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Public Interest Disclosure Procedures

2024

Contents

1. Introduction.....	4
Purpose.....	4
Statement of commitment	4
Date of effect.....	4
Scope.....	4
Application	5
2. Background to the PID Act.....	5
The purpose of the PID Act	5
Application of the 2023 reforms.....	5
The repeal of the general secrecy offence in the PID Act.....	5
The impact of the reforms on existing delegations	6
Machinery of government provisions	6
3. The disclosure process	6
Who can make a PID?	6
Anonymous disclosures.....	7
What is disclosable conduct?	7
What is not disclosable conduct?	8
Personal work-related conduct.....	8
Routine investigations of wrongdoing.....	8
How to make a PID	9
Immunities for Disclosers	10
Responsibilities of Disclosers	10
4. Types of disclosures	10
Internal disclosures	10
External or emergency disclosures.....	11
External disclosures.....	11
Emergency disclosures.....	12
Disclosure to legal practitioner	12
NACC disclosures	12
5. Procedures for supervisors	13
Obligation to give information to Authorised Officer.....	13
Responsibilities to the Discloser.....	13
6. Procedures for Authorised Officers	13
Responsibilities to the Discloser and potential Disclosers	13
Record of disclosure	14
Consideration of disclosure	14
Consent from the Discloser	14

Allocating disclosure to an agency for investigation.....	15
Mandatory and relevant considerations	15
Decision not to allocate disclosure for investigation.....	15
Decision to investigate under another law or power.....	15
Risk assessment of reprisal.....	16
Record keeping.....	16
7. Investigations.....	16
Decision to investigate the disclosure.....	17
Decision not to investigate disclosure.....	17
Notification to Discloser.....	18
Procedure for investigations.....	18
Procedural fairness.....	18
Interviewing witnesses.....	18
Time limits.....	19
Report and recommendations.....	19
8. Corruption and criminal offences.....	20
Who is a PID Officer for the purposes of the NACC Act?	20
Mandatory referral to the NACC.....	20
Criminal offences.....	21
9. Protections and support.....	21
Protections for Disclosers and witnesses.....	21
Support for Disclosers and witnesses.....	22
10. Privacy and record keeping.....	22
Confidentiality of identifying information.....	22
Privacy.....	23
Record keeping.....	23
11. Reporting to the Ombudsman.....	23
12. Notification forms.....	23
13. References.....	25
Procedure contact.....	25
Version control.....	25

1. Introduction

Purpose

- 1.1 The AEC's Public Interest Disclosure Procedures (the Procedures) are made under section 59 of *Public Interest Disclosure Act 2013* (PID Act) for the purpose of handling Public Interest Disclosures (PIDs). The PID Act creates a PID scheme that promotes internal reporting of suspected wrongdoing by another public official or by an Australian government agency. These procedures will assist AEC employees and other people to understand their rights and obligations under the PID Act.

Statement of commitment

- 1.2 The Australian Electoral Commission (AEC) is committed to the highest standards of ethical and accountable conduct. To this end, the AEC encourages people to report suspected or probable illegal conduct or other wrongdoing in accordance with the PID Act. The AEC will take steps to ensure that those who make, or who are considering making, a disclosure under the PID Act are properly supported and protected from any adverse consequence relating to the disclosure.
- 1.3 In order to uphold the good reputation of the AEC and to provide a safe and ethical workplace, public officials who are aware of suspected wrongdoing in the AEC (or elsewhere in the Commonwealth public sector) are encouraged to report such instances in accordance with the provisions set out in these procedures.

Date of effect

- 1.4 This procedure is effective from 13 May 2024.

Scope

- 1.5 Public officials ('Disclosers') who suspect wrongdoing within the Commonwealth public sector can raise their concerns under the PID Act. Any allegations of wrongful conduct made under the PID Act are Public Interest Disclosures. All Australian Government agencies, Commonwealth companies and public authorities have responsibilities under the PID Act to:
- investigate suspected wrongdoing, and
 - take appropriate action(s).
- 1.6 Conduct which may be the subject of a PID includes (but is not limited to):
- a contravention of the law,
 - corruption,
 - perverting the course of justice,
 - maladministration,
 - an abuse of public trust,
 - falsifying scientific research,
 - wastage of public money, or

- conduct that is a danger to health, safety or the environment.
- 1.7 The PID Act includes certain protections for Disclosers and witnesses from reprisal action.
- 1.8 The AEC's Principal Officer is the Electoral Commissioner.

Application

- 1.9 These Procedures apply to internal PIDs that relate to the AEC and are made by current or former Public Officials belonging to the AEC.
- 1.10 These Procedures do not apply to external disclosures, emergency disclosures or legal practitioner disclosures, unless subsequently allocated to the AEC. For more information on these types of disclosures please refer to the Commonwealth Ombudsman's [Agency Guide to the PID Act 2013](#).

2. Background to the PID Act

The purpose of the PID Act

- 2.1 The PID Act complements existing notification, investigation, complaint handling and corruption reporting schemes in the Commonwealth public sector.
- 2.2 The purpose of the PID Act is to promote the integrity and accountability of the Commonwealth public sector by:
- a) encouraging and facilitating disclosures of wrongdoing by:
 - i) public officials; and
 - ii) former public officials,
 - b) ensuring that:
 - i) public officials and former public officials who make protected disclosures, and witnesses who provide assistance in relation to disclosures are supported and protected from adverse consequences relating to the making of disclosures; and
 - ii) disclosures are properly investigated and dealt with (refer to section 6 of the PID Act).

