



PUBLIC INTEREST DISCLOSURE PROCEDURES

I, Lillian Gordon, Acting National Commissioner for Aboriginal and Torres Strait Islander Children and Young People, make the following Procedures under subsection 59(3) of the *Public Interest Disclosure Act 2013*.

These Procedures commence upon signature.

ORIGINAL SIGNED

Lillian Gordon

Acting National Commissioner for Aboriginal and Torres Strait Islander Children and Young People

Date **08 July 2025**

1. BACKGROUND

This document sets out the Procedures of the National Commission for Aboriginal and Torres Strait Islander Children and Young People (**National Commission**) for facilitating and dealing with a public interest disclosure (**PID**) for the purposes of subsection 59(3) of the *Public Interest Disclosure Act 2013* (**PID Act**).

The PID Act facilitates the disclosure and investigation of wrongdoing in the Commonwealth public sector. The PID Act also provides protections for public officials who make disclosures and for persons who provide assistance in disclosure investigations.

The National Commission is committed to the highest standards of ethical and accountable conduct and encourages the reporting of wrongdoing through established mechanisms, including under the PID Act. The Commission will act on disclosures made under the PID Act in accordance with its obligations under the PID Act and protect a person making a disclosure (**a discloser**) from any reprisals or threats of reprisals because they have made, or are suspected to have made, a disclosure.

The National Commission will review these Procedures annually to ensure their continued effectiveness and compliance with the PID Act.

2. WHAT ARE PUBLIC INTEREST DISCLOSURES?

The PID Act distinguishes 5 different types of PIDs. A PID may include an:

1. internal disclosure;
2. external disclosure;
3. emergency disclosure;
4. legal practitioner disclosure;
5. National Anti-Corruption Commission (**NACC**) disclosure.

An internal disclosure is the most common type of disclosure under the PID Act. The PID Act provides certain protections for current and former public officials who make disclosures in the circumstances set out in sections 26(1) and 26(1A) of the PID Act. It is important to note that not all disclosures of information made to the National Commission will be a PID for the purpose of the PID Act. A disclosure of information will only be a PID to which these Procedures relate if it meets the following requirements:

- it is made by a public official or a person who has been a public official (or a person who is deemed to be a public official);¹
- 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 Act;² and
- the disclosure is made to an appropriate person.³

¹ This includes a current or former APS employee or contracted service providers. See sections 26 and 69 of the PID Act.

² What does and does not constitute disclosable conduct is defined in sections 29-33 of the PID Act.

³ Generally, to constitute a PID, the disclosure must first be made to an "authorised internal recipient" or a "supervisor" of the discloser as defined in sections 34 and 8 (respectively) of the PID Act.

An overview of the different types of PIDs and the above key requirements, prepared by the Commonwealth Ombudsman, is included at **Attachment A**.

A disclosure may only be treated as a PID, and the discloser will only receive the benefit of the PID Act protections, if the above requirements are met. It is important to carefully review the contents of the PID Act and seek independent legal advice where appropriate before making a disclosure.

Summaries of the rights, protections and responsibilities of a discloser, a person who is the subject of a disclosure, officials and others involved in PIDs are set out at **Attachments B, C, D and E** respectively.

Further guidance material on PIDs is available on the [Commonwealth Ombudsman's website](#).

2.1. DISCLOSABLE CONDUCT

Examples of what is, and is not, disclosable conduct are included at **Attachment A**.

3. PROCEDURES: RECEIVING A PUBLIC INTEREST DISCLOSURE

3.1. AUTHORISED OFFICERS

Under the PID Act, the principal officer of the National Commission is the National Commissioner. Authorised officers are the principal officer of an agency (i.e. Commissioner) and officers that the principal officer appoints, in writing, as "authorised officers" under the PID Act.⁴

The National Commission maintains a list of authorised officers appointed by the National Commissioner for the purpose of the PID Act. The National Commissioner has appointed public officials who belong to the National Commission as authorised officers to receive disclosures.

A person can make a PID to an authorised officer of the National Commission if the PID relates to the National Commission or the discloser belongs, or last belonged to, the National Commission.

In line with Legal advice, the National Commission recognises that it is best practice to have a dedicated PID Inbox to reduce the practical or operational risk of breaching confidentiality requirements. Noting the current sizing of the National Commission, the use of the centralised administrative mailbox for managing receipt of PIDs will be considered, while ensuring access is appropriately restricted and confidentiality maintained.

This practice will be reviewed as required to ensure their continued effectiveness and compliance with the PID Act.

3.2. SUPERVISOR OF THE DISCLOSER

If a public official discloses information to a supervisor and the supervisor or discloser have reasonable grounds to believe that the information concerns, or could concern, disclosable conduct, and the supervisor is not an authorised officer, the supervisor must:

- inform the discloser that the disclosure could be treated as an internal disclosure for the purposes of the PID Act;

⁴ PID Act, section 36.

- explain to the discloser the procedures under the PID Act are for such a disclosure to be:
 - given to an authorised officer;
 - allocated to the discloser's agency or another agency; and
 - investigated by the principal officer of the National Commission;
- advise the individual about the circumstances (if any) in which a PID must be referred to an agency, or other person or body, under another law of the Commonwealth; and
- explain to the discloser the civil and criminal protections the PID Act provides to protect disclosers, and those providing assistance in relation to such disclosures, from reprisals; and
- following obtaining the discloser's consent to pass on identifying particulars, give the information to an authorised officer of the National Commission as soon as reasonably practicable.

3.3. PROTECTING CONFIDENTIALITY

The authorised officer and the principal officer will take all reasonable steps to protect the identity of a public official who has made a PID from the time of the making of the disclosure.

To protect a discloser's identity, the authorised officer and principal officer will limit the number of people who are aware of the discloser's identity or information that will tend to identify them and remind each person who has that identifying information that they should keep it confidential, and that unauthorised disclosure may be a criminal offence.

