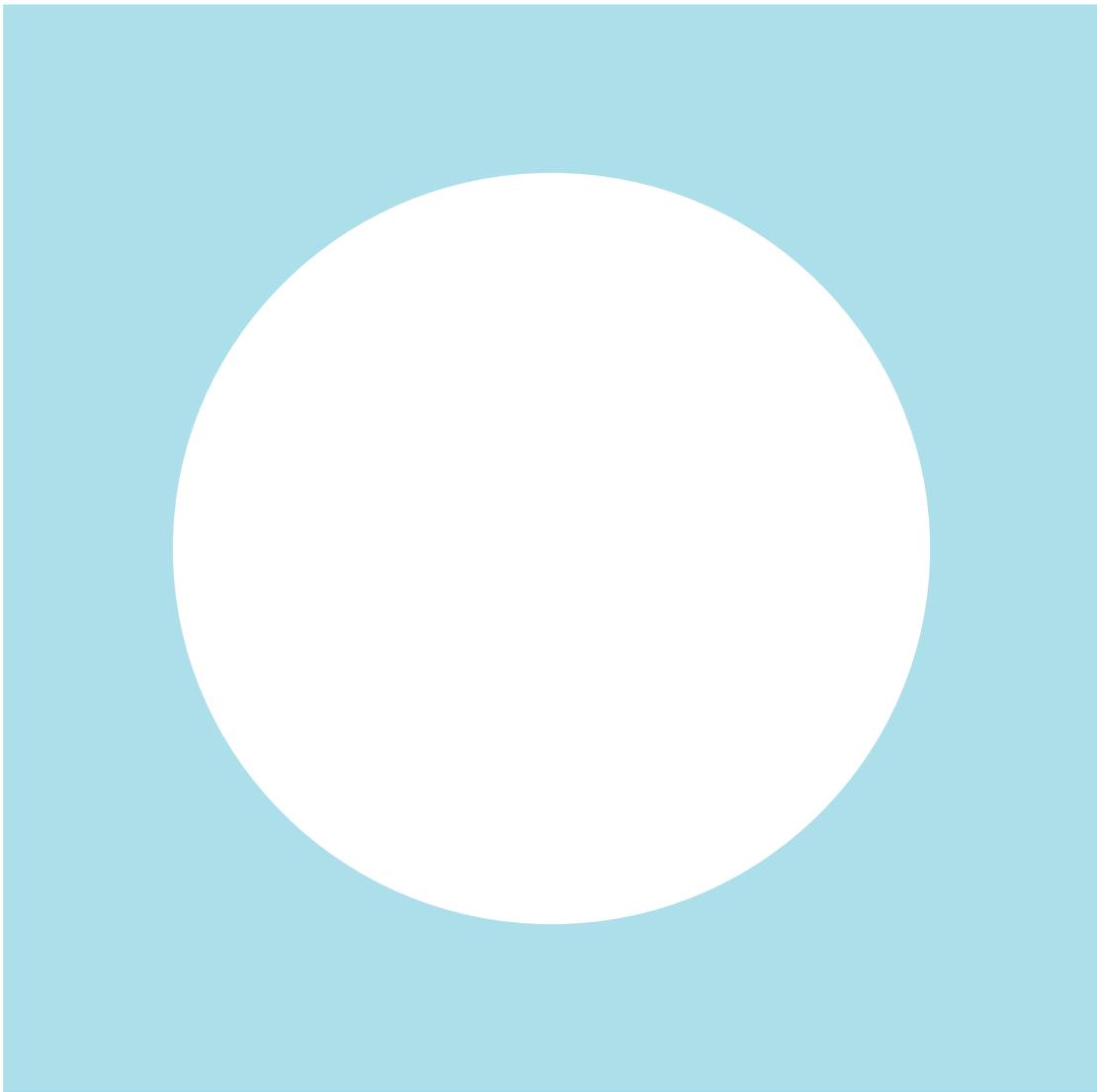




Procedures for facilitating and dealing with public interest disclosures

2019





Procedures for facilitating and dealing with public interest disclosures relating to the National Health and Medical Research Council