Application of the 2023 reforms

- 2.3 The [reforms to the PID Act](#) will apply to:
- a) disclosures made on or after *1 July 2023*; and
 - b) to conduct that occurs before, on or after *1 July 2023*.

The repeal of the general secrecy offence in the PID Act

- 2.4 The offence does not apply to disclosures made *on or after 1 July 2023*, regardless of whether the conduct disclosed occurred before, on or after 1 July 2023.

- 2.5 Agencies must handle disclosures made *before* 1 July 2023 in accordance with the secrecy offence.

The impact of the reforms on existing delegations

- 2.6 As of *1 July 2023*, all public officials subject to a delegation must comply with any directions of the Principal Officer who delegated the function or power.
- 2.7 This is the case both where a delegation was made *prior to 1 July 2023*, but continues to be in force on and after this time, and where a delegation is made *on or after 1 July 2023*.

Machinery of government provisions

- 2.8 A machinery of government (MoG) change may involve the movement of functions, resources and staff from one Commonwealth agency to another, which may affect which agency an internal disclosure will *relate to* under the PID Act.
- 2.9 Disclosures that are on foot during a MoG process can be transferred from an agency affected by a MoG change to the new agency, following a MoG change. The new agency would then be responsible for the handling of a disclosure in relation to the relevant conduct and would be subject to relevant obligations under the PID Act.
- 2.10 The reforms enable a Principal Officer of an affected agency to share information related to the disclosure with the new agency.
- 2.11 These reforms apply from 1 July 2023 in relation to a machinery of government change irrespective of whether the disclosure, or the conduct that is the subject of the disclosure, occurs before, on or after 1 July 2023.

3. The disclosure process

- 3.1 Either current or former employees or officers of contracted service providers may make a disclosure of disclosable conduct to an Authorised Officer or, in certain circumstances, to the Commonwealth Ombudsman (the 'Ombudsman'). In certain circumstances, a public official may be able to make another type of disclosure, including an external, emergency, or legal disclosure. For more information see section 26 of the PID Act.

Who can make a PID?

- 3.2 In order to make a PID, a person must be a current or former 'public official' as defined in ss 69-70 of the PID Act (s 26(1)(a)). A public official under the PID Act is a broad term which includes any person who belongs to one of the agencies covered by the PID Act.
- 3.3 A public official includes:
- any person who is, or was, employed by the Australian Government,
 - individuals employed by any Commonwealth companies, authorities and statutory agencies, the Parliamentary service, statutory officeholders, and
 - service providers under contract to the Commonwealth and anyone employed by them.

- 3.4 A public official also includes any other person deemed by the Authorised Officer to be a public official for the purposes of the PID Act.
- 3.5 A potential Discloser should not investigate a matter themselves before making a disclosure.
- 3.6 A PID can be made anonymously or openly, orally or in writing.

Anonymous disclosures

- 3.7 All persons may make disclosures in an anonymous way if they wish to do so. A disclosure is anonymous if the identity of the Discloser is not revealed, for example if no contact details for the Discloser are provided or if the contact details do not reveal the identity of the Discloser. Where a supervisor receives a disclosure of one of these kinds, they must refer it to an Authorised Officer as soon as is reasonably practicable.
- 3.8 Where an Authorised Officer receives a disclosure of one of these kinds, they must consider whether to exercise the power in section 70 of the PID Act to determine on their own initiative that a person who has disclosed information to them is a public official in relation to the making of the disclosure.
- 3.9 However, if the Authorised Officer cannot contact the Discloser, no determination can be made because the Authorised Officer must be able to give written notice of the determination to the individual (see section 70(1)).

What is disclosable conduct?

- 3.10 Section 29 of the PID Act outlines the definition of disclosable conduct.
- 3.11 Disclosable conduct is conduct by a Commonwealth agency, a contracted service provider under a Commonwealth Contract, or a public official that:
 - a) contravenes a law of the Commonwealth, a State, or a Territory,
 - b) occurs in a foreign country and contravenes a law in force in that country that applies to the agency or public official and that corresponds to a law in force in the Australian Capital Territory,
 - c) perverts, or attempts to pervert, the course of justice or involves corruption of any other kind, constitutes maladministration, including conduct that:
 - i) is based on improper motives Procedures for Dealing with PIDs,
 - ii) is unreasonable, unjust, or oppressive, or
 - iii) is negligent,
 - d) is an abuse of public trust,
 - e) is fabrication, falsification, or deception in relation to scientific research, or misconduct in relation to scientific work,
 - f) results in the wastage of public money or public property or of the money or property of an authority covered by the PID Act,
 - g) unreasonably results in a danger to the health and safety of a person or unreasonably results in or increases the risk of a danger to the health and safety of a person,
 - h) results in a danger to the environment or results in or increases the risk of a danger to the environment, or
 - i) is engaged in by a public official that:
 - i) involved abuse of the public official's position, or

- ii) could, if proved, give reasonable grounds for disciplinary action resulting in the termination of the public official's engagement or appointment.

3.10 It does not matter whether:

- disclosable conduct occurred *before or after 15 January 2014*. However, if the disclosable conduct has already been addressed via another process, the Principal Officer or their delegate may determine that an investigation under these procedures is not required, or
- the public official who carried out the alleged conduct has ceased to be a public official since the time the conduct is alleged to have occurred, although it is necessary that they carried out the conduct in connection with their position as a public official.

What is not disclosable conduct?