The authorised officer and principal officer should, however, make the discloser aware that their identity may become apparent during the course of an investigation.

It is an offence for a public official to disclose information that is likely to enable the identification of a person as a person who has made a PID other than in accordance with the PID Act.

Identifying information about a discloser will not be disclosed to a court or tribunal except where necessary to give effect to the PID Act.

3.4. INTERACTION WITH THE NATIONAL ANTI-CORRUPTION COMMISSION

The *National Anti-Corruption Commission Act 2022* (**NACC Act**) establishes the National Anti-Corruption Commission (**NACC**). Information about the NACC can be found on the [NACC's website](#).

At all stages of dealing with and handling a disclosure, staff members of the National Commission who are exercising powers or functions under Division 1 or 2 of Part 3 of the PID Act (including the principal officer and authorised officers) must be aware of and consider their mandatory obligation under section 35 of the NACC Act.

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

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

A PID officer is not required to refer a corruption issue if they believe on reasonable grounds that that NACC is already aware of the issue. If a PID officer becomes aware of such a corruption issue as a

result of an internal disclosure they must, as soon as reasonably practicable, notify the discloser of the referral of the issue to the NACC under section 35 of the NACC Act.

Where a referral is made to the NACC, the National Commission should continue to deal with / handle the disclosure,⁵ unless a stop action direction has been issued under subsection 43(1) of the NACC Act.

The NACC Act contains particular obligations with respect to stop action directions.

3.5. DISCLOSURE TO THE NATIONAL COMMISSION

A discloser may make a PID to the National Commissioner as the principal officer of the National Commission or an appointed authorised officer by:

Phone:	(02) 5162 5838
E-mail:	admin@ncatsicyp.gov.au

3.6. DISCLOSURE TO THE COMMONWEALTH OMBUDSMAN

If the discloser believes on reasonable grounds that it would be appropriate for the disclosure to be investigated by the Commonwealth Ombudsman, they may make their disclosure directly to an authorised officer of the Commonwealth Ombudsman by contacting:

Phone:	1300 362 072
E-mail:	PID@ombudsman.gov.au
Phone:	GPO Box 442, Canberra ACT 2601

3.7. SUPPORTING INFORMATION TO DISCLOSURE

Disclosers are encouraged to include as much supporting information as possible to enable the merits of the disclosure to be properly assessed. In the absence of sufficient supporting information, the authorised officer may use their discretion not to allocate the disclosure for investigation.

Disclosures that are made anonymously may prevent an authorised officer from assessing or otherwise managing the disclosure. It may also prevent the principal officer from investigating the disclosure.

4. PROCEDURES

4.1. INITIAL CONSIDERATION AND ALLOCATION

4.1.1. STEP 1: CONSIDER WHETHER A DISCLOSURE SHOULD BE ALLOCATED

When an authorised officer receives a disclosure of information (from a discloser, or the discloser's supervisor), they will consider the information disclosed and must allocate a disclosure to one or more agencies (which may or may not be the National Commission) unless the authorised officer is satisfied on reasonable grounds that:

⁵ NACC Act, s 39.

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

The authorised officer must use their best endeavours to make a decision about the allocation of a disclosure within 14 days after the date on which the disclosure is made to, or given to, an authorised officer.

Before making a decision, the authorised officer must consider whether they have satisfied their obligations under section 60 of the PID Act (which relate to providing information to disclosers).

An authorised officer may also consider the re-allocation of a disclosure to another agency after making an original decision allocating the disclosure.

If the authorised officer decides to allocate a disclosure:

- they will allocate the disclosure to a principal officer of one or more agencies for investigation in accordance with the process outlined at Step 2.

If the authorised officer decides not to allocate a disclosure

The authorised officer must:

- if reasonably practicable, give written notice to the discloser of:
 - the decision not to allocate the disclosure and the reasons for the decision;
 - if the authorised officer is satisfied on reasonable grounds that the conduct disclosed would be more appropriately investigated under another law or power, the details of:
 - the other law or power;
 - the agency or other person or body to which the conduct has been, or is to be referred;
 - the steps taken or proposed to be taken to refer the conduct disclosed, or to facilitate its referral, for investigation; and
 - otherwise, any other course of action that might be available to the discloser under another law or power.
- give written notice to the Ombudsman (or the Inspector-General of Intelligence and Security (IGIS) if the conduct disclosed relates to an intelligence agency or the Australian Criminal Intelligence Commission (ACIC) or the Australian Federal Police (AFP) in relation to their intelligence functions) of:
 - the decision not to allocate the disclosure and the reasons the decision;
 - whether the authorised officer has taken, or proposes to take, action to refer the conduct disclosed, or to facilitate its referral, for investigation under another law or power, and if so, details of:
 - the other law or power;
 - the agency or other person or body to which the conduct has been, or is to be referred;
 - the steps taken or proposed to be taken to refer the conduct disclosed, or to facilitate its referral, for investigation.

- if the authorised officer is satisfied on reasonable grounds that the conduct disclosed would be more appropriately investigated under another law or power, take reasonable steps as soon as reasonably practicable to refer the conduct disclosed, or facilitate its referral, for investigation under the other law or power.

If a stop action direction prevents the allocation of the disclosure

If a stop action direction under the NACC Act prevents the authorised officer from allocating a disclosure, the authorised officer must give written notice to the Ombudsman or IGIS (if the disclosure concerns conduct relating to an intelligence agency, or the IGIS, or ACIC or AFP in relation to their intelligence functions), of:

- the information that was disclosed to the authorised officer;
- the conduct disclosed; and
- if the discloser's name and contact details are known to the authorised officer, and the discloser consents to the principal officer and the Ombudsman/IGIS being informed – the discloser's name and contact details;
- the stop action direction under the NACC Act that prevents allocation of some or all of the disclosure.