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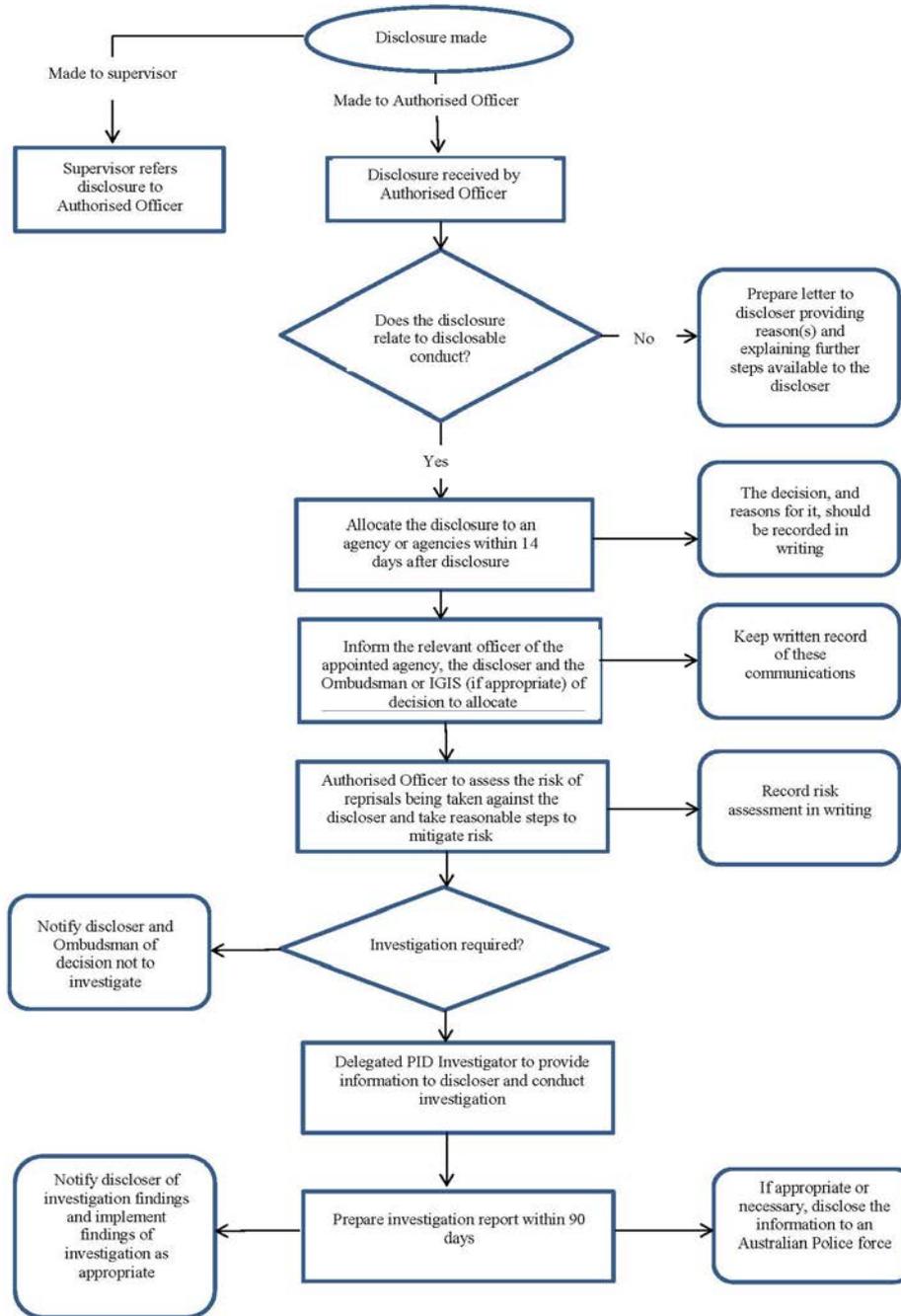
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Public Interest Disclosure Flowchart

*Department of Social Services Public Interest Disclosure Procedures





Introduction

The purpose of these procedures is to promote the integrity and accountability of the National Health and Medical Research Council (NHMRC). The *Public Interest Disclosure Act 2013* (the PID Act) prescribes a framework for the disclosure and investigation of wrongdoing and maladministration in the Australian Public Sector. In fostering a culture of disclosure, NHMRC encourages and supports the reporting of wrongdoings and are committed to ensuring appropriate action is taken.

What are Public Interest Disclosures?

A public interest disclosure is the reporting of information, or information and allegations, about the conduct of NHMRC, or a public official¹ associated with NHMRC. Such conduct (known as disclosable conduct) is defined in the PID Act as:

- a) Contraventions of the law
- b) Corruption or perverting the course of justice
- c) Maladministration
- d) An abuse of public trust or an official's position
- e) The wastage of NHMRC's money or property
- f) Dishonesty in relation to scientific research, analysis, evaluation or advice
- g) Conduct that results in a danger to the health and safety of another person or the environment, or that results in or increases a risk to the health and safety of another person or the environment
- h) Conduct that could give rise to the taking of disciplinary action against the official.

More information on public interest disclosures can be found at *Attachment A*.

A public interest disclosure generally occurs when:

- a current or former public official² (*discloser*) discloses to their manager, or an Authorised Officer³, information which tends to show, or the discloser believes on reasonable grounds tends to show, one or more instances of disclosable conduct.

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

- a. It is made by a public official or a person who has been a public official⁴
- 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 PID Act⁵
- c. The disclosure is made to an appropriate person.

¹ Chief Executive Officer

² Ongoing employee, Non-ongoing employee, Committee members

³ Authorised Officers for the purposes of the PID Act are staff who have been appointed by the CEO. A PID can be made to an Authorised Officer of NHMRC if the PID relates to NHMRC or the discloser belongs, or last belonged to, NHMRC.



Who can make a Public Interest Disclosure?

A person (*a discloser*) who is a current or former ‘public official’ may make a public interest disclosure. A public official includes:

- an APS employee (either current or former employees)
- a statutory office holder
- another person who exercises power under Commonwealth Law
- people or bodies providing services under a contract to the Commonwealth including subcontractors.

An Authorised Officer can deem a person to be a public official to facilitate the making of a public interest disclosure.

If a person who intends to make a disclosure was not a public official at the time they obtained the information they intend to disclose, they may be deemed to be a public official by an Authorised Officer who believes on reasonable grounds that the person has information that concerns disclosable conduct.

Who can receive a Public Interest Disclosure?

A public interest disclosure, internally within NHMRC can be made to:

- the CEO
- a discloser’s current manager
- an Authorised Officer.

In certain circumstances, a disclosure may be made to an external body such as the [Ombudsman](#).

To gain the protections the PID Act provides to disclosers, a public official must make a disclosure to an appropriate person.

