's consent to passing on the disclosure by email.
- (e) if the person wishes to remain anonymous, do a written assessment of any risks that reprisal action might be taken against the discloser (see Appendix 3: Risk Assessment).

60 At the time a supervisor gives information to an Authorised Officer, the supervisor must also:

- (a) give the Authorised Officer all records in relation to the disclosure;
- (b) if the person wishes to remain anonymous, give the Authorised Officer their written assessment of the risk of reprisal; and
- (c) inform the discloser that they have given the information to an Authorised Officer and advise the discloser of the name and contact details of that Authorised Officer.

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<sup>19</sup> PID Act section 60A

## ***Deciding to allocate a PID***

61 Once an Authorised Officer has received a disclosure of suspected wrongdoing (either directly from the discloser, or via the discloser's supervisor), the PID Act requires certain steps to be taken. The Authorised Officer will:

- (a) Make an initial assessment of the disclosure to determine whether or not it meets the criteria for an internal public interest disclosure. This may involve making preliminary enquiries<sup>20</sup>.
- (b) Allocate<sup>21</sup> the PID within 14 days of receiving it, or decide that it will not be allocated.
- (c) If the Authorised Officer decides not to allocate the PID, they must, where practicable, notify the discloser and refer to other processes available for resolution. This decision must be documented. When explaining the requirements of the PID Act to disclosers, the Authorised officer will explain the circumstances in which a PID must be referred to another agency, person, or body, under another law (i.e. referral to the NACC if the disclosure could involve serious or systemic corrupt conduct).
- (d) Undertake a risk assessment, as outlined in paragraphs 43-45.
- (e) Take reasonable steps to protect public officials who belong to the agency from reprisal if the authorised officer (AO) suspects a relevant PID has been, may have been, is proposed to be, or could be made or given to the AO.

## **Allocation under the PID Act**

62 Once the Authorised Officer is satisfied that the disclosed information is an internal disclosure, they must allocate it for handling under the PID Act<sup>22</sup>, usually to the agency to which the disclosure relates. This may not be OPC.

63 The Authorised Officer must inform<sup>23</sup>:

- (a) the principal officer of the agency to which the disclosure is allocated;
- (b) the Ombudsman (or the Inspector-General of Intelligence and Security (IGIS), if allocated to one of the intelligence agencies); and
- (c) the discloser.

64 The Authorised Officer should make a written record of their allocation decision, the reasons for the decision and the receiving agency's consent to the allocation (if allocated to another agency for handling).

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<sup>20</sup> PID Act subsection 43(4).

<sup>21</sup> Allocation is defined PID Act section 8.

<sup>22</sup> PID Act subsection 43(1).

<sup>23</sup> PID Act section 44.

65 The Authorised Officer should also make a written record of whether the discloser was notified of the allocation decision and the details of how that happened, including the date, time and means of notification, and the content of the notification to the discloser.

### ***Mandatory referral to the National Anti-Corruption Commission***

66 Any staff member of a Commonwealth agency who performs or exercises functions or powers relating to allocation or investigation of internal disclosures under the PID Act (a 'PID officer') has a mandatory referral obligation under the *National Anti-Corruption Commission Act* (NACC ACT) if:

- (a) in the course of exercising their functions or powers they handle an internal disclosure that raises a corruption issue under the NACC Act,
- (b) the PID officer suspects the issue could involve serious or systemic corrupt conduct.

67 When these criteria are met, the PID officer must refer the corruption issue to the NACC as soon as reasonably practicable after becoming aware of the issue, unless a specified exception applies.

### ***Investigating a PID***

68 Once a disclosure had been allocated to OPC, FPC is obliged to investigate it<sup>24</sup>; decide not to investigate it, or to stop investigating it, if one of the discretionary grounds in section 48 of the PID Act apply.

### **Deciding not to start, or to stop, an investigation**

69 If FPC decides not to investigate a disclosure, they must notify the discloser, and the Ombudsman or IGIS, and make a written record of their decision. The notification to the discloser will advise that the discloser may contact the Authorised Officer if they wish to discuss concerns about the process or the outcome.

70 FPC may decide during a PID investigation that it is inappropriate to continue the investigation on one of the grounds in section 48 of the PID Act. If so, they are not obliged to complete the PID investigation and prepare a report. They must, however, prepare written reasons for their decision, notify the discloser and the Ombudsman or IGIS, and make a written record of their decision. The notification to the discloser will advise that the discloser may contact the Authorised Officer if they wish to discuss concerns about the process or the outcome.

### **Conducting an investigation**

71 The purpose of a PID investigation is to establish whether one or more instances of disclosable conduct have occurred<sup>25</sup>.

72 A PID investigation must be completed within 90 days of:

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<sup>24</sup> PID Act section 47.

<sup>25</sup> PID Act subsection 47(1).



- (a) allocation (unless an extension has been granted);
- (b) reallocation;
- (c) a decision to reinvestigate; or
- (d) the day the principal officer becomes aware a NACC stop action direction no longer applies.

73 FPC may delegate the function of investigating a disclosure to a public official.

74 The following general principles will apply to the conduct of investigations<sup>26</sup>:

- (a) maintaining the confidentiality of the identity of the discloser will be paramount when conducting the investigation;
- (b) the investigation will be conducted in accordance with the principles of procedural fairness;
- (c) a person who is the subject of the investigation will have an opportunity to respond or provide information;
- (d) in the event that an interview is to be conducted, it will be conducted in a manner consistent with the *Public Interest Disclosure Standard 2013*; and
- (e) a decision on whether evidence is sufficient to prove a fact will be determined on the balance of probabilities.