The authorised officer must also notify the discloser of the referral to the NACC as soon as reasonably practicable.

The authorised officer should also consider whether it is appropriate to notify a discloser that a stop action direction has prevented the allocation of the disclosure. The authorised officer must carefully consider the terms of any stop action direction and consult with the principal officer (who may also consult with the NACC) prior to notifying a discloser.

Record keeping

An appropriate written record must be kept by the authorised officer of:

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

If a stop action direction prevents the allocation of a disclosure to an agency, a written record must be kept of the details of the direction, including when the direction was made and when the stop action direction no longer applies. The written record must also indicate whether the principal officer of the relevant agency considers that it is reasonably practicable or appropriate for the discloser to be given a copy of the notice.

4.1.2. STEP 2: DECIDE WHICH AGENCY THE DISCLOSURE SHOULD BE ALLOCATED TO

If the authorised officer decides to allocate the disclosure, the authorised officer must allocate the disclosure to one or more agencies.

When deciding which agency to allocate a disclosure, the authorised officer must have regard to:

- the principle that an agency should not handle a disclosure unless some or all of the conduct disclosed relates to the agency (unless the agency is the Ombudsman, IGIS, or an investigative agency); and
- any other matters the authorised officer considers relevant, including:
 - whether another agency in the same portfolio as the recipient agency would be better placed to handle the disclosure; and
 - any recommendation from the Ombudsman or IGIS about the allocation of the disclosure following a review under section 55 of the PID Act.

The authorised officer must not allocate a disclosure to another agency unless an authorised officer of that agency has consented to the allocation.

4.1.3. STEP 3: CONFIRM WHETHER THE DISCLOSER CONSENTS TO BEING IDENTIFIED

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

4.1.4. STEP 4: INFORM RELEVANT PERSONS OF THE ALLOCATION

When the authorised officer allocates the handling of a disclosure to an agency the authorised officer must, as soon as reasonably practicable, give written notice to:

- the principal officer of that agency;
- the Ombudsman (unless the authorised officer allocated the disclosure to the Ombudsman, the IGIS, an intelligence agency or the ACIC or AFP in relation to their intelligence functions); and
- the IGIS (if the authorised officer allocated the disclosure to an intelligence agency or the ACIC or AFP in relation to their intelligence functions).

The written notice must set out the following matters:

- the allocation to the agency;
- the information that was disclosed to the authorised officer;
- the conduct disclosed; and
- if the discloser's name and contact details are known to the authorised officer, and the discloser consents to the principal officer and the Ombudsman/IGIS being informed – the discloser's name and contact details.

Informing the discloser

If reasonably practicable, the authorised officer must also give a copy of the notice to the discloser as soon as reasonably practicable after the allocation.

4.1.5. STEP 5: MAKE A RECORD OF THE ALLOCATION DECISION

Record of decision

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 other agency to which the allocation is made; and
- any consent provided by the discloser.

Record of communication of decision to discloser

In addition, the authorised officer must keep appropriate records of:

- whether the notice provided under step 4 (or a copy of the notice) was given to the discloser, and if not, why not;
- if the notice was given to the discloser:
 - the day and time the discloser was given the notice;
 - the means by which the discloser was given the notice; and
 - the matters included in the notice.

These records should be kept confidential.

4.2. REPRISAL RISK ASSESSMENT

4.2.1. STEP 1: CONDUCT A RISK ASSESSMENT

As soon as possible after a disclosure is received, the authorised officer will also assess the risk that reprisals may be taken in relation to a disclosure.

Reprisal occurs if someone causes, by act or omission, any detriment to another person because they believe or suspect that person, or any other person, has made, may have made, proposes to make, or could make a PID. Reprisal also includes a threat to take reprisal action.

Authorised officers should assess the risk of reprisal for the discloser, and any other person (including witnesses and staff) who might be suspected to have made, or could make, disclosures.

If it is not feasible for an authorised officer to conduct an initial assessment, the authorised officer should ensure that, within a reasonable time, the information is passed to another officer with the requisite skills and experience to conduct the risk assessment.

In assessing the risk of reprisals, the authorised officer should use the following risk matrix:

		Likely seriousness of reprisal			
Likelihood of reprisal being taken		Minor	Moderate	Major	Extreme
	Almost certain	Medium	High	High	High
	Likely	Medium	Medium	High	High
	Unlikely	Low	Low	Medium	Medium
	Highly unlikely	Low	Low	Low	Medium

The authorised officer should first consider the risk factors and what reprisal action may be taken, and then assess the seriousness of that reprisal action and the likelihood of reprisal action being taken.

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, the authorised officer should take into account all relevant factors, including the following factors:

- The likelihood of the discloser being identified, which may involve a consideration of:
 - the size of the work area in which the discloser is located; and
 - the number of people who are aware of the information leading to the disclosure.
- The number of people implicated in the disclosure.
- The subject matter of the disclosure.
- The number of people aware of the disclosure or 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 received.
- Whether there are circumstances that will make it difficult for the discloser not to discuss the disclosure 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 investigation of the disclosure can occur while maintaining confidentiality.

Criteria for assessing likely seriousness of potential reprisals

In considering the likely seriousness of any potential reprisal, the authorised officer should take into account all relevant factors, including the following factors:

- The significance of the issue being disclosed.
- The likely outcome if the disclosure is substantiated.
- The subject matter of the disclosure.
- Whether the discloser/other person is isolated.
- Whether the discloser/other person 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 or another person.
- The relative positions of the discloser/other persons and the person whose alleged wrongdoing is the subject of the disclosure.

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.

4.2.2. STEP 2: DEVELOP A RISK MITIGATION STRATEGY IF NECESSARY

Where the risk level is anything greater than low, the authorised officer will develop a risk management strategy for mitigating the risk of reprisals against the discloser. This strategy may include some or all of the support measures set out at paragraph 4.3 of these Procedures and, in appropriate circumstances could include raising the matter with employees by reminding staff that taking or threatening to take a reprisal is a criminal offence.