Authorised Officers

NHMRC maintains a list of “Authorised Officers” for the purposes of the PID Act who have been appointed by the CEO. A PID can be made to an Authorised Officer of NHMRC if the PID relates to NHMRC or the discloser belongs, or last belonged to, NHMRC.

How can a disclosure be made?

You can contact a person who is authorised to receive and deal with public interest disclosures (Authorised Officers).

A disclosure may be made to an Authorised Officer either directly, or through the person’s manager. These disclosures may be made orally or in writing, and may be made anonymously and do not have to state that the disclosure is being made under the PID Act. ⁶

⁶ 4.1.1 Agency Guide to the Public Interest Disclosure Act 2013



Anonymous disclosures will be acted upon wherever possible. However, one of the requirements for making a public interest disclosure is that the person is or was a public official. This does not mean that the person has to prove their status. The discloser may give information that supports that status, for example, by explaining how they know about the wrongdoing they are reporting. If they do not, the Authorised Officer may wish to ask questions along these lines.

There are reasons why disclosers should consider identifying themselves to an Authorised Officer, or at the very least providing a means of contact⁷:

- the PID Act requires that discloser's identity is kept confidential, subject to limited exceptions including the discloser's consent. The person's identity may nonetheless become apparent if an investigation is commenced
- it will may be difficult to ensure protection from reprisal if the agency does not know the discloser's identity
- 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 they cannot contact the discloser to seek necessary further information, the matter may not proceed
- it will may be difficult to conduct an investigation if the discloser cannot be contacted for further information. An investigator has the discretion not to investigate, or investigate further, if the discloser does not provide their name and contact details or is unable to give the investigator further information or assistance if needed
- 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.

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

Disclosure to a Manager

If a public official discloses information to a manager and the manager has reasonable grounds to believe that the information concerns, or could concern, disclosable conduct, the manager must give the information to an Authorised Officer as soon as reasonably practicable.⁸

More information on Manager responsibilities can be found at **Attachment B**.

Staff responsibility

Staff are expected to share general responsibility for ensuring these procedures work effectively by:

- reporting matters where there is evidence that shows or tends to show disclosable conduct
- identifying areas where there may be opportunities for wrongdoing to occur because of inadequate systems or procedures, and proactively raising those with management
- maintaining confidentiality whenever they are aware of the identity of a discloser, of anyone against whom an allegation has been made, or of anyone who has contributed to a disclosure investigation
- supporting staff known to have made public interest disclosures

⁷ 4.1.5 Agency Guide to the Public Interest Disclosure Act 2013

⁸ 3.3.2 Agency Guide to the Public Disclosure Act 2013



- reporting to an appropriate person (a manager or Authorised Officer) any threats or reprisal action in relation to a disclosure.

Confidentiality

Generally the identity of disclosers is protected and remains confidential. Identification of disclosers will only occur in accordance with the PID Act or with the consent of the discloser. It is a criminal offence for a public official who is involved in handling a disclosure to reveal the discloser's identifying information to anyone else without their consent or use it for another purpose, unless it is for the purposes of the PID Act, an investigation by the Ombudsman, or another Commonwealth law or prescribed law, or if the information has already lawfully been published.⁹

When the disclosure is received the Authorised Officer must conduct a risk assessment (*Attachment C and D*) that considers if the identity of the discloser is readily ascertainable or is likely to become ascertainable during the conduct of an investigation. If the disclosure is first made to a manager and the person wishes their identity to remain anonymous, the manager should conduct a risk assessment (further information on how to conduct a risk assessment is detailed below).

Protecting disclosures from reprisal

A discloser is subject to protection from reprisal under the PID Act where they make a disclosure, unless such disclosure does not fall within the PID Act or these Procedures do not apply. Those protections include confidentiality and immunity from criminal and civil liability or disciplinary action.

However, making a disclosure under the PID Act does not protect a discloser from their wrongdoing, including where the discloser is involved in the wrongdoing. A person who intentionally makes a false or misleading disclosure will not receive protections under the PID Act.¹⁰

When the disclosure is received the Authorised Officer must conduct a risk assessment that considers the risk of reprisal action being taken against the discloser. If the disclosure is first made to a manager and the person wishes their identity to remain anonymous, the manager should conduct a risk assessment.

When conducting a risk assessment, wherever possible the discloser should be asked why they are reporting wrongdoing and who they might fear reprisal from.

Authorised Officer to deal with a disclosure

At the time a disclosure is made to an Authorised Officer, the discloser will be advised by the Authorised Officer of the following matters:

- that the disclosure could be treated as an internal disclosure for the purposes of the PID Act, including outlining all requirements in order to be considered an internal disclosure under the PID Act
- explain the protections provided by the PID Act to persons who make disclosures under the PID Act (*Attachment E*)
- advise the discloser of any orders or directions of which the Authorised Officer is aware that are designated publication restrictions that may affect disclosure of the information.

⁹ 4.1.5 Agency Guide to the Public Interest Disclosure Act 2013

¹⁰ 8.2.2 Agency Guide to the Public Interest Disclosure Act 2013



The Authorised Officer is required to make an appropriate record, including the time and date of the disclosure and include information that is advised to the discloser. All practicable steps should be taken for this record to be signed by the discloser as being correct.

Details about how and when a public interest disclosure was made must be recorded and kept in a secure place. If the disclosure was made orally, it should be documented by the receiving officer. A copy of all records, file notes or information provided as part of the disclosure must be retained on the official file.

