



Australian Government

Department of Finance

PROCEDURES FOR DEALING WITH PUBLIC INTEREST DISCLOSURES

I, Jenny Wilkinson, Secretary of the Department of Finance (Finance), establish these Procedures under section 59 of the [Public Interest Disclosure Act 2013](#) (the PID Act). These Procedures take effect from the date it is signed.

A handwritten signature in blue ink, reading 'J. Wilkinson'.

Jenny Wilkinson
Secretary

1. Finance's commitment

- 1.1. The PID Act prescribes a framework for the disclosure and investigation of wrongdoing and maladministration in the Australian public sector (APS). Finance encourages and supports the reporting of wrongdoings in the APS so that they can be investigated and addressed.
- 1.2. It is important that allegations of disclosable conduct are brought to the attention of Finance and then investigated in a fair and timely manner. Finance promotes integrity and accountability in the APS by encouraging disclosure of suspected wrongdoing in accordance with these Procedures. Finance aims to protect people who make disclosures in accordance with the PID Act.

2. What is a public interest disclosure?

- 2.1. A public interest disclosure generally occurs when:
 - a current or former public official (*the discloser*)
 - discloses to their supervisor or manager, or an authorised officer
 - information which tends to show, or the discloser believes on reasonable grounds tends to show, one or more instances of disclosable conduct.
- 2.2. In limited circumstances a public official may disclose such information to a person outside government. For more information please refer to Public interest disclosure on the Commonwealth Ombudsman's [website](#).

3. Application of these Procedures

- 3.1. These Procedures apply to disclosures made to Finance authorised officers as internal disclosures, or those disclosures which are subsequently allocated to Finance.
- 3.2. These Procedures do not apply to external disclosures, emergency disclosures or legal practitioner disclosures, unless subsequently allocated to Finance. For more

information on these types of disclosures please refer to the Commonwealth Ombudsman's [website](#).

3.3. These Procedures must be applied and interpreted in a manner that is not inconsistent with the PID Act, the Rules, Ombudsman's Guides and Standards. All terms that are used in these Procedures are taken to have the same meaning as in the PID Act.

3.4. A failure to apply these Procedures to their full extent will not result in an allocation, investigation or decision being invalid.

4. Who can make a public interest disclosure?

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

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

4.2. An authorised officer can deem a person to be a public official to facilitate the making of a public interest disclosure.

4.3. The authorised officer must take reasonable steps to protect public officials who belong to Finance from reprisal if the authorised officer suspects a relevant PID has been, may have been, is proposed to be, or could be made or given to the authorised officer.

4.4. 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.

4.5. The authorised officer can determine a person to be a public official on the person's request or on their own initiative. If it is in response to a person's request, the authorised officer must either make the determination, or refuse to make the determination and advise the person of the reasons.

4.6. To make the determination, the authorised officer must issue a written notice to the person stating that the PID Act has effect, and is taken always to have had effect, in relation to the disclosure of the information as if the individual had been a public official when they obtained the information.

5. Who can receive a public interest disclosure?

5.1. A public interest disclosure, internally within Finance, can be made to:

- the Secretary;
- a discloser's current supervisor or manager; or
- an authorised officer (a list of authorised officers is available on the Finance intranet or by contacting HR)

5.2. In certain circumstances, a disclosure may be made to an external body such as the Ombudsman. For more information please refer to the Commonwealth Ombudsman's [website](#).

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

6. How can a disclosure be made?

6.1. You can contact a person who is authorised to receive and deal with a public interest disclosure (authorised officers) by email at PID@finance.gov.au. Finance will take reasonable steps to encourage and support disclosers, including potential disclosers, and those who provide assistance in relation to PIDs.

6.2. A disclosure may be made to an authorised officer either directly, or through the person's supervisor or 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.

6.3. If a disclosure is made to a person's supervisor or manager, the supervisor or manager must:

- Inform the discloser that their disclosure could be treated as an internal disclosure
- Explain to the disclosure the next steps in the PID process – referring their disclosure to an authorised officer, the potential allocation of the PID to Finance or another agency, and investigation of the PID by the principal officer of that agency
- 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
- Explain the civil and criminal protections the PID Act provides to protect disclosers, and those assisting with the handling of a PID, from reprisals.

6.4. 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 (if the person has provided contact details).