3.11 Disclosable conduct does not include:

- a) personal work-related conduct, such as interpersonal conflict such as bullying or suspension, except where this constitutes reprisal action, would undermine public confidence in an agency, or would have significant implications for an agency,
- b) conduct related to courts, tribunals and the Parliament,
- c) disagreements with government policy or proposed policy, action or proposed action by a minister, the Speaker of the House of Representatives or the President of the Senate expenditure, or proposed expenditure,
- d) judicial conduct (unless of an administrative nature and unrelated to matters before the court or tribunal),
- e) conduct of members of Parliament, or
- f) conduct of an intelligence agency (or public official of) if engaged in the proper performance of its functions or exercise of its powers.

3.12 For further information refer to the [Ombudsman Guide – Chapter 2](#).

Personal work-related conduct

3.13 Disclosures about personal work-related conduct are not covered by the PID Act unless an exception applies (for example, it constitutes reprisal action).

3.14 Personal work-related conduct is where one official engages in conduct that relates to another official's engagement, appointment or the exercise of their functions or powers, and the conduct has personal implications for that second official. This includes, but is not limited to, bullying and harassment, conduct relating to the terms and conditions of engagement and disciplinary action (including Code of Conduct investigations). If a disclosure relates to both personal work-related conduct and other types of wrongdoing, it will still be covered by the PID Act as long as the other type of wrongdoing meets the definition of disclosable conduct.

3.15 The refusal to investigate a disclosure may be the subject of a complaint to the Ombudsman under the *Ombudsman Act 1976*.

Routine investigations of wrongdoing

3.16 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.

3.17 Additionally:

- Conduct that would reasonably require disciplinary action is only disclosable conduct if the Authorised Officer considers it would provide reasonable grounds for termination.
- Personal work-related conduct is not disclosable conduct unless it could constitute reprisal or is otherwise significant (see section 29(2A)).

How to make a PID

3.18 A PID can be accepted by an Authorised Officer from the agency the Discloser belongs to. The AEC's other Authorised Officers are appointed under section 36 of the PID Act 2013, and are the:

- Deputy Electoral Commissioner,
- First Assistant Commissioners,
- Assistant Commissioner People Services Branch, and
- State managers, who hold the statutory appointment of Australian Electoral Officer for each state and the Northern Territory.

3.19 Ordinarily, a current AEC employee is encouraged to make their PID to an Authorised Officer rather than their supervisor. This is because Authorised Officers have been formally trained in receiving PIDs, and they can also offer information about how to make a PID and the protections given to Disclosers under the PID Act. If an AEC employee is considering making a disclosure, in the first instance they should contact one any of the AEC's Authorised Officers to get information about making a disclosure under the PID Act.

3.20 Under the PID Act, Authorised Officers have responsibility for:

- receiving,
- assessing, and
- allocating PIDs.

3.21 A disclosure can be made to an AEC Authorised Officer by telephone on (02) 6271 4764, in person or in writing (including by email via PID@aec.gov.au).

3.22 If you are a current public official, you can also make a PID to an Authorised Officer through your supervisor.

3.23 Individuals can also make a disclosure of disclosable conduct to the Ombudsman.

3.24 The information in a disclosure should be:

- a) clear,
- b) factual,
- c) avoid speculation (as much as possible), personal attacks, and emotive language, and
- d) contain supporting evidence where that is available to the Discloser and if possible, identify any witnesses to the disclosable conduct.

Immunities for Disclosers

- 3.25 The PID Act outlines immunities for current and former public officials who make disclosures in the circumstances set out in [ss 26\(1\) and \(1A\) of the PID Act](#). A disclosure must be made to an authorised recipient to be afforded the protections available under the PID Act.
- 3.26 If a person makes a disclosure other than in the circumstances defined in [ss 26\(1\) or \(1A\)](#), the immunities in the PID Act do not apply. This means that the person will not be protected from the consequences of breaching any privacy, confidentiality, or secrecy requirements that apply to the information disclosed.

Responsibilities of Disclosers

- 3.27 A person making a disclosure should be aware that making a disclosure does not entitle them to protection from the consequences of their own wrongdoing.
- 3.28 If a person knowingly makes a false or misleading disclosure, they will not have any protections under the PID Act.
- 3.29 Once a PID has been made, it cannot be withdrawn. A Discloser has the option to state that they do not wish the disclosure to be investigated and they may refuse to consent to their name and contact details being provided to the Principal Officer or delegate.
- 3.30 A person who has made a disclosure under the PID Act should not discuss the details of their disclosure with anyone who does not have a need to know about it. Discussions with these people will not be protected by the PID Act.
- 3.31 If these circumstances arise, the Authorised Officer should seek legal advice from the AEC Legal Services Branch (legal@aec.gov.au). The request for advice should not include details of the disclosure in the first instance.

4. Types of disclosures

- 4.1 The PID Act makes distinctions between different types of PIDs. A PID may be:
- an internal disclosure,
 - external disclosure,
 - emergency disclosure,
 - a legal practitioner disclosure, or
 - a National Anti-Corruption Commission (NACC) disclosure (as set out in [ss 26\(1\) and \(1A\) of the PID Act](#) and [s 23 of the *National Anti-Corruption Commission Act 2022*](#)).

Internal disclosures

- 4.2 An 'internal disclosure' is the most common type of disclosure under the PID Act. To make an internal PID, the person disclosing suspected wrongdoing must:
- be a current or former public official (or deemed to be a public official),
 - make their disclosure to an authorised person within an Australian Government agency (their supervisor or an authorised internal recipient), and

- c) provide information that they believe tends to show, on reasonable grounds, disclosable conduct within an Australian Government agency or by a public official.

