

1 February 2019

# Public Interest Disclosure Procedures

**Corporate Services Branch**

## Contents

Objective .....	2
Statement of Commitment .....	2
Application .....	2
Definitions applicable to the Procedures .....	2
What is a public interest disclosure? .....	3
Who can make a public interest disclosure? .....	4
Who can receive a public interest disclosure? .....	4
How to make a public interest disclosure .....	4
Confidentiality .....	5
Authorised Officer to deal with disclosure .....	6
Allocation of a disclosure .....	7
Investigation of a disclosure .....	7
Support for Disclosers .....	9
Protection from reprisal .....	9
Record keeping .....	10
Investigation complete .....	10
References & further guidance .....	10
Contact .....	10
Version Control .....	11

## Objective

---

1. The purpose of these procedures is to facilitate and manage the disclosure of information relating to the Australian Electoral Commission (AEC) where that disclosure is in the public interest.

## Statement of Commitment

---

2. The 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 *Public Disclosure Act 2013* (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.
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.

## Application

---

4. These Procedures apply to internal public interest disclosures that relate to the AEC and are made by a current or former Public Official.
5. 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](#).

## Definitions applicable to the Procedures

---

Authorised Officer	<p>Authorised Officers receive public interest disclosures, provide advice to Disclosers about the PID Act and allocate disclosures, when necessary. Authorised Officers are appointed in writing by the Electoral Commissioner.</p> <p>Authorised Officers have a range of decision-making, notification and other responsibilities under the PID Act. Further information is provided by the <a href="#">Commonwealth Ombudsman</a>.</p>
Disclosable Conduct	<p>The full definition of Disclosable Conduct is set out in section 29 of the PID Act.</p> <p>In summary, Disclosable Conduct is conduct which is engaged in by an agency, Public Official or contracted service provider including illegal conduct, corruption, maladministration, abuse of public trust, deception</p>

	relating to scientific research, wastage of public money, unreasonable danger to health and safety, and danger to the environment. Disclosable Conduct also includes conduct that involves abuse of power by a Public Official or conduct engaged in by a Public Official that could, if proved, give reasonable grounds for disciplinary action.
Discloser	A public official who makes a disclosure under the PID Act.
Electoral Commissioner	Appointed under section 18 of the <i>Commonwealth Electoral Act 1918</i> and is the Principal Officer of the AEC for the purposes of the PID Act.
PID Investigator	A public official with written authority to exercise any or all of the principal officer's functions and powers in connection with investigating a PID.
Principal Officer	Means the Electoral Commissioner.
Public Official	Public servants (ongoing, non-ongoing and casual) and parliamentary service employees, persons engaged under the <i>Commonwealth Electoral Act 1918</i> , service providers under a Commonwealth contract, statutory office holders, staff of Commonwealth companies and temporary employees engaged through a recruitment agency. A Public Official also includes any other person determined by an Authorised Officer, in writing to be a Public Official in relation to the disclosure of information by the individual for the purposes of the PID Act.
Reprisal Officer	A person who has been given responsibility for assessing and managing the risk of reprisal or workplace conflict, either generally in an agency's procedures, or in the case of a particular PID.

## What is a public interest disclosure?

---

6. A public interest disclosure generally occurs when:
  - a. a current or former Public Official;
  - b. discloses to their supervisor or manager, or an Authorised Officer; and
  - c. information which tends to show, or the discloser believes on reasonable grounds tends to show, one or more instances of Disclosable Conduct.
7. Individual grievances or workplace conflicts would generally be dealt with through other existing mechanisms such as the AEC's Respect at Work Policy rather than being the subject of an investigation under the PID Act. If it appears to the Authorised Officer that such a disclosure may represent a systemic issue within the AEC then it may be treated as a disclosure under the PID Act.
8. Where a public official is considering making a disclosure, they should, in the first instance, contact one of the AEC's Authorised Officers to get information about making a public interest disclosure under the PID Act.

## Who can make a public interest disclosure?

---

9. A current or former Public Official can make a public interest disclosure under the PID Act. They can do so anonymously or openly. They do not have to state or intend that they are doing so under the PID Act.
10. A current or former Public Official can disclose information that they believe on reasonable grounds tends to show Disclosable Conduct.
11. An Authorised Officer may, by written notice, deem an individual to be a Public Official if they reasonably believe the individual has information about wrongdoing and proposes to make a disclosure.
12. An individual is not subject to any civil, criminal or administrative liability (including disciplinary action) for making a public interest disclosure.
13. It is an offence to threaten or take a reprisal against an individual because of a public interest disclosure or to disclose the identity of that individual.
14. For more information please refer to the [Agency Guide to the PID Act 2013](#).