75 An investigator must ensure referral of suspected serious or systemic corruption uncovered in a PID investigation to the National Anti-Corruption Commission.

76 After an internal disclosure has been investigated, FPC or their delegate must prepare a written report of the investigation<sup>27</sup>. The PID investigation is only completed when the report has been prepared<sup>28</sup>.

77 A copy of the PID investigation report (redacted as appropriate) must be provided to the discloser (provided that contacting the discloser is reasonably practicable) and the Ombudsman (or the IGIS) within a reasonable time of preparing it<sup>29</sup>.

## Record-keeping

78 Thorough records of all actions, conversations and decisions (including the reasons) relating to a disclosure must be made.

79 All records must be kept in an electronic record marked 'Sensitive – Personal'.

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<sup>26</sup> Part 3 of the PID Standard sets out mandatory requirements for PID investigations.

<sup>27</sup> PID Act subsection 51(1).

<sup>28</sup> PID Act subsection 52(1).

<sup>29</sup> PID Act subsection 51(4).

80 Physical records may be kept temporarily, marked as ‘Sensitive – Personal’ and stored in the appropriate storage container. Physical records must be converted to electronic records before the end of the PID, and the physical copies destroyed.

81 Access to these records must be restricted to the Authorised Officers, FPC and their delegates (including investigators) or other employees in OPC who require access in order to perform some function under the PID Act or for the purposes of another law of the Commonwealth (for example, under the *Work Health and Safety Act 2011* or the *Public Service Act 1999*).

82 Any email messages sent by supervisors, Authorised Officers or delegates that contain identifying information must be clearly marked For Addressee Eyes Only – Public Interest Disclosure.

83 When a person ceases their role as an Authorised Officer in OPC (including because of resignation or movement to another agency), they must transfer all their PID records to another Authorised Officer in OPC.

## Monitoring and evaluation

84 At the conclusion of each PID received by them (including from another agency’s Authorised Officer), each Authorised Officer must provide a report to FPC specifying the nature of the disclosable conduct (by reference to the relevant item or paragraph in the definition).

85 Each member of SMT who takes action in response to a recommendation made in a PID investigation report must do so as soon as is reasonably practicable, and make a report of this action to FPC.

86 This information will form part of FPC’s bi-annual report to the Commonwealth Ombudsman.

## Training and education

87 In order to provide ongoing training and education to public officials about the PID Act, People Service team will:

- (a) include awareness of the PID scheme and other mechanisms for resolving concerns, disputes and grievances as part of the regular schedule of promotion communications.
- (b) include awareness of the PID scheme and the role of supervisors as part of the induction process for new supervisors.

88 People Service team will provide any necessary to support officials to carry out their functions under the PID Act.

**Related documents**

89 The following documents are related to this document:

- (a) Policy No. 2.4 Fraud control
- (b) Policy No. 5.10 Complaints resolution
- (c) Commonwealth Ombudsman’s Agency Guide to the PID Act

**Review**

90 This document will be reviewed at least every three years.

This procedure is issued by First Parliamentary Counsel.

Meredith Leigh  
December 2023

<b>Document History</b>		
<b>Release</b>	<b>Release date</b>	<b>Document number</b>
1.0	March 2016	s14ay379.v01.docx
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Note: Before November 2022, this document was called Office Procedural Circular No. 2.10 Procedures for facilitating and dealing with public interest disclosures. Before May 2017, this OPC was called Office Procedural Circular No. 25

## APPENDIX 1: Risk Assessment

When a supervisor receives an anonymous disclosure, they must assess the risk that reprisals will be taken against any person in relation to a disclosure (for example, the discloser or witnesses).

When an Authorised Officer receives a disclosure (whether the discloser is anonymous or not), the Authorised Officer must assess the risk that reprisals will be taken against any person in relation to a disclosure (for example, the discloser or witnesses).

When conducting the risk assessment, where consistent with protecting the discloser’s confidentiality, the Authorised Officer may ask the discloser why they are reporting the wrongdoing and who they might fear a reprisal from, and may also speak to the discloser’s supervisor.

In assessing the risk of reprisals, the following risk matrix should be used.:

		<b>Likely seriousness of reprisal</b>			
		Minor	Moderate	Major	Extreme
<b>Likelihood of reprisal being taken against a discloser</b>	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 “CC” the person on work-related emails which the person has a genuine business need to know).
- 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 or the denial of a promotion opportunity without reasonable cause).

## Criteria for assessing likelihood of potential reprisals

When considering the likelihood of a reprisal being taken against a discloser, the supervisor or Authorised Officer should take into account all relevant factors. Factors the supervisor or Authorised Officer may take into account, to the extent relevant, are:

- 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);
- the culture of the workplace;
- whether any specific threats against the discloser have been received;
- whether there are allegations about individuals in the disclosure;
- whether there is a history of conflict between the discloser and the subject of the disclosure;
- whether there is a history of conflict between the discloser and the subject of the disclosure;
- whether the disclosure can be investigated while maintaining confidentiality; and
- any other relevant matters.

## Criteria for assessing likely seriousness of potential reprisals

When considering the likely seriousness of any potential reprisals against a discloser, the supervisor or Authorised Officer should take into account all relevant factors. Factors the supervisor or Authorised Officer may take into account, to the extent relevant, are:

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