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

- a) their current agency,
b) the agency to which they previously belonged, or
c) the agency to which the disclosure relates.

Figure 1: Summary of the elements of making an internal disclosure under the PID Act¹

When a public official (current or former) (s 69)	discloses information (s 26)	about disclosable conduct (s 29)	to an authorised internal recipient (s 34)	they receive protection (s 13)
<ul style="list-style-type: none"> » public servants » parliamentary service officers » service providers under a Commonwealth contract » Defence Force members » Australian Federal Police appointees » statutory office holders » staff of Commonwealth companies » individuals deemed to be public officials 	<ul style="list-style-type: none"> » the information tends to show, or the public official believes on reasonable grounds that the information tends to show disclosable conduct » the disclosure is not made in the course of performing the discloser's ordinary functions as a public official 	<ul style="list-style-type: none"> » conduct engaged in by an agency, public official or contracted service provider <p>AND</p> <ul style="list-style-type: none"> » involves illegal conduct, corruption, maladministration, abuse 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 grounds for disciplinary action resulting in termination <p>NOTE: Personal work related conduct is NOT disclosable unless it could constitute reprisal or is otherwise significant</p>	<ul style="list-style-type: none"> » principal officer or authorised officer of own agency, agency where the public official previously belonged, or agency to which the disclosable conduct relates » supervisor or manager » Commonwealth Ombudsman (if there is a reasonable belief the Ombudsman should investigate) » IGIS (if the disclosure relates to an intelligence agency or to an intelligence function of the ACIC or AFP) 	<p>Protection from:</p> <ul style="list-style-type: none"> » Reprisals (ss 14-16 & 19) » exposure of their identity (ss 20 & 21) » civil, criminal or administrative liability (s 10)

External or emergency disclosures

4.4 In limited circumstances, a public official may disclose such information to a person outside government – this is known as an 'external disclosure' or 'emergency disclosure'. Neither the external disclosure or the emergency disclosure types can consist of or include intelligence information (s 41 of the PID Act).

4.5 The other restrictions that apply to external and emergency disclosures can be complex, and disclosers should carefully consider the requirements before making these types of disclosure.

External disclosures

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

¹ Commonwealth Ombudsman, Agency Guide to the Public Interest Disclosure Act 2013, Chapter 2: How the public interest disclosure scheme works, Page 3, accessible here: [Agency Guide to the Public Interest Disclosure Act 2013](#).

- a) the final report of the internal PID investigation has not been prepared within 90 days of allocation, or the extended investigation period approved by the Ombudsman or the Inspector-General of Intelligence and Security (this condition does not apply to Ombudsman/Inspector-General of Intelligence and Security investigations under their respective legislation),
 - b) the PID investigation has been completed and the discloser believes on reasonable grounds that the investigation was inadequate,
 - c) an investigation has been completed (whether the investigation was conducted under the PID Act or under other legislation) and the discloser believes on reasonable grounds that the response to the investigation was inadequate (s 26(1) item 2 of the PID Act).
- 4.7 If a public official is considering making an external disclosure it is open to them to contact the Ombudsman for advice or seek external legal advice.
- 4.8 A public official who is not satisfied about the way the AEC has handled an internal disclosure can complain to the Ombudsman. More information about making a complaint to the Commonwealth Ombudsman is available at www.ombudsman.gov.au.

Emergency disclosures

- 4.9 An emergency disclosure can be made if a public official believes on reasonable grounds that the information they have involves a substantial and imminent danger to the health or safety of one or more people or to the environment. A public official may make an emergency disclosure to any person except a foreign public official (s 26(1) item 3), provided they meet certain requirements:
- a) the information they disclose must be only what is necessary to alert the recipient of the substantial and imminent danger,
 - b) if a previous internal disclosure about the matter was made or if the investigation is not completed, there must be exceptional circumstances justifying their decision to make an external disclosure.

Disclosure to legal practitioner

- 4.10 The PID Act allows a public official to make a disclosure to a legal practitioner, for the purposes of seeking legal advice about making a PID. This is referred to in the PID Act as a 'legal practitioner disclosure'. A disclosure of this nature, for the purposes of seeking legal advice, does not trigger any other actions under the PID Act.

NACC disclosures

- 4.11 A public official may make a PID directly to the NACC. The NACC Commissioner has discretion to investigate a corruption issue raised through a disclosure if they are of the opinion that the issue could involve serious or systemic corrupt conduct. Where the NACC decides to take no further action, and they have contact details of the Discloser, it will advise its decision and provide a short explanation of why.
- 4.12 More information is available at: www.nacc.gov.au/

5. Procedures for supervisors

Obligation to give information to Authorised Officer

- 5.1 A public official can also make a disclosure to their supervisor (defined in s 8 to mean someone who supervises or manages them). A supervisor who receives a disclosure is obliged to give the information to an Authorised Officer in their agency as soon as reasonably practicable (s 60A). The supervisor's obligation applies as soon as the supervisor has reasonable grounds to believe the information concerns, or could concern, one or more instances of disclosable conduct.