4.2.3. STEP 3: MONITOR AND REVIEW RISKS

The authorised officer should monitor and review the risk assessment as necessary throughout the investigation process.

4.3. SUPPORT FOR DISCLOSERS AND WITNESSES

Regardless of the outcome of the risk assessment, the authorised officer and principal officer will take reasonable steps to provide support and to protect public officials who belong to the National Commission who have made a PID from detriment or threats of detriment relating to the PID. This obligation also extends to other persons who provide, or are considering providing, assistance in relation to such PIDs.

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

- appointing a support person to assist the discloser or witness, who is responsible for checking on the wellbeing of the discloser or witness regularly;
- informing the discloser of the progress of the investigation;
- advising the discloser of the availability of the Employee Assistance Program;
- where there are any concerns about the health and wellbeing of the discloser or witness, liaising with officers responsible for work health and safety in the National Commission; or
- transferring the discloser or witness to a different area within the workplace.

4.4. SUPPORT FOR A PERSON AGAINST WHOM A DISCLOSURE HAS BEEN MADE

The authorised officer and principal officer will also take steps to support any employee who is the subject of a PID.

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

- advising the employee of their rights and obligations under the PID Act and about the National Commission's investigation procedures, including the employee's rights to procedural fairness;
- informing the employee of the progress of the investigation;
- advising the employee of the availability of the Employee Assistance Program;
- ensuring that the identity of the employee is kept confidential as far as reasonably practicable;
- where there are any concerns about the health and wellbeing of the employee, liaising with officers responsible for work health and safety in the National Commission; and
- transferring the employee to a different area within the workplace.

4.5. CONSIDERATION AND INVESTIGATION BY PRINCIPAL OFFICER

4.5.1. STEP 1: PROVIDE INITIAL INFORMATION TO DISCLOSERS

Where reasonably practicable, within 14 days of an authorised officer allocating a PID to an agency, the principal officer will provide the discloser with information about the principal officer's powers, which include to:

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

4.5.2. STEP 2: CONSIDER WHETHER TO INVESTIGATE THE DISCLOSURE

If allocation of a PID to the National Commission occurs, the principal officer must investigate the disclosure, unless there is a basis under the PID Act to decide not to investigate the disclosure or the principal officer cannot investigate the disclosure (or investigate the disclosure further) because of a stop action direction under the NACC Act.

The principal officer may decide not to investigate a disclosure (or not to investigate a disclosure further) if:

- the discloser is not and has not been a public official;
- the information does not, to any extent, concern serious disclosable conduct;
- the disclosure is frivolous or vexatious;
- the information is the same or substantially the same as information previously disclosed under the PID Act and a decision had been previously made under section 48 not to investigate or further investigate the disclosure;
- the conduct disclosed (or substantially the same conduct) is being investigated under another law or power and the principal officer is satisfied, on reasonable grounds, that it would be inappropriate to conduct a PID investigation at the same time;
- the conduct disclosed (or substantially the same conduct) has been investigated under another law or power and the principal officer is satisfied, on reasonable grounds, that there are no further matters considering the conduct that warrant investigation;

- the principal officer is satisfied, on reasonable grounds, that the conduct disclosed would be more appropriately investigated under another law or power (unless this view is reached because the conduct disclosed raises a corruption issue)
- the principal officer has been informed by the discloser, an authorised officer of the agency, or a principal officer or authorised officer of another agency, that the discloser does not wish for the investigation of the disclosure to be pursued and the principal officer is satisfied, on reasonable grounds, that there are no matters concerning the disclosure that warrant investigation;
- it is impracticable for the disclosure to be investigated because:
 - the discloser's name and contact details have not been disclosed;
 - the discloser fails or is unable to give such information or assistance as the person who is or will be investigating asks the discloser to give; or
 - of the age of the information.

4.5.3. STEP 3: MAKE A DECISION AND NOTIFY THE DISCLOSER AND OMBUDSMAN

If the disclosure will be investigated

If the principal officer decides to investigate the disclosure, they will give written notice to the discloser, as soon as reasonably practicable:

- that they are required to investigate the disclosure; and
- of the estimated length of the investigation.

If the disclosure will not be investigated

If the principal officer decides not to investigate (or further investigate) a disclosure under the PID Act, they will:

- if reasonably practicable, give written notice to the discloser that the principal officer has decided not to investigate (or further investigate) the disclosure, identifying:
 - the reasons for the decision not to investigate;
 - if the principal officer decides that the disclosure would be more appropriately investigated under another law or power, details of:
 - the other law or power;
 - the agency or other person or body to which the conduct has been or will be referred;
 - the steps taken or proposed to be taken for the conduct to be referred or to facilitate referral.
- the principal officer may delete from the reasons any reasons that would cause the document:
 - to be exempt for the purposes of Part IV of the *Freedom of Information Act 1982*;
 - to have or be required to have, a national security or other protective security classification; or
 - to contain intelligence information.
- give written notice to the Ombudsman of the decision not to investigate (or further investigate) and the reasons for that decision. If the principal officer decides that the disclosure would be

more appropriately investigated under another law or power, the principal officer must provide the Ombudsman with details of:

- the other law or power;
- the agency or other person or body to which the conduct has been or will be referred;
- the steps taken or proposed to be taken for the conduct to be referred or to facilitate referral.

If the principal officer decides that the disclosure would be more appropriately investigated under another law or power, the principal officer must, as soon as reasonably practicable, take reasonable steps to refer the conduct disclosed, or facilitate its referral, for investigation under the other law or power.

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

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

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

4.5.4. STEP 4: CONDUCT AN INVESTIGATION

The principal officer may investigate the matter personally, or may refer the matter to an investigator to assist in determining whether there are one or more instances of disclosable conduct.