## Who can receive a public interest disclosure?

---

15. An internal disclosure can be made to:
  - a. the supervisor or manager of the Discloser (who is required to give the information to an Authorised Officer of the AEC);
  - b. an Authorised Officer of the AEC who has been appointed in writing by the Electoral Commissioner; or
  - c. the Electoral Commissioner.
16. In certain circumstances, a disclosure may be made to an external body such as the Ombudsman. For more information please refer to [Agency Guide to the PID Act](#).
17. A disclosure must be made to one of these recipients to gain the protections available under the PID Act.

## How to make a public interest disclosure

---

18. A disclosure may be made to an Authorised Officer either directly via the details on the [AEC website](#), by emailing [PID@aec.gov.au](mailto:PID@aec.gov.au), or through the person's supervisor or manager. A disclosure may be made orally or in writing, and may be made anonymously, or under a pseudonym, and does not have to state that the disclosure is being made under the PID Act.
19. Where possible, Public Officials are encouraged to make their disclosure to an Authorised Officer rather than their supervisor or manager. This is because Authorised Officers in the AEC have been trained in receiving public interest disclosures and they can provide information about how to make a public interest disclosure and about the protections given to disclosers under the PID Act.

20. Anonymous disclosures will be acted upon where there is sufficient information for the Authorised Officer to determine that a person was a “Public Official” under section 70 of the PID Act. However, one of the requirements for making a public interest disclosure is that the person is or was a Public Official. This does not mean that the person has to prove their status. The Discloser may give information that supports that status, for example, by explaining how they know about the wrongdoing they are reporting. If they do not, the Authorised Officer may wish to ask questions along these lines (if the person has provided contact details).
21. There are reasons why Disclosers should consider identifying themselves to an Authorised Officer, or at the very least providing a means of contact, for example:
- the PID Act requires the AEC to keep a Discloser’s identity confidential, subject to limited exceptions including the Discloser’s consent. The person’s identity may nonetheless become apparent if an investigation is commenced;
  - it will be difficult to ensure protection from reprisal if the Authorised Officer and the Reprisal Officer do not know the Discloser’s identity;
  - the Authorised Officer who receives an anonymous report must have reasonable grounds to suspect the Disclosable Conduct has occurred in order to allocate the matter for investigation. If they cannot contact the Discloser to seek necessary further information, the matter may not proceed;
  - it will be difficult to conduct an investigation if the Discloser cannot be contacted for further information. An investigator has the discretion not to investigate, or investigate further, if the Discloser does not provide their name and contact details or is unable to give the investigator further information or assistance if needed; and
  - a Discloser who does not provide a means of contact cannot be updated on the progress of the matter, including the outcome of the investigation.
22. A person who has made an anonymous public interest disclosure may come forward at a later stage to disclose their identity and seek the protections of the PID Act.
23. The information contained in a disclosure should be clear and factual, and should, as far as possible, avoid speculation, personal attacks and emotive language. It should contain supporting evidence where that is available to the Discloser and should, where possible, identify any witnesses to the Disclosable Conduct.
24. A potential Discloser should not investigate a matter themselves before making a disclosure.

## Confidentiality

---

25. The AEC will ensure the identity of a Discloser is protected, and remains confidential as far as practically possible in the handling of public interest disclosures. Identifying information will only be used and disclosed in accordance with the PID Act or with the consent of the Discloser. It is a criminal offence for a Public Official who is involved in handling a disclosure to reveal the Discloser’s identifying information to anyone else without their consent or use it for another purpose, unless for the purposes of the PID Act, an investigation by the Ombudsman, or another Commonwealth law or prescribed law, or if the information has already been lawfully published. It is also a criminal

offence for a person to disclose or use information obtained in the course of conducting a disclosure investigation or in connection with their powers and functions under the PID Act.

26. Any interviews conducted by an Authorised Officer or delegates (including PID Investigators) should be conducted in private.
27. Any interviews with the Discloser should be arranged so as to avoid the identification of the discloser by other staff of the agency.
28. For more information please refer to the [Agency Guide to the PID Act](#).