Responsibilities to the Discloser

- 5.2 Once a PID has been made to a public official's supervisor, the supervisor must:
- a) inform the Discloser that their disclosure could be treated as an internal disclosure,
 - b) explain to the Discloser the next steps in the PID process (referring their disclosure to the Authorised Officer, the potential allocation of the PID, and investigation of the PID),
 - c) advise the Discloser about the circumstances in which a PID must be referred to an agency, or other person or body, under another law of the Commonwealth, and
 - d) explain the civil and criminal protections the PID Act provides to Disclosers, and those assisting with the handling of a PID.
- 5.3 Supervisors should:
- have 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,
 - know who the Authorised Officers are in their agency,
 - be careful to observe confidentiality requirements,
 - be approachable to staff who wish to raise concerns,
 - confront any workplace prejudices about making a disclosure,
 - support staff members who they know have made or believe could make a disclosure,
 - take actions available to protect relevant people from risks of reprisal,
 - pay 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),
 - ensure identified problems in the workplace are corrected, and
 - set an example for staff through their own conduct.

6. Procedures for Authorised Officers

Responsibilities to the Discloser and potential Disclosers

- 6.1 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

and that the person may be unaware of what the PID Act requires for the disclosure to be an internal disclosure, the Authorised Officer must:

- a) inform the person that the disclosure could be treated as an internal disclosure for the purposes of the PID Act,
- b) explain to the person what the PID Act requires for a disclosure to be an internal disclosure,
- c) explain to the person the circumstances in which a disclosure must be referred to another agency, person or body under another law of the Commonwealth,
- d) explain to the person the protections provided by the PID Act to persons who make disclosures under that Act, and
- e) advise the person of any orders or directions that may affect disclosure of the information.

6.2 The Authorised Officer must decide whether or not to allocate and/or refer a disclosure.

Record of disclosure

6.3 Where a public official, or a person who has been 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 should make a written record of the substance of the disclosure and of the time and date of the disclosure. Where possible, the record should be verified by the Discloser.

Consideration of disclosure

6.4 Where an Authorised Officer receives a disclosure, the Authorised Officer may obtain information and may make such inquiries 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 (i.e. meets the requirements of a PID) or not.

Consent from the Discloser

6.5 Where the Authorised Officer is aware of the contact details of the Discloser they should, as soon as practicable after receiving the disclosure, and **before allocating the disclosure**, ask the Discloser:

- a) whether they consent to the Authorised Officer giving the Discloser's name and contact details to the Principal Officer and to the Principal Officer's delegates, and
- b) to provide information to support assessment of potential reprisal risks.

6.6 The Authorised Officer should make a written record of the Discloser's responses (if any) to the questions above.

6.7 Where a Discloser does not respond within seven days to the question regarding consent to disclose their name, the Discloser is taken not to have consented to the disclosure of their name and contact details to the Principal Officer and their delegates.

Allocating disclosure to an agency for investigation

- 6.8 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.
- 6.9 Where an Authorised Officer in the AEC allocates a disclosure to an agency (including to the AEC) they should complete a Minute and send it to the Principal Officer or to their delegate for approval. The Authorised Officer must not allocate a disclosure to another agency unless an Authorised Officer of that agency has consented to the allocation.
- 6.10 The Authorised Officer should notify the Ombudsman by sending the completed Ombudsman form, [Form 1 – Notification of allocation or reallocation](#).
- 6.11 After allocating a disclosure to an agency (including the AEC), it remains open to the Authorised Officer who received the disclosure, to decide to reallocate the disclosure to one or more other agencies. The Authorised Officer should notify the Ombudsman of any reallocation decision by sending the completed Ombudsman form, [Form 1 – Notification of allocation or reallocation](#).
- 6.12 Where the Authorised Officer is aware of the contact details of the Discloser, and consent has been obtained, the Authorised Officer must inform the Discloser of the allocation as soon as reasonably practicable.

Mandatory and relevant considerations

- 6.13 In deciding the allocation, the Authorised Officer:
- a) must have regard to the principle that an agency should not handle the PID unless some or all of the disclosable conduct with which the information may be concerned (suspected disclosable conduct) relates to the agency,
 - b) should have regard to any other matters (if any) the Authorised Officer considers relevant, and
 - c) may obtain further information for the purpose of allocating the PID.

Decision not to allocate disclosure for investigation

- 6.14 Where an Authorised Officer decides that a disclosure that has been made to them will not be allocated, they must (where the Discloser's contact details are known to the Authorised Officer) advise the Discloser in writing as soon as reasonably practicable that the disclosure is not going to be allocated.
- 6.15 The Authorised Officer must also notify the Ombudsman of their decision not to allocate the disclosure including the reasons by sending the completed Ombudsman form, [Form 4 – Notification of decision not to allocate](#).

Decision to investigate under another law or power

- 6.16 An Authorised Officer may decide that a disclosure that has been made to them would be more appropriately investigated under another law or power other than the PID Act. If this occurs, the Authorised Officer must:

- a) if the disclosure will not be allocated, notify the Discloser and the Ombudsman; and,
- b) as soon as reasonably practicable, take reasonable steps to facilitate the referral, which may include:
 - i) seeking consent from the Discloser to share their identifying information for the purpose of facilitating investigation under the other law or power and arranging the transfer of documents, and
 - ii) in cases where it may not be appropriate or possible to make a complaint under another law of power on behalf of the Discloser, providing information or contact details for making the complaint under the other law or power.