Documents associated with a public interest disclosure do not attract any special exemption from the operation of the *Freedom of Information Act* (FOI Act).¹¹ Requests for access to documents under the FOI Act must be considered on a case by case basis. An agency officer handling freedom of information requests must be aware of the confidentiality and secrecy provisions of the PID Act as they may apply to them.

Procedures for Authorised Officers

The Authorised Officer must advise disclosers and potential disclosers about the PID Act

Where:

- a person discloses, or is proposing to disclose, information to an Authorised Officer which the Authorised Officer has reasonable grounds to believe may be disclosable conduct
- the Authorised Officer has reasonable grounds to believe that the person may be unaware of what the PID Act requires for the disclosure to be an internal disclosure
- the Authorised Officer is aware of the contact details of the person.

The Authorised Officer must:

- inform the person that the disclosure could be treated as an internal disclosure for the PID Act
- explain to the person what the PID Act requires for a disclosure to be an internal disclosure
- advise the person of any orders or directions that may affect disclosure of the information.

The Authorised Officer must decide whether or not to allocate a disclosure.

Where a public official makes a disclosure of disclosable conduct directly to an Authorised Officer, the Authorised Officer must make a written record of the fact of the disclosure and, if the disclosure is not in writing, they must make a written record of the substance of the disclosure and of the time and date of the disclosure.

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

Where an Authorised Officer is required to make a record under these procedures the record should be classified 'For Official Use Only'.

Where an Authorised Officer sends an email containing identifying information the email must be marked "To be Read by the Named Addressee Only".

Where a disclosure has been given to or made to an Authorised Officer, the Authorised Officer must use their best endeavours to decide on the allocation of the disclosure within **14 days** after the disclosure is given to or made to the Authorised Officer.¹²

¹¹ 7.5.3 Agency Guide to the Public Interest Disclosure Act 2013

¹² 5.1.1 Agency Guide to the Public Interest Disclosure Act 2013



An Authorised Officer who receives a disclosure must decide whether they are satisfied, on reasonable grounds, that there is no reasonable basis on which the disclosure could be considered to be an internal disclosure.

Note: The basis on which an Authorised Officer could be satisfied of this include: that the disclosure has not been made by a person who is, or was, a public official; that the disclosure was not made to an authorised internal recipient or manager; that the disclosure is not about disclosable conduct; that the person who is alleged to have carried out the disclosable conduct was not a public official at the time they are alleged to have carried out that conduct; and that the disclosure is not otherwise a public interest disclosure within the meaning of the PID Act.

Where an Authorised Officer receives a disclosure, the Authorised Officer may obtain information and may make such enquiries as they think fit, for the purposes of deciding the allocation of the disclosure, including for the purposes of deciding whether the disclosure is an internal disclosure or not.

Where an Authorised Officer decides that a disclosure that has been made to them is not to be allocated they must where the discloser's contact details are known to the Authorised Officer, advise the discloser in writing of:

- the reasons why the disclosure is not to be allocated
- any other courses of action that might be available to the discloser under other laws of the Commonwealth.

Where the Authorised Officer is aware of the contact details of the discloser, they must, as soon as practicable after receiving the disclosure and before allocating the disclosure, ask the discloser whether the discloser:

- consents to the Authorised Officer giving the discloser's name and contact details to the Principal Officer¹³, - and
- wishes the disclosure to be investigated.

The Authorised Officer must make a written record of the discloser's responses (if any) to the questions referred to above. Where practicable the Authorised Officer should ask the discloser to sign the record.

Where a discloser does not respond within **7 days** to the questions referred to above:

- the discloser is taken not to have consented to the disclosure of their name and contact details to the Principal Officer
- the discloser is taken to wish the disclosure to be investigated.

When Authorised Officer allocates an internal disclosure

An Authorised Officer must obtain the consent of an Authorised Officer in another agency before the first authorised officer can allocate an internal disclosure to that agency.

Where an authorised officer in NHMRC allocates a disclosure to an agency (including to NHMRC) they must inform the Principal Officer of that agency of:

- the allocation to the agency
- the information that was disclosed to the Authorised Officer
- the suspected disclosable conduct, and

¹³ Chief Executive Officer



- if the discloser's name and contact details are known to the Authorised Officer, and the discloser consents to the Principal Officer being informed, the discloser's name and contact details.

When the Authorised Officer allocates the handling of a disclosure to NHMRC itself, the Authorised Officer will inform the General Manager, as delegate of the Principal Officer of the information above.

If the Authorised Officer allocates a disclosure to an agency, including NHMRC itself, which is not the Ombudsman, the Inspector General of Intelligence and Security (IGIS) or an intelligence agency, they will inform the Ombudsman of this in writing. If the disclosure is allocated to an intelligence agency, the Authorised Officer will inform the IGIS of this in writing.¹⁴

Where the Authorised Officer is aware of the contact details of the discloser the authorised officer must inform the discloser, in writing, of the allocation and the information that has been provided to the Principal Officer of the relevant agency.

Record of allocating the handling of a disclosure

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

- the decision (including the name of each agency to which the disclosure is to be allocated)
- the reasons for the decision
- the consent provided by the authorised officer of the agency to which the allocation is made.

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

- the day and time the discloser was notified
- the means by which the discloser was notified
- the contact of the notification.

These records should be marked 'For Official Use Only' and handled as such.