6.5. There are reasons why disclosers should consider identifying themselves to an authorised officer, or at the very least providing a means of contact:

- the PID Act requires Finance 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;
- 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 discloser to seek necessary further information, the matter may not proceed;
- it will 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; and

- 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.

6.6. 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.

7. Confidentiality

7.1. 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.

7.2. When the disclosure is received the authorised officer must conduct a risk assessment 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 supervisor or manager and the person wishes their identity to remain anonymous, the supervisor or manager should conduct a risk assessment.

7.3. For more information please refer to the Commonwealth Ombudsman's [website](#).

8. Protecting disclosers from reprisal

8.1. A discloser is subject to protection from reprisal under the PID Act where they make a disclosure, unless such a 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.

8.2. Finance will take reasonable steps to protect public officials who belong to Finance against reprisals in relation to PIDs that have been, may have been, are proposed to be, or could be made to Finance.

8.3. However, making a disclosure under the PID Act does not protect a discloser from his or her 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.

8.4. 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 or supervisor and the person wishes their identity to remain anonymous, the manager or supervisor should conduct a risk assessment.

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

8.6. For more information please refer to the Commonwealth Ombudsman's [website](#).

8.7. .

9. What conduct can be disclosed?

9.1. A public official can disclose information that they believe on reasonable grounds to be disclosable conduct.

9.2. In general this means conduct by an agency, a public official or a Commonwealth contractor (in connection with the contract) 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; or
- is prescribed by the PID rules.

9.3. Individual grievances, personal work-related conduct or workplace conflicts should be dealt with through other existing mechanisms such as the inappropriate behaviour policy rather than being the subject of an investigation under the PID Act. However, if it appears to the authorised officer that such a disclosure may represent a systemic issue within Finance then it may be treated as a disclosure under the PID Act.

9.4. Not all conduct is disclosable, for more information please refer to the Commonwealth Ombudsman's [website](#).

10. Authorised officer to deal with a disclosure

10.1. 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; and
- that the disclosure could be referred to the National Anti-Corruption Commission (NACC) if there is suspected serious or systemic corruption involved; and
- explain the protections provided by the PID Act to persons who make disclosures under the PID Act; and
- 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.

- 10.2. The authorised officer is required to make an appropriate record, including the time and date of the disclosure and include the information that is advised to the discloser under paragraph 10.1 of these Procedures. All practicable steps should be taken for this record to be signed by the discloser as being correct.
- 10.3. A copy of all records, file notes or information provided as part of the disclosure must be retained on the official file, as per paragraph 17 of these Procedures.
- 10.4. The authorised officer is not the officer who investigates the disclosure. The investigator is the Secretary (or delegate) if the disclosure is allocated to Finance for investigation.

11. Allocation of a disclosure

- 11.1. An authorised officer must consider the disclosure and determine if they require further information prior to deciding if the disclosure is a public interest disclosure that should be allocated. An allegation alone with no supporting information is insufficient to make a decision and the discloser should be asked for additional information.
- 11.2. The authorised officer should ask the discloser if they wish the disclosure to be investigated, prior to making an allocation decision. However, the discloser's view will not be the substantive factor taken into consideration when making a decision whether or not to allocate a disclosure for investigation. If the discloser does not respond within 7 calendar days, the discloser is deemed to wish the disclosure to be investigated.
- 11.3. The authorised officer must, where practicable, ask the discloser whether they consent to the authorised officer giving the discloser's name and contact details to the Secretary for allocation and investigation. If the discloser does not respond within 7 calendar days, the discloser is deemed not to consent to their name and contact details being provided to the Secretary.
- 11.4. The authorised officer must make a written record of any information or responses received if they seek further information from the discloser prior to allocation.
- 11.5. The authorised officer must decide if they are satisfied, on reasonable grounds, that the disclosure is a public interest disclosure within the meaning of the PID Act. If the authorised officer decides the disclosure is a public interest disclosure within the meaning of the PID Act, the disclosure must be allocated for investigation. The authorised officer must refer the disclosure to the NACC if they become aware of a corruption issue that they suspect could involve serious or systemic corrupt conduct.
- 11.6. A disclosure may be allocated to one or more agencies for handling (including Finance, the Ombudsman or another agency). The authorised officer can only allocate a public interest disclosure to another agency if an authorised officer in that agency consents to the allocation.
- 11.7. Once a decision is made regarding allocation, the authorised officer is required to send information regarding the disclosure, and the allocation decision, to:
 - the Secretary, or their nominated delegate; and
 - the Ombudsman's office.