Risk assessment of reprisal

- 6.17 It is an offence to take a reprisal, or to threaten to take a reprisal, against a person (including a Discloser or a person who assists with a disclosure) because of a PID (including a proposed or a suspected PID).
- 6.18 A reprisal involves causing a person detriment or threatening to do so. This may include:
- dismissing an employee,
 - injuring an employee in their employment,
 - altering an employee's position to their disadvantage,
 - discriminating between an employee and other employees,
 - harassing, intimidating, harming or injuring another person, or
 - damaging a person's property, reputation or business or financial position.
- 6.19 When the disclosure is received, the Authorised Officer must conduct a risk assessment that considers the risk of reprisal action against the Discloser. Another officer may be assigned to conduct the assessment, if appropriate (a Reprisal Officer). The assessment may involve consultation with the Discloser to determine potential threats of reprisals.
- 6.20 Reasonable steps must be taken to protect public officials who are employed by the agency against reprisals. The Reprisal Officer may also assist with actions to manage reprisal risks and support the Discloser and affected parties. Reprisal risk must be assessed based on a checklist of risk factors, and have regard to any assessment of risk provided under these procedures by the Discloser's supervisor.

Record keeping

- 6.21 The Authorised Officer must keep appropriate written records associated with their handling of the disclosure. On making an allocation decision, records must include information provided to the Discloser. Records must also include the Authorised Officer's allocation decision and the reasons, the agency's consent if an allocation was made to another agency, and the record of notification of the allocation decision to the Discloser.

7. Investigations

- 7.1 Once a disclosure has been allocated to the Principal Officer of the AEC, where the Discloser's contact details are available and it is reasonably practicable to do so, the Principal

Officer or their delegate (the PID Investigator) must conduct an investigation unless there is a basis under the PID Act for not investigating.

Decision to investigate the disclosure

- 7.2 Upon deciding to conduct an investigation under section 48 of the PID Act, if the Principal Officer or their delegate has the Discloser's contact details, they must inform them of the decision to investigate and the expected outcome.
- 7.3 If the Principal Officer or delegate initially decides to investigate but then opts not to continue under section 48, they must:
- a) notify the Discloser, explaining the decision or providing alternative legal options, and
 - b) inform the Ombudsman about the decision and its reason with the [Form 2 – Notification of decision not to investigate or not to investigate further](#).

Decision not to investigate disclosure

- 7.4 A PID must be investigated unless the PID Investigator considers that:
- a) the Discloser is not, and has not been, a Public Official (and a determination has not been made under section 70 of the PID Act),
 - b) the information provided as the disclosure does not concern serious conduct,
 - c) the disclosure is frivolous or vexatious,
 - d) the disclosure is substantially the same as a disclosure that has been investigated under the PID Act (including where the information is the same or substantially the same as information previously disclosed under the PID Act and a decision was previously made not to investigate the earlier disclosure),
 - e) the disclosure is substantially the same as a disclosure that has already been investigated, or is currently being investigated, under another law of the Commonwealth, and
 - i) it would be inappropriate to conduct another investigation at the same time, or
 - ii) the Commissioner or delegate is reasonably satisfied that there are no matters that warrant further investigation,
 - f) the conduct disclosed, or substantially the same conduct, has been investigated under another law or power, and the PID Investigator is satisfied that there are no further matters concerning the conduct that warrant investigation,
 - g) the Discloser has informed the PID Investigator that they do not wish the disclosure to be pursued and the PID Investigator is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation, or
 - h) it is impracticable to investigate the disclosure because:
 - i) the Discloser has not revealed their name and contact details,
 - ii) the Discloser has refused or has failed or is unable to give the investigator the information they requested, or
 - iii) of the age of the information.
- 7.5 Where a decision is made not to investigate, the Ombudsman must be notified as soon as practicable with reasons for the decision using [Form 2 – Notification of decision not to investigate or not to investigate further](#).

Notification to Discloser

- 7.6 The PID Investigator must, as soon as reasonably practicable, inform the Discloser in writing that the PID Investigator:
- a) is required to investigate the disclosure (and provide the estimated length of the investigation), or
 - b) has decided not to investigate the disclosure or investigate it further (with reasons for the decision), or
 - c) cannot investigate because of a stop action direction under the NACC Act.

Procedure for investigations

- 7.7 The investigation may be conducted as the PID Investigator sees fit. However, in conducting the investigation and completing the report, the PID Investigator must comply with the PID Act and *PID Standard 2013* (PID Standard).
- 7.8 If relevant, when conducting an investigation the following must also be taken into account:
- a) Procedures under s 15(3) of the *Public Service Act 1999* if investigating alleged breaches of the relevant Code of Conduct,
 - b) Commonwealth Fraud Control Policy and Australian Government Investigation Standards if investigating allegations of fraud in non-corporate Commonwealth entities, and
 - c) When conducting an investigation, the PID Investigator must ensure that a decision as to whether evidence is sufficient to prove a fact is made on the balance of probabilities.

Procedural fairness

- 7.9 Procedural fairness applies to investigations, particularly to protect the interests of a person against whom the allegation has been made. Generally, that individual is entitled to:
- have a decision maker act fairly and without bias,
 - know the substance of allegations and evidence against them, and
 - have a reasonable opportunity to respond.
- 7.10 However, that individual is not entitled to:
- procedural fairness in circumstances where a disclosure is not investigated or is discontinued and the allegation/s are of no substance, or
 - be advised as soon as the disclosure is received or as soon as an investigation is commenced.