Support for disclosers

Regardless of the outcome of the risk assessment, the Authorised Officer will take all reasonable steps to protect public officials who have made a disclosure from detriment of threats of detriment relating to the disclosure. The Authorised Officer will:

- provide acknowledgement to the discloser for having come forward with a report of wrongdoing
- an assurance that NHMRC will take all reasonable steps necessary to protect them.

Support may also include taking one or more of the following actions:

- providing the discloser with a copy of the Rights and Responsibilities of a Discloser document (See **Attachment F**)
- appointing a support person to assist the discloser, who is responsible for checking on the wellbeing of the discloser regularly
- informing the discloser of the progress of the investigation
- advising the discloser of the availability of the Employee Assistance Program

¹⁴ 5.2.5.2 Agency Guide to the Public Interest Disclosure Act 2013



- where there are any concerns about the health and wellbeing of the discloser, liaising with Human Resources
- transferring the discloser to a different area within the workplace, in consultation with the discloser.

Support for a public official against whom a disclosure has been made

The Authorised Officer will also take steps to support any public official who is the subject of a disclosure.

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

- advising the public official of their rights and obligations under the PID Act and about NHMRC's investigation procedures, including the right to procedural fairness
- informing the public official against whom a disclosure has been made of the progress of the investigation
- advising the public official of the availability of EAP
- ensuring that the identity of the public official is kept confidential as far as reasonable practicable
- where there are any concerns about the health and wellbeing of the public official, liaising with Human Resources
- transferring the public official to a different area within the workplace.

Definitions

The *Public Interest Disclosure Act 2013 (PID Act)* is the legislation underpinning the Australian Government's Public Interest Disclosure (PID) scheme to encourage public officials to report suspected wrongdoing in the Australian public sector. The PID Act offers protection to 'whistleblowers' from reprisal action. The protection applies to public officials who disclose suspected illegal conduct, corruption, maladministration, abuses of public trust, deception relating to scientific research, wastage of public money, unreasonable danger to health or safety, danger to the environment or abuse of position or conduct which may be grounds for disciplinary action. The Office of the Commonwealth Ombudsman is responsible for promoting awareness and understanding of the PID Act and monitoring its operation; as well as providing guidance, information and resources about making, managing and responding to disclosures.

Authorised Officer for the purposes of the PID Act are staff who have been appointed by the CEO. A PID can be made to an Authorised Officer of NHMRC if the PID relates to NHMRC or the discloser belongs, or last belonged to, NHMRC.

Principal Officer for the purposes of these guidelines, the Principal Officer is the Chief Executive Officer.

Public Official is an ongoing employee, Non-ongoing employee and Committee members.

Discloser for the purposes of these guidelines is a public official who makes a public interest disclosure.

Resources

- For further information or assistance regarding the Public Interest Disclosure (PID), phone 02 6276 3777 or email PID@ombudsman.gov.au



- [Agency Guide to the Public Interest Disclosure Act 2013](#)
- The Australian Government Investigation Standards (AGIS) are available at www.ag.gov.au. All
 - A. non-corporate Commonwealth entities must comply with the AGIS which sets out minimum
 - B. standards for agency investigations involving suspected breaches of the law. It has useful
 - C. information on such topics as investigation planning, interviewing witnesses and finalising
 - D. investigations.
- [Public Interest Disclosure Act 2013](#) and [Public Interest Disclosure Standard 2013](#)
- For information about the role and functions of the IGIS, see the [IGIS website](#)
- For information about breaches of the APS Code of Conduct, see the [APSC website](#)
- Information about Australian workplace rights and rules and the role of the Fair Work
 - E. Ombudsman is at [Fair Work website](#)
 - More information on the PID scheme, including fact sheets and guides, is on the
 - F. Ombudsman’s website at the [Ombudsman’s website](#)
- [Managing risk of reprisal](#)
- [Supervisors and the PID Scheme](#)
- [Procedures for Authorised Officers.](#)

Contact Information

Policy manager:	Director HR Services
Policy contact officer:	Director HR Services