## Authorised Officer to deal with disclosure

---

29. Once a disclosure is made to an Authorised Officer, the Authorised Officer will :
  - a. inform the Discloser that the disclosure could be treated as an internal disclosure for the purposes of the PID Act, including outlining all requirements in order to be considered an internal disclosure under the PID Act; and
  - b. explain the protections provided by the PID Act, and support available to persons who make disclosures under the PID Act (e.g. Employee Assistance Program); and
  - c. advise the Discloser of any orders or directions of which the Authorised Officer is aware that are designated publication restrictions that may affect disclosure of the information.
30. Unless the disclosure is made in writing, the Authorised Officer is required to make an appropriate record, including the time and date of the disclosure and include the information that is advised to the Discloser. All practicable steps should be taken for this record to be signed by the Discloser as being correct.
31. A copy of all records, file notes or information provided as part of the disclosure must be retained on the official file.
32. An Authorised Officer must consider the disclosure and determine if further information is required prior to deciding if the disclosure is a public interest disclosure that should be allocated. An allegation alone with no supporting information is insufficient to allow the Authorised Officer to make a decision and the Discloser should be asked for additional information.
33. The Authorised Officer must make a written record of any information or responses received when they seek further information from the Discloser prior to allocation.
34. The Authorised Officer should ask the Discloser if he or she would like the disclosure to be investigated, prior to making an allocation decision. However, the Discloser's view will not be the deciding factor when making a decision whether or not to allocate a disclosure for investigation. If the Discloser does not respond within 7 calendar days, the Discloser is deemed to wish the disclosure to be investigated.
35. The Authorised Officer must, where practicable, ask the Discloser if he or she consents to the Authorised Officer giving the Discloser's name and contact details to the Electoral Commissioner (as the Principal Officer of the AEC) for allocation and investigation. If the Discloser does not respond within 7 calendar days, the Discloser is deemed not to consent to their name and contact details being provided to the Electoral Commissioner.

## Allocation of a disclosure

---

36. The Authorised Officer must decide if they are satisfied, on reasonable grounds, that the disclosure is a public interest disclosure within the meaning of the PID Act. If the Authorised Officer decides the disclosure is a public interest disclosure within the meaning of the PID Act, the disclosure must be allocated for investigation.
37. If the disclosure relates to the AEC, the allocation will be to the AEC.
38. A disclosure may be allocated to one or more agencies for handling (including the AEC, the Ombudsman or another agency). The Authorised Officer can only allocate a public interest disclosure to another agency if an Authorised Officer in that agency consents to the allocation.
39. Once a decision is made regarding allocation, the Authorised Officer is required to send information regarding the disclosure, and the allocation decision, to:
  - a. the Electoral Commissioner, or the Public Official to whom the function has been delegated by the Electoral Commissioner; and
  - b. the Ombudsman's office.
40. This information can only include the name and contact details of the Discloser if he or she consents.
41. The Authorised Officer will keep a written record of the allocation decision, including the reasons for the decision, and ensure any notification requirements to the Commonwealth Ombudsman have been satisfied.
42. The Authorised Officer must as soon as practicable notify a Discloser of their decision in relation to the allocation of the disclosure. The Authorised Officer need not notify the Discloser of their allocation decision if it is not reasonably practicable to do so. If the Authorised Officer considers it is not reasonably practicable to contact the Discloser, they should make a record explaining why, including details of the time, date and method of any contact attempts made.
43. The Authorised Officer must use his or her best endeavours to make the allocation decision within 14 days of disclosure being made to the Authorised Officer. In the event that a decision is unlikely to be made within this timeframe, the Discloser will be informed accordingly.

## Investigation of a disclosure

---

44. Once a disclosure has been allocated to the Electoral Commissioner, the Electoral Commissioner or the Public Official to whom the function has been delegated by the Electoral Commissioner (the PID Investigator) must conduct an investigation into a disclosure, unless it is reasonably believed that (in accordance with section 48(1) of the PID Act):
  - a. the Discloser is not, and has not been, a Public Official; or
  - b. the information provided as the disclosure does not concern serious conduct; or
  - c. the disclosure is considered vexatious, frivolous, misconceived or lacking in substance; or
  - d. the disclosure has been substantially dealt with, in that the matter is the same or substantially the same as a matter already investigated or being investigated; or



- e. where it is impracticable to investigate; or
  - f. where the matter is to be investigated, other than in accordance with these Procedures; or
  - g. the Discloser has informed the Electoral Commissioner that they do not wish to investigation to be pursued, and the Electoral Commissioner is reasonably satisfied that there are no matters concerning the disclosure that warrant investigation.
45. Where the name and contact details of the Discloser are available, the PID Investigator must inform the Discloser that they are required to investigate the Disclosure and the estimated length of an investigation.