The principal officer must investigate whether there are one or more instances of disclosable conduct. Instances of disclosable conduct may relate to information that is disclosed or information obtained in the course of the investigation, unless the principal officer is satisfied on reasonable grounds that such information is tangential or remote to the disclosure.

General principles

The following general principles will apply to the conduct of investigations:

- maintaining the confidentiality of the identity of the discloser will be paramount when conducting the investigation;
- the investigation process will be consistent with the principles of procedural fairness;
- the investigation will be carried out with as little formality as a proper consideration of the matter allows;
- documentation of actions, conversations and decisions relating to a disclosure should be kept;
- a decision whether evidence is sufficient to prove a fact will be determined on the balance of probabilities; and
- a person who is the subject of the investigation will be provided with an opportunity to respond and provide evidence in relation to the allegations.

Aside from compliance with these principles, the principal officer is free to conduct the investigation as they see fit. The method of the investigation may vary depending on the alleged conduct being investigated.

Additional procedures required in particular circumstances

If a disclosure relates to conduct that would require the National Commission to take steps under the National Commission's Fraud Control Plan, the processes set out in those procedures and policies must be complied with in the conduct of an investigation under these procedures, to the extent that the rules are not inconsistent with the PID Act.

Obtaining information

During the investigation, the principal officer may, for the purposes of the investigation, obtain information from such persons and make such inquiries as they see fit.

During the investigation, an interviewee will be informed of:

- the identity and function of each individual conducting the interview;
- the process of conducting an investigation;
- the authority of the principal officer/delegate/investigator under the PID Act and supporting delegations to conduct the investigation;
- inferences that may be drawn, negative or otherwise, from an interviewee declining to participate in person in an interview, if relevant; and
- the protections provided under Part 2 of the PID Act.

The principal officer will ensure:

- an audio or visual recording of the interview is only made with the interviewee's knowledge;
- the interviewee is given an opportunity to make a final statement or comment or express a position when the interview ends; and
- any final statement, comment or position by the interviewee is included in the record of the interview.

In conducting the investigation, the principal officer may adopt findings set out in reports of other investigations or inquiries under other laws or powers, or investigations under the PID Act.

Deciding not to investigate further

The principal officer may decide during the course of an investigation not to investigate further on one or more of the grounds in section 48 of the PID Act (see considerations summarised in paragraph 4.5.2 (above)). If the principal officer makes such a decision, they must provide the relevant notifications set out in paragraph 4.5.3.

Referral of information to police and others

If, during the course of the investigation, the person conducting the investigation suspects on reasonable grounds that information disclosed or obtained in the course of the investigation is evidence of the commission of an offence, they **may** disclose the information to a member of an Australian police force responsible for the investigation of the offence.

If the information relates to an offence that is punishable by a period of imprisonment for at least two years, the principal officer **must** disclose the information to a member of an Australian police force responsible for the investigation of the offence. This is unless the investigator suspects on reasonable grounds that the relevant

information raises a corruption issue and the corruption issue has already been referred to the NACC or IGIS (as relevant), or that agency is already aware of the issue.

4.5.5. STEP 5: PREPARE INVESTIGATION REPORT

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

- the initial allocation or reallocation of the disclosure to the National Commission;
- in the case of a re-investigation, the day on which the principal officer decides to reinvestigate the disclosure; or
- to the extent that a stop action direction under the NACC Act prevented the investigation, the day on which the principal officer becomes aware that a stop direction under the NACC Act which prevented the investigation no longer applies

The Ombudsman may extend, or further extend, the 90 day period by such period as the Ombudsman considers appropriate on application by the principal officer.

If the Ombudsman grants an extension, the principal officer will, as soon as reasonably practicable, inform the discloser of the progress of the investigation.

Content of report

The report must set out:

- the matters considered in the course of the investigation;
- the duration of the investigation;
- the principal officer's findings (if any);
- the action (if any) that has been, is being or is recommended to be taken;
- any claims of reprisals being taken against the discloser or other persons that relate to the matters considered in the course of the investigation including any related evidence;
- the agency's response to any claims or evidence relating to the reprisal;
- to the extent relevant:
 - the steps taken to gather evidence;
 - a summary of the evidence, as well as any findings and recommendations made based on that evidence;
 - any regulations, rules, administrative requirements or similar matters to which the disclosable conduct relates;
 - whether there have been one or more instances of disclosable conduct.

4.5.6. STEP 6: PROVIDE A REPORT TO THE DISCLOSER AND OMBUDSMAN

The principal officer must provide written notice of the completion of the investigation and a copy of the report to the discloser (if reasonably practicable) and to the Ombudsman. The notice and report must be provided within a reasonable time after preparing the report.

However, the principal officer may delete from the copy of the report given to the discloser any material:

- that is likely to enable the identification of the discloser or another person;

- would be exempt for the purposes of Part IV of the *Freedom of Information Act 1982*;
- would require a national security or other protective security clearance;
- contains intelligence information; or
- contravenes a designated publication restriction as defined in the PID Act.

The principal officer may delete from a copy of the report given to the Ombudsman any material:

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

4.6. REPORTING TO OMBUDSMAN

The principal officer will ensure that records are kept so that the principal officer can comply with their obligation to provide the following information to the Ombudsman as required:

- the number of PIDs received by authorised officers of the agency during the period covered by the report;
- the kinds of disclosable conduct to which those PIDs related;
- the number of disclosures allocated to the agency during the period covered by the report;
- the number of disclosure investigations that the principal officer conducted during the period covered by the report;
- the time taken to conduct those investigations;
- the actions that the principal officer has taken during the period covered by the report in response to recommendations in reports relating to those disclosure investigations;
- any other information requested by the Ombudsman.