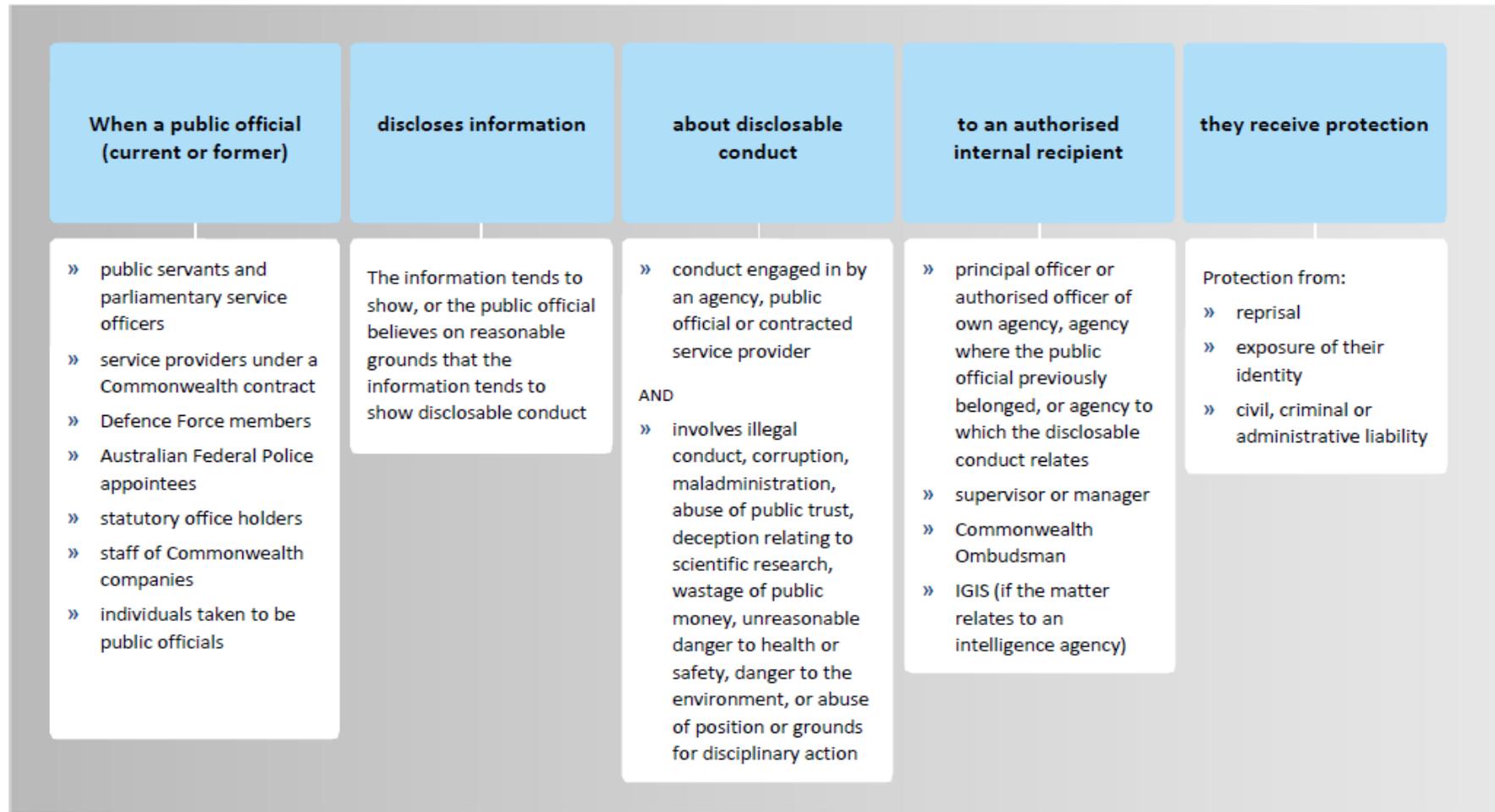
Note: “The NHMRC will make proposed changes to any policy, procedure or guideline that is in place to support the operation of this Agreement available to the Staff Consultative Forum for comment and feedback for a minimum period of two (2) weeks. The NHMRC will take into account any comments or feedback received in relation to the proposed changes prior to the employment policy, procedure or guideline being finalised.”¹⁵

¹⁵ NHMRC Enterprise Agreement 2016-19, Clause 200



Attachment A What is an internal public interest disclosure

Figure 1 – What is an internal public interest disclosure



Attachment B Manager and supervisor responsibilities

A public official may make a disclosure to their 'supervisor' (s 26). A supervisor includes any public official who supervises or manages the discloser (s 8). It is recommended that each agency's internal PID procedures clearly describe who is considered to be a supervisor or manager for which officials, by reference to the specific working arrangements and structure in that agency.

If the supervisor or manager believes that the information given to them concerns, or could concern, disclosable conduct, they must give that information to an authorised officer of the agency as soon as reasonably practicable (s 60A).

Managers and supervisors also have a key role in ensuring that the workplace culture supports the making of public interest disclosures. They can help to do so by:

- 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
- being careful to observe confidentiality requirements
- knowing who the authorised officers are in their agency
- being approachable to staff who wish to raise concerns
- holding awareness sessions or discussion forums for their staff
- ensuring staff undergo available training
- confronting any workplace prejudices about making a disclosure
- supporting a staff member who they know has made a public interest disclosure and ensuring they are protected from reprisal
- 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)
- ensuring identified problems in the workplace are corrected
- setting an example for staff through their own conduct and ethical approach.

Attachment C Risk assessment

Step 1: Conduct a risk assessment

When an Authorised Officer decides to allocate a PID to NHMRC, they must also assess the risk that reprisals will be taken against the discloser.

In assessing the risk of reprisals, the Authorised Officer will use the following risk matrix:

		Likely seriousness of reprisal			
		Minor	Moderate	Major	Extreme
Likelihood of reprisal being taken against a discloser	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).
- 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).
- 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).

Criteria for assessing 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
 - 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 circumstances that will make it difficult for the discloser not to discuss the discloser in the workplace
- 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 the disclosure can be investigated while maintaining confidentiality.

Criteria for assessing likely seriousness of potential reprisals

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

- 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
- the relative positions of the discloser and the person whose alleged wrongdoing is the subject of the disclosure.

When conducting the risk assessment, where consistent with protecting the discloser's confidentiality, the 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 manager.

Step 2: Develop a risk mitigation strategy if necessary

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

Step 3: Monitor and review risks

The Authorised Officer should monitor and review the risk assessment as necessary throughout the investigation process.