Interviewing witnesses

- 7.11 Section 53(2) of the PID Act provides that the PID Investigator may obtain information from such persons, and make such inquiries, as they think fit.
- 7.12 Subject to any restrictions imposed by law, the investigator must ensure that, if a person is interviewed as part of an investigation, that person is informed of:
- a) the identity and function of each person conducting the interview,
 - b) the investigation process,
 - c) the authority of the investigator under the PID Act to conduct an investigation,

- d) protections provided to the person under the PID Act and other relevant legislation,
- e) the person's duty:
 - i) if they are a public official – to use their best endeavours to assist the investigator (subject to the public official's privilege against incriminating themselves or exposing themselves to a penalty),
 - ii) not to take or threaten to take reprisal action against the Discloser, and
 - iii) subject to the PID Act, not to disclose the identity of the person who made the disclosure.

7.13 Where the investigator conducts an interview as part of an investigation, the investigator must ensure that:

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

7.14 Where the investigator is aware of the Discloser's identity and considers that it is necessary to reveal the Discloser's identity to a witness, the investigator must consult with the Discloser, where practicable, before proceeding.

Time limits

7.15 The AEC has 90 days from the date the disclosure was allocated in which to complete the investigation, unless an extension is approved by the Commonwealth Ombudsman.

7.16 The investigation is complete when the investigation report is prepared.

7.17 The 90-day clock resets on:

- reallocation,
- a decision to reinvestigate a disclosure, or
- the day the PID Investigator becomes aware a NACC stop action direction no longer applies.

Report and recommendations

7.18 On completing an investigation into a PID, a report must be prepared by the PID Investigator. Under section 51(2) of the PID Act, the report must include:

- matters considered in the course of the investigation,
- the duration of the investigation,
- the PID Investigator's findings (if any),
- the action (if any) that has been, is being, or is recommended to be, taken,
- claims of any reprisal taken against the Discloser, or any other person, that relates to the matters considered in the course of the investigation, together with any related evidence, and
- the agency's response to any claims or evidence relating to reprisal.

7.19 If reasonably practicable, the PID Investigator must provide written notice of the completion of the report, with a copy of the report, to the Discloser. The PID Investigator may delete material:

- likely to enable the identification of the Discloser or another person,
 - exempt under Part IV of the *Freedom of Information Act 1982*,
 - that is, or is required to have, a national security or other protective security classification,
 - that is intelligence information,
 - that would contravene a designated publication restriction under section 8 of the PID Act.
- 7.20 The PID Investigator may adopt findings of an investigation or inquiry that was undertaken under another Commonwealth law or power.
- 7.21 The Ombudsman must be notified of the completion of an investigation and provided a copy of the investigation report using [Form 5 – Notification of a finalised PID investigation](#).
- 7.22 The Electoral Commissioner must, as soon as reasonably practicable, ensure that appropriate action in relation to the AEC is taken in response to any recommendations in a report.
- 7.23 There must be due regard to confidentiality in the collection, storage and use of the records.

8. Corruption and criminal offences

- 8.1 *The National Anti-Corruption Commission Act 2022* (NACC Act) includes compulsory referral obligations for 'PID Officers' (which includes the Principal Officer, or their delegates, and Authorised Officers).

Who is a PID Officer for the purposes of the NACC Act?

- 8.2 Under the NACC Act, PID officers are defined as Commonwealth agency employees who are tasked with specific roles under the PID Act. To qualify as a PID officer as per the NACC Act, an employee must have responsibilities for:
- assigning internal disclosures according to Division 1 Part 3 of the PID Act, where they are referred to as 'Authorised Officers', or
 - investigating internal disclosures under Division 2 of Part 3 of the PID Act.

Mandatory referral to the NACC

- 8.3 If, a PID Officer becomes aware of a corruption issue that:
- a) 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, and
 - b) the PID Officer reasonably suspects could involve corrupt conduct that is serious or systemic,
the PID Officer must refer the corruption issue to the NACC as soon as reasonably practicable after becoming aware of it.
- 8.4 However, if a PID Officer believes on reasonable grounds that the NACC Commissioner is already aware of the corruption issue, or the NACC Commissioner decides a referral is not required, then the PID Officer is not required to refer a corruption issue to the NACC.

- 8.5 The PID Officer should, in considering whether the information could involve corrupt conduct that is serious or systemic, have regard to [advice published by the Attorney-General's Department and the NACC](#).
- 8.6 If a disclosure raises a corruption issue and is referred to the NACC, the PID Officer must, as soon as reasonably practicable, notify the Discloser that the matter has been referred to the NACC.
- 8.7 The Authorised Officer must do the following if the NACC issues a 'stop action' direction:
- a) keep a record of the direction including when the direction was made and when the direction no longer applies,
 - b) notify the Ombudsman (or the Inspector-General of Intelligence and Security if applicable) of the direction and the information that was disclosed, the Discloser's name (if known and if the Discloser consents) and the nature of the direction, and
 - c) notify the Discloser of the direction, if reasonably practicable. The Authorised Officer must also keep a written record of whether the notice was given to the Discloser (or if not, why not), including the date and time, the method of notification and the matters included in the notice.

Criminal offences

- 8.8 If the Principal Officer or their delegate has reasonable suspicion based on the evidence from a disclosure or its investigation, that an offence against any Commonwealth, State, or Territory law may have been committed, the Principal Officer or their delegate is permitted to share this information with a member of the appropriate police force responsible for investigating the offence.
- 8.9 It is mandatory to notify the appropriate police force if the suspected offence carries a potential prison sentence of two years or more. This does not apply if the information is related to a corruption matter that has already been referred to the NACC.
- 8.10 If the suspected offence carries a potential prison sentence of less than two years, the Principal Officer may notify a member of the appropriate police force.