5. RECORD KEEPING

5.1. RECORDS

Access to any records kept under this Procedure must be restricted to the authorised officer, the National Commissioner or other employees in the National Commission who require access in order to perform some function under the PID Act or for the purpose of another law of the Commonwealth.

When a person ceases their role as an authorised officer at the National Commission, they must transfer access to records relating to PIDs to another authorised officer within the National Commission.

6. MONITORING AND EVALUATION

6.1. REPORTING

The authorised officer must provide a six-monthly report to the National Commissioner specifying the number of PIDs received by the authorised officer and the nature of the disclosable conduct for each disclosure (by reference to the relevant item or paragraph in the definition in the PID Act). The report must also include any disclosures that have been allocated to the National Commission by another Commonwealth agency's authorised officer.

The National Commissioner will prepare the National Commission's annual report to the Ombudsman on disclosures made during the financial year.

ATTACHMENT A – RELEVANT EXTRACTS FROM THE COMMONWEALTH OMBUDSMAN'S AGENCY GUIDE TO THE PUBLIC INTEREST DISCLOSURE ACT 2013

(published July 2023 on www.ombudsman.gov.au)

Who can make a public interest disclosure?

A person must be a current or former 'public official', as defined in section 69-70 of the PID Act, to make a public interest disclosure (s 26(1)(a)).

In general, a person can make a disclosure if they belong, or previously belonged, to one of the agencies covered by the PID Act. This includes Commonwealth public servants, members of the Defence Force, appointees of the Australian Federal Police, Parliamentary Service employees, directors or staff of Commonwealth companies, statutory office holders or any other person who exercises powers under a Commonwealth law.

Individuals and organisations that provide goods or services under a Commonwealth contract (defined in s 30(3)) and their officers or employees, are also public officials for the purposes of the PID Act. This includes subcontractors who are responsible for providing goods or services, either directly or indirectly, to an agency covered by the PID Act for the purposes of a Commonwealth contract (s 30(2)).

The PID Act specifically excludes some individuals from being public officials under the Act. Public official does not include a Member of Parliament, staff employed under the *Members of Parliament (Staff) Act 1984* (MOP(S) Act) employees, a judicial officer, a member of a Royal Commission or grant recipients.

A public official whose ordinary functions include sharing information about wrongdoing in the agency with their supervisor or an authorised officer (for example, those working in internal fraud control, case management, or protective security) will not meet the requirements for making an internal disclosure if the disclosure is made in the course of performing the discloser's ordinary functions as a public official (s 26(1)). If a public official in such a role intends to make a public interest disclosure, they will need to clearly express that intent when making the disclosure.

Deeming individuals to be public officials

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

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

- a current or former volunteer with an agency;
- a member of an advisory body to a Commonwealth agency (where the member's terms of engagement do not meet the definition of a public official);

- an employee of an organisation that receives grant funding from the Australian Government; or
- state and territory department officials who work alongside Commonwealth officials.

An authorised officer may also decide to deem a person to be a public official if they do not know, or cannot be certain, whether the person is a public official. For example, the person may be unwilling to provide identifying information for fear of reprisal. The relevant test is that the person was not a public official at the time the information they are disclosing was obtained (s 70(1)(b)). If the authorised officer is otherwise satisfied that the person is or has been a public official, then deeming is not required.

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

What can be disclosed?

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

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

- an agency;
- a public official in connection with their position;
- a contracted Commonwealth service provider in connection with entering into or giving effect to the contract.

The kinds of conduct that a disclosure can be made about are listed in the table to section 29(1) of the PID Act. They are conduct that:

- contravenes a Commonwealth, State or Territory law;
- in a foreign country, contravenes a foreign law that applies to the agency, official or service provider;
- perverts the course of justice;
- is corrupt;
- constitutes maladministration, including conduct that is based on improper motives or is unreasonable, unjust, oppressive or negligent;
- is an abuse of public trust;
- involves fabrication, falsification, plagiarism or deception relating to scientific research, or other misconduct in relation to scientific research, analysis or advice;
- results in wastage of public money or public property;
- unreasonably endangers health and safety;
- endangers the environment;
- is prescribed by the PID rules (s 29(1)).

Disclosable conduct also includes conduct by a public official that:

- involves or is engaged in for the purposes of abusing their position as a public official; or

- could give reasonable grounds for disciplinary action resulting in the termination of the public official's engagement or appointment (s 29(2)).

What is not disclosable conduct?

Personal work-related conduct

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

- interpersonal conflict, such as bullying or harassment;
- changing a person's duties;
- disciplinary action;
- adverse decisions about promotion or temporary acting arrangements;
- terms and conditions of employment or engagement;
- suspension or termination;
- actions that could be reviewed under s 33 of the *Public Service Act 1999*, or comparable review processes relating to terms or conditions of engagement or appointment.

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

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

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

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

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

Conduct relating to courts, tribunals and the Parliament

The PID Act has limited application to courts and tribunals. The following aspects of court and tribunal operations are excluded from the categories of disclosable conduct in the PID Act (s 32):

- the conduct of judicial officers (defined in s 32(1));
- the judicial functions of court staff, tribunal staff or tribunal members;
- the conduct of tribunal members or tribunal staff when exercising a power of the tribunal;
- any other conduct related to a court or tribunal unless it is of an administrative nature and does not relate to the management or hearing of matters before the court or tribunal.

The conduct of members of parliament or of MOP(S) Act employees is not covered by the PID Act (because they are not 'public officials' as defined in s 69). However, the departments of the Parliament and their employees are covered.

Disagreement with government policy or actions

It is not disclosable conduct just because a person disagrees with:

- a government policy or proposed policy;
- action or proposed action by a minister, the Speaker of the House of Representatives or the President of the Senate;
- expenditure or proposed expenditure related to such policy or action (s 31).

Disclosable conduct also does not include judicial conduct, that is, the conduct of judicial officers, the judicial functions of court staff, tribunal staff or tribunal members, or any other conduct related to a court or tribunal unless it is of an administrative nature and does not relate to matters before the court or tribunal (s 32).