Attachment D - Risk Assessment Matrix

	Identified risk event	Likelihood High/Medium/Low	Consequence Minor/Moderate/Serious	Action to mitigate Yes/No (if yes, describe)
1	Assault			
2	Verbal assault			
3	Stalking			
4	Cyber-bullying			
5	Silent treatment in workplace			
6	Interference to personal items in workplace			
7	Excluded from legitimate access to information			
8	Excluded from promotion			
9	Excluded from workplace sanctioned social events			
10	Unjustified change to duties/hours of work			
11	Dismissal			
12	Unjustified refusal of leave			

13	Onerous/unjustified audit of access to ICT / Timesheets			
14	Onerous/unjustified audit of expenditure of Commonwealth money / Cab charge use			
15	Other (describe)			

Attachment E - Can a discloser be anonymous or use a pseudonym?

- Disclosers do not have to identify themselves and may remain anonymous.
- Remaining anonymous means disclosers do not have to identify themselves at any stage to anyone, including the authorised officer who receives the disclosure.
- A discloser may wish to use a pseudonym throughout the PID process. 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.
- One of the requirements for making a public interest disclosure is that the person is or was a public official. This does not mean that the person has to prove their status beyond doubt. They may simply give information that supports that status, for example, by stating that they used to work for the agency or otherwise explaining how they know about the suspected wrongdoing they are reporting.

There are reasons why staff might consider identifying themselves to an authorised officer, or at the very least providing a means of contact:

- The PID Act requires agencies 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. If the person's identity needs to be disclosed or is likely to become apparent, the agency should discuss this with them.
- It will be difficult to ensure protection from reprisal if the agency does not know the discloser's identity.
- 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 they cannot contact the person to seek necessary information, the matter may not proceed.

Source: Commonwealth Ombudsman Agency Guide to the Public Interest Disclosure Act 2016

Attachment F - Rights and responsibilities of a discloser

Rights

A discloser has a right to the protections set out in the PID Act, including protection from reprisals, from civil and criminal liability, and from the disclosure of his or her identity where the disclosure is made anonymously.

However, a disclosure does not protect the discloser from the consequences of their own wrongdoing, including where they have been involved in the misconduct that they are reporting.

During the PIO Act process, a discloser will be advised of the following:

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

Responsibilities

A discloser must:

- comply with the PIO Act requirements and the procedures set out in this document when making a PIO
- use his or her best endeavours to assist the principal officer of any agency in the conduct of an investigation
- use his or her best endeavours to assist the Ombudsman in the performance of the Ombudsman's functions under the PIO Act
- use his or her best endeavours to assist the IGIS in the performance of the IGIS's functions under the PIO Act
- report to the Authorised Officer any detriment the discloser believes he or she has been subjected to as a result of making the disclosure
- cooperate with actions proposed by the Authorised Officer to protect the discloser from reprisals or the threat of reprisals or address work health and safety risks. In particular, although a discloser will be consulted regarding any actions proposed to be taken, such actions may be taken without the consent of the discloser.

Attachment - G Frequently Asked Questions

Sourced from Ombudsman

The PID Act specifies that principal officers are able to appoint authorised officers. How many authorised officers must a principal officer appoint?

The PID Act does not prescribe a certain number of authorised officers. However, a principal officer must take reasonable steps to ensure that the number of authorised officers appointed is sufficient to ensure that avenues for public officials 'belonging to' the agency who wish to discuss or report a potential wrongdoing are readily accessible. While there is no hard or fast rule as to what constitutes reasonable steps, principal officers may want to consider a mix of contextual factors, such as the size and location of their agency and perceived or actual risk that might arise if reports of wrongdoing are made to a single area (or officer) within their agency.

Can a public official who is appointed as an Authorised Officer for an agency also be delegated authority to conduct PID investigations?

Yes, the PID Act does not prohibit the same person being appointed an Authorised Officer and delegated to conduct PID investigations.

Are public officials who investigate PIDs required to have specific qualifications (eg. Certificate IV qualifications in investigations)?

The PID act does not specify any particular qualifications necessary to perform PID investigations. However, depending on the nature of the matter, there may be certain requirements mandated by other Commonwealth legislation or procedure. For example where the investigation relates to fraud against the Commonwealth, the principal officer must also act in accordance with the Commonwealth Fraud Control Guidelines (see regulations under the *Financial Management and Accountability Act 1997*) to the extent that those requirements are not inconsistent with the PID Act (s53(4)). There are requirements within the Commonwealth Fraud Control Guidelines for investigators to hold a particular level of accredited qualification.

The PID Act allows principal officers to delegate their functions or powers to an official who 'belongs to' the agency. Does the requirement to 'belong' to the agency limit the ability to outsource the functions relating to PID investigations?

A principal officer may be able to delegate their investigation functions under the PID Act to an external investigator if:

- The investigator is an officer or employee of a contracted services provider to that agency
- The services under the contract are to be provided wholly or principally for the benefit of the agency
- The investigator provides services for the purposes of the contract.

However, whether or not a principal officer should delegate such functions to persons outside their agency is a decision they should make with reference to their own agency's circumstances, such as their operating environment and available human resources.

What is 'serious disclosable conduct' for the purpose of exercising the discretionary power not to investigate in s.48?

The PID Act does not define 'serious disclosable conduct'. The principal officer should consider all the relevant circumstances based on the information before them. Factors which might be considered could include:

- Whether the wrongdoing, if proven, involves an offence with a significant penalty or would lead to severe disciplinary or other consequences

- Whether the wrongdoing was one of a series of incidents that indicates a course of conduct
- The level of trust, confidence or responsibility placed in a public official who is alleged to have acted wrongly
- The level of risk to others or to the Commonwealth
- The harm or potential harm arising from the conduct, including the amount of public money wasted
- The benefit or potential benefit derived by the public official or others
- Whether the public official acted in concert with others, and the nature of their involvement
- Any apparent premeditation or consciousness of wrongdoing
- What the public official ought to have done and how their conduct might reasonably be viewed by their professional peers
- Any applicable codes of conduct or policies
- Maladministration that relates to significant failure in the administration of government policy, programs or procedures.