#### Decision not to investigate or investigate further (where the investigation has started)

46. Where the PID Investigator decides not to investigate a disclosure, or investigate further (where the investigation has started), having regard to the criteria in section 48(1) of the PID Act, the PID Investigator must, as soon as reasonably practicable, inform the Commonwealth Ombudsman of that decision, and of the reasons for that decision.
47. Where the PID Investigator decides not to investigate, or continue investigations into, a disclosure, and where they have been given the name and contact details of the discloser, the Electoral Commissioner or delegate must, as soon as reasonably practicable, inform the discloser of that decision, of the reasons for that decision and of other courses of action that may be available to the Discloser under other laws of the Commonwealth.

#### Procedures for investigators

48. 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 (Part 3) and *Public Interest Disclosure Standard 2013*. If relevant, 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.
49. 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.
50. The PID Investigator 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.
51. Further information is contained in the [Agency Guide to the PID Act](#).

#### Procedural fairness

52. The rules of procedural fairness apply to the conduct of an investigation and in particular to protect the interests of a person against whom the allegation has been made. This will vary with the circumstances but generally this means that the individual is entitled to have a decision maker act fairly and without bias and, noting that this will only arise where it likely that an adverse finding will be made about the individual's conduct,

- a. know the substance of allegations and evidence against them; and
- b. have a reasonable opportunity to respond.

53. Where a disclosure is not investigated or the investigation is discontinued, there is no requirement for the PID Investigator to provide procedural fairness to the person against whom the allegations have been made if the Electoral Commissioner or delegate decides they are of no substance.

## Reports of investigations

54. If investigated, the Electoral Commissioner or delegate must notify the Discloser of the outcome of the investigation, including a copy of the report, to the extent that the release of the report would not contravene designated publication restrictions as defined in section 8 of the PID Act.

## Support for Disclosers

---

55. 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. This option is also available to a person who is subject to an allegation of wrongdoing which is the subject of the PID.

56. 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.

57. 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.

## Protection from reprisal

---

58. A Discloser is subject to protection from reprisal under the PID Act where they make a disclosure, unless the disclosure does not fall within the PID Act. Protections include immunity from criminal and civil liability or disciplinary action.

59. Protections under the PID Act remain in place even if after any investigation has been completed and the matter concluded.

60. However, making a disclosure under the PID Act does not protect a Discloser from his or her wrongdoing, including where the Discloser is involved in the wrongdoing which is the subject of the reprisal.

61. When the disclosure is received, the Authorised Officer must conduct a risk assessment that considers the risk of reprisal action against the Discloser, if the identity of the Discloser is readily ascertainable or is likely to become ascertainable during the conduct of an investigation. If the disclosure is first made to a supervisor or manager and the person wishes their identity to remain anonymous, the supervisor or manager should conduct a risk assessment.

62. The risk assessment needs to be monitored and reviewed as necessary. If a Discloser considers that they have been victimised, discriminated against, or otherwise adversely affected because of the disclosure, they should immediately report this to an Authorised Officer.
63. When conducting a risk assessment, wherever possible, the Discloser should be asked why they are reporting wrongdoing and from whom they might fear a reprisal.
64. For more information please refer to the [Agency Guide to the PID Act](#).

## Record keeping

---

65. All documentation collected, including all information provided as part of the initial 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. There must be due regard to confidentiality in the collection, storage and use of the records.

## Investigation complete

---

66. Compliance with these Procedures is complete once the Discloser is provided with :
- notification that the matter has not been allocated as an internal disclosure to the AEC, including the statement of reasons; or
  - notification, including the statement of reasons, that no investigation or further investigation will occur; or
  - a copy of the report into the investigation.

## References & further guidance

---

[Public Interest Disclosure Act 2013](#)

[Public Interest Disclosure Standard 2013](#)

[Agency Guide to the PID Act](#)

[Speaking up about wrongdoing – A guide to making a disclosure under the PID Act](#)

[AEC Recordkeeping Policy](#)

## Contact

---

[PID@aec.gov.au](mailto:PID@aec.gov.au)

# Version Control

---

<b>Version</b>	<b>Last review date</b>	<b>Action</b>	<b>Next review date</b>	<b>Owner</b>	<b>Approved by</b>
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