This information can only include the name and contacts of the discloser if he or she consents.

- 11.8. The authorised officer is required to notify the discloser of their allocation decision, and reasons for their decision, in accordance with paragraph 15 of these Procedures.

12. Investigation of a disclosure

- 12.1. Once a disclosure has been allocated to the Secretary, the Secretary must investigate the disclosure unless the discretion in paragraph 13 of these Procedures is exercised.
- 12.2. The Secretary may investigate the disclosure in the manner that he deems fit in the circumstances, provided it is not inconsistent with these Procedures or the PID Act.

13. Decision not to investigate or discontinue investigation

- 13.1. The Secretary may decide not to conduct an investigation, or decide not to investigate further, into a disclosure if:
- the disclosure is not in regards to a public official; or
 - the information provided in the disclosure does not concern serious conduct; or
 - the disclosure is considered vexatious, frivolous, misconceived or lacking in substance; or
 - the disclosure has been substantially dealt with, in that the matter is the same or substantially the same as a matter already investigated or being investigated; or
 - the information is the same or substantially the same as information previously disclosed under the PID Act and a decision was previously made to not investigate (or further investigate) the earlier disclosure; or
 - where it is impracticable to investigate; or
 - where the matter is to be investigated, other than in accordance with these Procedures.
- 13.2. If the Secretary decides not to investigate or discontinue the investigation, the discloser will be notified in accordance with paragraph 15 of these Procedures.
- 13.3. The Secretary must document the reasons for their decision to decline or discontinue the investigation, and this must be provided, if practicable, as part of the notification to the discloser.
- 13.4. The Secretary must inform the Ombudsman of any decision not to conduct an investigation or to discontinue an investigation, including the reasons for that decision.

14. Procedural fairness

- 14.1. The rules of procedural fairness apply to the conduct of an investigation and in particular to protect the interests of a person against whom an allegation has been made. However, if a disclosure is not investigated or discontinued, the Secretary does not have to provide procedural fairness to the person against whom allegations have been made.

15. Notification to persons making disclosures

- 15.1. The authorised officer must notify a discloser, if applicable and reasonably practicable in the circumstances, of their decision in relation to the allocation of the disclosure.
- 15.2. If allocated for investigation, the Secretary must notify the discloser, if applicable and reasonably practicable in the circumstances, of their decision:
 - to investigate the disclosure, either in accordance with these Procedures or under a separate investigative power;
 - to refer the disclosure to the NACC if they suspect there is an issue that could involve serious or systemic corrupt conduct;
 - not to investigate the disclosure; or
 - not to investigate the disclosure further.
- 15.3. If investigated, the Secretary must notify the discloser of the outcome of the investigation, including a copy of the report, insofar as the release of the report would not contravene designated publication restrictions as defined in section 8 of the PID Act.
- 15.4. When providing notification, in accordance with paragraphs 15.1 and 15.2 of the Procedures, the discloser must be provided with reasons for the decision and any review or appeal rights which flow from that decision.
- 15.5. A copy of all materials provided under paragraph 15.1 and 15.2 must be retained, as per paragraph 17 of these Procedures.
- 15.6. If contact details are not provided by the discloser, notifications to be provided under paragraph 15.1, will be deemed not practicable in the circumstances.

16. Timeframes for dealing with a disclosure

- 16.1. If a discloser makes a disclosure to their supervisor or manager, the supervisor or manager must inform the authorised officer as soon as possible.
- 16.2. An authorised officer is generally required, within 14 days of receiving the disclosure, to decide on the allocation of the disclosure.
- 16.3. Any investigation must be completed, and the report of the investigation finalised, within 90 days after the relevant disclosure was allocated. This timeframe will start counting again on reallocation, a decision to reinvestigate, or the day the principal officer becomes aware a NACC stop action direction no longer applies.
- 16.4. The timeframe for investigation may be extended in accordance with the PID Act.

17. Record keeping

- 17.1. All documentation collected, including all information provided as part of the initial disclosure and copies of all notifications, must be retained on an official file by the authorised officer or appropriate delegate until the matter is completed.

The Archives Act 1983 and Privacy Act 1988 apply to all documents created as part of this Procedure.