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

Intelligence agencies

Disclosable conduct also does not include the proper performance of the functions and proper exercise of the powers of an intelligence agency or its officials (s 33).

Making a disclosure

In order to gain the protections available under the PID Act, a disclosure must be made to an authorised recipient (s 26). The PID Act focuses on the reporting and investigating of wrongdoing within government (internal disclosures) but allows for reporting outside government in specified circumstances.

Making an internal disclosure

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

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

Authorised officers are the principal officer of an agency (i.e. the agency head), and officers that the principal officer appoints as authorised officers under the PID Act (s 36). If a public official has information about suspected wrongdoing in an agency other than the one in which they work, they can choose to make their disclosure directly to an authorised officer in that other agency. However, if the conduct disclosed relates to an intelligence agency, the public official must disclose it to an authorised officer in that agency (or the IGIS) and not to their own agency.

The *Public Interest Disclosure Rules 2025* (PID Rules) which commenced on 26 March 2025 ensures that all Commonwealth statutory officeholders come within the framework of the PID Act (except for those statutory officeholders expressly excluded by ss 69(2) and (4) of the PID Act). Section 6 of the PID Rules ensures that all statutory officers 'belong to' an agency for the purposes of the PID Act, which in turn would make it possible to identify an 'authorised internal recipient' for disclosures about their conduct.

A public official can also make a disclosure to authorised officers of the Commonwealth Ombudsman, if they believe on reasonable grounds that it would be appropriate for the Ombudsman to investigate (ss 26(1), 34). This could include, but would not be limited to, circumstances where the discloser believes that the agency will not take appropriate action to deal with the conduct disclosed.

If the matter involves an intelligence agency or agency with intelligence functions (see s 8 definition), there are 2 options. Either the public official can make a disclosure to an authorised officer in the intelligence agency or, if they believe on reasonable grounds that it would be appropriate for the IGIS to investigate, the public official may make a disclosure to an authorised officer of the IGIS (see www.igis.gov.au).

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

Making a disclosure internally gives the agency the chance to investigate the matter and remove any danger or correct any wrong practices as quickly as possible.

Making other disclosures

A public official must use one of the proper avenues to gain the protections available under the PID Act. This means that a public official will not receive these protections if they give the information to someone outside government, for example a journalist or union representative, unless the conditions for an external or emergency disclosure are met. If these conditions are not met, they may be in breach of their duty to maintain appropriate confidentiality in relation to official information they have gained in the course of their work, or be subject to other civil, criminal or disciplinary action.

External disclosures

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

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

Additional restrictions apply to external disclosures (s 26):

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

The external disclosure must not include intelligence information, including sensitive law enforcement information, and none of the information disclosed can concern the conduct of an intelligence agency. Further, the definition of 'disclosable conduct' excludes conduct that an

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intelligence agency, or one of its officials, engages in as part of the proper exercise of the intelligence agency's functions.

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

Emergency disclosure

If a public official believes on reasonable grounds that the information they have involves a substantial and imminent danger to the health or safety of one or more people or to the environment, they may make an emergency disclosure to any person except a foreign public official (s 26(1) item 3), provided they meet certain requirements:

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

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

Legal practitioner disclosure

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

There is also a specific category of public interest disclosure under the PID Act – 'a legal practitioner disclosure' – which allows a public official to disclose information to an Australian legal practitioner for the purposes of seeking legal advice or professional assistance in relation to the official's actual or proposed disclosure elsewhere (i.e., an internal disclosure, an emergency disclosure or an external disclosure).

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

For a 'legal practitioner disclosure', the official must not disclose intelligence information including sensitive law enforcement information (s 26(1) item 4).

Disclosures to the NACC

A public official may make a public interest disclosure directly to the NACC. The NACC Commissioner has discretion to investigate a corruption issue raised through a disclosure if they are of the opinion that the issue could involve serious or systemic corrupt conduct. If the

disclosure is made to the NACC and the Commissioner decides not to investigate it, the Commissioner may refer it back to the relevant agency for consideration or investigation.

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

ATTACHMENT B – RIGHTS, PROTECTIONS AND RESPONSIBILITIES OF DISCLOSERS

Rights and protections

A discloser has right to the protections set out in the PID Act, including:

- protection from the unauthorised disclosure of their identity;
- protection from reprisal;
- protection from civil, criminal and administration liability for making a public interest disclosure (noting that the making of 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).

The authorised officer and principal officer will take reasonable steps to protect the discloser against reprisal.

The taking of reprisal action against a discloser is an offence under the PID Act and can lead to imprisonment or the imposition of penalties.

If a discloser believes they are suffering or have been threatened with reprisal, they may apply to Court for an injunction, or for compensation for loss, damage or injury suffered from a reprisal.

During the PID Act process, a discloser will be:

- advised of the following:
 - any decision that a disclosure is not a disclosure within the meaning of the PID Act;
 - the allocation of their disclosure;
 - the decision of the National Commission to investigate their disclosure;
 - the estimated duration of the investigation into their disclosure;
 - if the National Commission 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 PID Act and an extension of time is granted by the Ombudsman, the progress of the investigation; and
 - 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 PID Act).
- given support in accordance with paragraph 4.3 of the procedures.
- able to seek assistance from the Ombudsman in relation to the operation of the PID Act.

Responsibilities

A discloser must:

- have regard to the National Commission's advice with respect to the making of disclosures;
- comply with the PID Act requirements and the procedures set out in this document when making a PID;
- use their best endeavours to assist the principal officer of an agency in the conduct of an investigation;
- use their best endeavours to assist the Ombudsman in the performance of the Ombudsman's functions under the PID Act;

- use their best endeavours to assist the IGIS in the performance of IGIS's functions under the PID Act;
- report to the authorised officer any detriment the discloser believes they have been subjected to as a result of making the disclosure; and
- 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.