9. Protections and support

Protections for Disclosers and witnesses

- 9.1 If a disclosure is made under the PID Act, a Discloser is protected from:
- reprisal or threatened reprisal,
 - criminal prosecution,
 - civil liability (this includes protection from contractual and defamation actions), and
 - administrative liability (e.g. disciplinary action), in relation to the disclosure made under the PID Act.
- 9.2 Protections under the PID Act remain in place even after an investigation has been completed and the matter is concluded.

- 9.3 Witnesses (or people who ‘provide assistance’ under s 12A of the PID Act) are similarly protected.
- 9.4 A Discloser or witness is not protected from liability where:
- they knowingly make a false or misleading statement, or
 - they knowingly breach a designated publication restriction without reasonable excuse.

Support for Disclosers and witnesses

- 9.5 The AEC will take all reasonable steps to encourage and support:
- a) public officials who make, or are considering making, PIDs relating to the agency, and
 - b) any other individuals who provide, or are considering providing, assistance in relation to PIDs.
- 9.6 A potential Discloser may bring a support person when making a disclosure or when attending interviews conducted as part of the investigation of a Disclosure. A support person would be somebody who is not the Authorised Officer or the investigator, and whose role may be to check regularly on the Discloser’s wellbeing. They may provide general reassurance and guidance insofar as the Discloser might experience heightened stress in the workplace during the investigation. While a support person may help the Discloser to identify if other professional supports may be beneficial, it is important to recognise that they will not be qualified, nor expected, to provide psychological counselling.
- 9.7 A person who is subject to an allegation relating to a PID may also bring a support person to interviews.
- 9.8 Disclosers have access to a number of support services provided or facilitated by the AEC, including access to the Employee Assistance Program or contact with Health and Safety Representatives and/or Workplace Contact Officers as relevant/required.
- 9.9 In seeking advice or support from a person external to the process, a potential or actual Discloser should ensure they do not disclose any information that would identify those alleged to have committed wrongdoing or any other information they have a duty to keep confidential under the *Privacy Act 1988* (Cth) or any other relevant legislation.

10. Privacy and record keeping

Confidentiality of identifying information

- 10.1 Under s 20 of the PID Act, it is a criminal offence for any person handling a PID to disclose identifying information about a Discloser unless an exception applies. Exceptions include:
- where the disclosure or use of the information is for the purposes of the PID Act or a law of the Commonwealth,
 - where the Discloser has consented or acted in a way that is inconsistent with keeping their identity confidential, or
 - where the information has already been lawfully published.

Privacy

- 10.2 The AEC will manage personal information collected for the purpose of investigating a PID in accordance with our Privacy Policy as well as the *Privacy Act 1988*, *Archives Act 1983* and the PID Act. Further information is available in the [AEC Privacy Policy](#).

Record keeping

- 10.3 All documentation collected, including information provided as part of the disclosure and copies of all notifications must be retained in accordance with:
- the AEC's Recordkeeping Policy, and
 - any other requirements specified in the PID Act and PID Standard.

11. Reporting to the Ombudsman

- 11.1 Authorised Officers are obliged to report to the Principal Officer when asked.
- 11.2 The Principal Officer or their representative must provide the Ombudsman with detailed information about the disclosures that they have processed for the purposes of preparing a relevant report, following section 15 of PID Standard. The report from the AEC is to be delivered to the Ombudsman within the specified timeframe or as per an agreement with the Ombudsman.
- 11.3 The AEC is dedicated to ongoing review and enhancement of its policies and procedures. This commitment includes regularly assessing the effectiveness of this procedure and the outcomes achieved, through a comprehensive range of audit processes.

12. Notification forms

- 12.1 The *PID Act 2013 (PID Act)* requires Commonwealth agencies including the AEC to notify the Ombudsman of the following:
- an allocation or reallocation of a disclosure,
 - a decision not to allocate a disclosure,
 - a decision not to investigate a disclosure or not further investigate,
 - an extension of time to investigate a PID (PID),
 - a finalised investigation, and
 - a stop action direction issued by the National Anti-Corruption Commission.
- 12.2 Forms are provided to facilitate these notifications and requests.
- 12.3 For disclosures made before 1 July 2023:
- [Form 1 - Notification of an allocation decision](#)
 - [Form 2 – s 48 Decision not to investigate OR not further investigate under the PID Act](#)
 - [Form 3 – Extension of time to investigate a PID](#)
 - [Form 6 – Notification of a stop action direction](#)

12.4 For disclosures made on or after 1 July 2023:

- [Form 1 – Notification of allocation or reallocation](#)
- [Form 2 – Notification of decision not to investigate or not to investigate further](#)
- [Form 3 – Extension of time to investigate a PID](#)
- [Form 4 – Notification of decision not to allocate](#)
- [Form 5 – Notification of a finalised PID investigation](#)
- [Form 6 – Notification of a stop action direction](#)

12.5 Email completed notification forms to pid@ombudsman.gov.au.

13. References

Procedure contact

Director, Corporate Law Team, Legal Services Branch

Version control

Version	Last review date	Action	Next review date	Owner	Approved by
1	2 July 2014	Creation of procedures	N/A	PSB	Electoral Commissioner
2	1 February 2019	Revisions made in line with legislative obligations and material published by the Commonwealth Ombudsman	2020	CSB	Electoral Commissioner
3	13 May 2024	Revisions made in line with new reforms to the PID Act	N/A	LSB	Electoral Commissioner