18. Investigation complete

- 18.1. This Procedure is considered complete once the discloser is provided either with:
- notification that the matter has not been allocated as an internal disclosure to Finance; or
 - notification, including the statement of reasons, that no investigation or further investigation will occur; or
 - a copy of the report into the investigation.
- 18.2 The report must set out claims of reprisal taken against the disclosure or any other person (together with related evidence), and Finance's response to those claims or evidence.
- 18.3 The Ombudsman must be notified of the completion of an investigation under the PID Act and be provided with a copy of the investigation report.

19. Interaction with the National Anti-Corruption Commission Act 2022

- 19.1 From 1 July 2023, the National Anti-Corruption Commission began operation. The *National Anti-Corruption Commission Act 2022* (NACC Act) imposes new obligations on PID Officers (including Authorised Officers and other officials that are performing functions under the PID Act) that this section of the Procedures set out.

20. Mandatory referral to the National Anti-Corruption Commission (NACC)

- 20.1 From 28 July 2023, in considering a disclosure, the PID Officer who is either:
- allocating an internal disclosure under Division 1 of Part 3 of the PID Act (i.e. an Authorised Officer); or
 - investigating an internal disclosure under Division 2 of Part 3 of the PID Act,
- must consider whether the mandatory referral obligation under the NACC Act to the NACC applies.
- 20.2 In exercising these functions, the PID Officer must consider whether:
- the internal disclosure raises a corruption issue¹ under the NACC Act;
 - the corruption issue concerns the conduct of a person who is, or was, a staff member of the agency while that person is, or was, a staff member of the agency; and

¹ The NACC Act broadly provides that a corruption issue is information, or an allegation, that raises a question of whether a person:

- has engaged in corrupt conduct in the past,
- is currently engaging in corrupt conduct, or
- will engage in corrupt conduct in the future.

- the PID Officer suspects the issue could involve serious or systemic² corrupt conduct³.

20.3 If these criteria are met, the PID Officer must refer the corruption issue to the NACC as soon as reasonably practicable after becoming aware of it.

20.4 This occurs in parallel with actions undertaken under these procedures. In effect, this means that the PID investigation must continue unless the NACC Commissioner directs Finance to stop action under section 43 of the NACC Act.

21. Informing the NACC

21.1 In making a mandatory referral to the NACC, the PID Officer must include the following information in the referral to the NACC:

- all information relevant to the corruption issue in their possession or control when they make the referral; and
- the reason why they suspect the issue could involve corrupt conduct that is serious or systemic.

21.2 Information relevant to a corruption issue may include (but is not limited to):

- the names of any public officials who the PID Officer suspects has engaged in serious or systemic corrupt conduct;
- the names of any private individual or entities involved;
- a description of the conduct;
- the dates and timeframes of when the alleged corrupt conduct occurred or may occur;
- how and when the PID Officer became aware of the issue;
- any supporting documents or evidence;
- any other relevant information.

If the PID Officer becomes aware of new information after making the referral, they must provide it to the NACC as soon as reasonably practicable.

22. Exceptions to information requirements

22.1 A PID Officer is not required to provide information about a corruption issue if any of the following apply:

- the PID Officer believes on reasonable grounds that the NACC Commissioner is already aware of the information;
- the NACC Commissioner has advised the information is not required;
- the information is subject to an exempt secrecy provision,; or

² Serious and systemic corrupt conduct is not a defined term. However, more guidance may be provided by the NACC in time.

³ While corrupt conduct can take many forms, the NACC Act defines it as situations where a public official:

- does something that breaches the public trust,
- abuses their office as a public official, or
- misuses information they have access to in their capacity as a public official.

It also applies to any person (whether or not they are a public official) who does something, or tries to do something, that that could adversely affect a public official's honesty or impartiality in their official capacity.

- the Attorney-General has certified that disclosing the information would be contrary to the public interest because it would harm Australia's international relations.

23. Informing the discloser

- 23.1 The PID Officer will also inform the discloser where mandatory referral has been made to the NACC, as soon as reasonably practicable. This requirement applies irrespective of whether the referral was made at the allocation or investigation stage.

24. Power of the NACC to require Finance to stop action

- 24.1 The NACC Commissioner may direct the Secretary to stop taking action in relation to a corruption issue. This may include to stop investigating a PID.
- 24.2 Finance must notify the Ombudsman when a stop action direction from the NACC prevents allocation of all or part of a disclosure.