This list is not exhaustive and the information is provided as a guide to the types of issues that might be considered when determining if disclosable conduct is serious.

Does a person (a discloser) need to specifically refer to making a PID for the protections and obligations under the PID Act to apply?

A person need not expressly identify their report of wrongdoing as a public interest disclosure, as they are not required to do so under the PID Act(s28(3)). They may not even know that their information or allegations could constitute a public interest disclosure.

If a supervisor or manager identifies that a matter is a public interest disclosure, they should let the person know that their report will be treated as such and that it will be referred to an Authorised Officer.

When do protections under the PID Act finish?

The PID Act does not place a time limit on protections.

What are the procedural fairness requirements for investigations conducted under the PID Act?

Procedural fairness requirements may vary depending on the nature of the disclosure and, where relevant, the PID investigation.

In an administrative investigation the investigator must ensure that a person against whom allegations are made is accorded procedural fairness (also known as 'natural justice'). What procedural fairness requires varies with the circumstances, but essentially it means that the person is entitled to:

- Have a decision-maker act fairly and without bias
- Know the substance of allegations and evidence against them if an adverse finding is going to be made about their conduct
- Have a reasonable opportunity to respond.

Procedural fairness does not mean that a person against whom allegations are made must be advised as soon as the disclosure is received or an investigation is commenced. There may be good reasons to carry out certain investigations before interviewing a person who is suspected of wrongdoing, particularly if there are concerns that they may collude with others or evidence may be destroyed if they are alerted.

Procedural fairness does not equate to a right to know the identity of the discloser. However, a person may be able to ascertain the discloser's identity because the substance of the allegations makes it evident (for example, if the alleged wrongdoing was directed at the discloser, or if the discloser is known to be the only witness to an incident). If this is likely, it should be discussed with the discloser in advance (see Chapter 4 of Agency Guide to the Public Interest Discloser Act 2013).

A person does not need to be told about an allegation against them that is of no substance (for example, if the agency determines not to investigate on the basis that the disclosure is clearly frivolous or vexatious).

What is the intersection of the PID Act and the Code of Conduct procedures under the Public Service Act?

When a disclosure concerns the conduct of APS employees that could give reasonable grounds for investigation of a suspected breach of the APS Code of Conduct (ie. An investigation in accordance with an agency's procedures, established under s15(3) of the Public Service Act), an agency may have two courses of action available.

2. Investigation under the PID Act

The principal officer of an agency may investigate the disclosure under Part 3 of the PID Act to assess if there is any substance to the alleged misconduct.

The PID investigation may be of short duration. This investigation may include consideration of whether a different investigation should be conducted under another law of the Commonwealth (s47(3)) – an investigation in accordance with an agency's s15(3) procedures is another law of the Commonwealth for this purpose). The principal officer may choose to conclude the PID investigation if they are satisfied that there is sufficient evidence to start a Code of Conduct inquiry under the Public Service Act. The principal officer should then prepare a report under s51 of the PID Act.

In these circumstances, on this investigation, the principal officer's report on the PID investigation may record a recommendation or a decision that a Code of Conduct inquiry under the Public Service Act be commenced. The principal officer should record their reasons for reaching this conclusion. The Code of Conduct inquiry would be a subsequent separate investigation under s15(3) of the Public Service Act to determine whether an APS employee has breached the Code of Conduct under that Act.

If the principal officer decides that there is insufficient evidence of the breach of the APS Code of Conduct arising from the disclosure then they should record their reasons for reaching this conclusion.

3. Discretion not to investigate or investigate further under the PID Act

The principal officer may determine not to investigate (or investigate further) a disclosure, if an investigation into the same (or substantially the same) disclosable conduct is already underway or has been concluded under procedures established under s15(3) of the Public Service Act (48(1)(f-g)). If such a determination is made, the principal officer is required to notify the discloser of a decision not to investigate (or investigate further) under s48 with reasons for the decision (ss50(1) and 50(3) of the PID Act).

Does an agency need to deal with suspected wrongdoing if not reported to an Authorised Officer or to a supervisor?

Agencies should deal with any genuine concerns or reports of wrongdoing, so that appropriate action/s can be taken. However, for a report of wrongdoing to be considered a PID (and, consequently, be handled under the provisions of the PID Act) a disclosure must be made by a current or former public official to certain authorised internal recipients (s34) of the agency or, in the case of a current official, the official's supervisor. Generally speaking an agency's 'authorised internal recipients' will be its Authorised Officers (which includes the principal officer).

If a matter reported as a public interest disclosure has been investigated in the past, does the PID Act require that it be re-investigated afresh?

No, in such circumstances investigation is not required. Once a matter has been considered and allocated, there are a number of reasons why a principal officer may decide not to investigate a disclosure, or to investigate further, including that the disclosure is considered the same or substantially the same as a matter already investigated or being investigated under another Commonwealth law (s48).

Does a decision not to investigate under the PID Act prevent other action?

A decision not to investigate, or investigate further, under the PID Act does not prevent any other type of investigation of the matter (s48(2)). If the requirements for making an internal disclosure were met, the discloser would still be given protection under the PID Act. The same position applies to an investigation that has commenced but later discontinued.