Advice to disclosers

When making a disclosure, a discloser should be clear and factual, and avoid speculation, personal attacks and emotive language, which can divert attention from the real issues in their disclosure.

When making a disclosure, disclosers should consider providing the following information:

- their name and contact details (if they wish);
- the nature of the suspected wrongdoing;
- who they believe committed the suspected wrongdoing;
- when and where the suspected wrongdoing occurred;
- how they became aware of the suspected wrongdoing;
- whether the suspected wrongdoing has been reported to anyone else;
- if so, what that person has done to fix, stop or prevent it;
- whether they are concerned about possible reprisal as a result of making a disclosure.

Disclosers should not investigate a matter themselves before making their disclosure.

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

ATTACHMENT C – RIGHTS, RESPONSIBILITIES AND PROTECTIONS OF PERSONS WHO ARE THE SUBJECT OF A PID

Rights

A National Commission employee who is the subject of a disclosure will be:

- given support in accordance with paragraph 4.4 of the Procedures;
- afforded procedural fairness; and
- able to seek assistance from the Ombudsman in relation to the operation of the PID Act.

Responsibilities

A National Commission employee who is the subject of a disclosure must:

- use their best endeavours to assist the principal officer of any agency in the conduct of an investigation;
- use their best endeavours to assist the Ombudsman in the performance of the Ombudsman's functions under the PID Act;
- use their best endeavours to assist the IGIS in the performance of IGIS's functions under the PID Act;
- comply with action taken by the National Commission to address risks or concerns in relation to the PID.

An employee who is the subject of a disclosure should also be aware that:

- the outcome of an investigation under the procedures set out in this document may result in another, different investigation (for example, a Code of Conduct investigation) taking place; and
- the National Commission may decide to take action in relation to the employee, for example temporarily transferring the employee to another work area without the employee's consent, in order to discharge its obligations including under the PID Act and work health and safety legislation.

ATTACHMENT D – OBLIGATIONS AND PROTECTIONS FOR OFFICIALS UNDER THE PID ACT

Additional obligations of the Principal Officer

The principal officer must:

- ensure that the number of authorised officers in the National Commission is sufficient to ensure that they are readily accessible by public officials who belong to the National Commission and that public officials are aware of the identity of the authorised officers;
- take reasonable steps to encourage and support public officials who make or are considering making PIDs, and persons who provide or are considering providing assistance in relation to PIDs;
- establish PID Procedures consistent with the PID Act and PID Standard;
- as soon as reasonably practicable, ensure that appropriate action in relation to the agency is taken in response to any recommendations in a PID report;
- take reasonable steps to provide ongoing training and education to public officials about the PID Act;
- ensure that officials who are appointed to perform functions and duties or exercise powers under the PID Act are given appropriate training and education within a reasonable time after their appointment;
- take reasonable steps to protect public officials who belong to the Commission against reprisals that have been, or may be taken in relation to PIDs that have been made, may have been made, are proposed to be made or could be made to an authorised officer or supervisor.

Additional obligations of authorised officers

An authorised officer must

- if an individual discloses, or proposes to disclose information to an authorised officer of the National Commission, and the authorised officer has reasonable grounds to believe that the information concerns or could concern disclosable conduct and the individual may be unaware of the consequences of making the disclosure:
 - inform the individual that the disclosure could be treated as an internal disclosure for the purposes of the PID Act;
 - explain what the PID Act requires for the disclosure to be an internal disclosure; and
 - advise the individual of the circumstances in which a PID must be referred to an agency or other person or body under another law of the Commonwealth;
 - advise the individual of any orders or directions of which the authorised officer is aware that are designated publication restrictions that may affect disclosure of the information; and
- take reasonable steps to protect public officials who belong to the National Commission against reprisals that have been, or may be taken in relation to PIDs that the authorised officer suspects on reasonable grounds have been made, may have been made, are proposed to be made or could be made, to them

Additional obligations of supervisors

The obligations of supervisors are set out in paragraph 3.2.2 of the Procedures.

Protection from liability

A person who is the principal officer, a delegate of the principal officer, an authorised officers, a supervisor of a person who makes a disclosure or a person assisting the principal officer (or

delegate) is not liable to any criminal or civil proceedings, or any disciplinary action, for or in relation to any act or matter done or omitted to be done, in good faith:

- the performance or purported performance or any functions conferred on the person by the PID Act;
- the exercise, or purported exercise, or any power conferred on the person by the PID Act;
- in the case of a person assisting a principal officer or delegate, in assisting the principal officer or delegate in doing anything mentioned above.

ATTACHMENT E – RIGHTS, RESPONSIBILITIES AND PROTECTIONS OF OTHER PERSONS

Responsibilities of public officials

Under section 61 of the PID Act, public officials must use their best endeavours to:

- assist the principal officer in the conduct of an investigation under the PID Act;
- assist the Ombudsman in the performance of the Ombudsman's functions under the PID Act;
- assist the IGIS in the performance of IGIS's functions under the PID Act;
- assist any other public official to exercise a right, or performance any duty or function, under the PID Act.

Immunities from liability for witnesses

A witness (other than a discloser) will not be subject to any civil, criminal or administrative liability because they give information or produce a document or other thing, or answer a question, that the witness considers on reasonable grounds to be relevant to:

- the making of a decision in relation to the allocation of a disclosure under section 43 of the PID Act;
- a disclosure investigation or a proposed disclosure investigation; or
- a review or proposed review by the Ombudsman or IGIS under section 55(3) of the PID Act about the handling of a disclosure.

This immunity does not apply to any liability of the witness for:

- making false or misleading statements;
- contravening a designated publication restriction;
- particular offences under the Criminal Code;
- their own conduct (the immunity only relates to the act of providing assistance in relation to the public interest disclosure).