



Australian Government
Clean Energy Regulator

Procedures for handling public interest disclosures

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Procedures for handling Public Interest Disclosures

I, David Parker, Chair, Clean Energy Regulator, establish these procedures under section 59 of the *Public Interest Disclosure Act 2013*.

I revoke all previous versions of the Procedures for Handling Public Interest Disclosures made in relation to the Clean Energy Regulator.

A handwritten signature in black ink, consisting of a stylized 'D' followed by a horizontal line and a circular flourish.

David Parker AM
Chair and Principal Officer, Clean Energy Regulator

Date: 22 April 2025



Glossary

Term	Description
Accountable Authority	An accountable authority is the person, or group of persons responsible for, and having control over, a Commonwealth entities operations. In the context of the agency, the Chair is the Accountable Authority.
Authorised officer	Authorised officers are public officials within the agency who have been appointed by the principal officer to receive, assess and allocate public interest disclosures related to the agency.
Commonwealth Ombudsman	The Commonwealth Ombudsman oversees and reports on the operation of the Public Interest Disclosure Scheme. They also receive and investigate complaints about the handling of public interest disclosures.
Disclosable conduct	Disclosable conduct, broadly speaking, includes conduct that: <ul style="list-style-type: none"> • is illegal or corrupt, or • results in wastage of money or property, or • results in unreasonable danger or risk to health and safety, or • results in danger, or an increased risk of danger, to the environment. (See section 29 PID Act for more detail relating to disclosable conduct.)
National Anti-Corruption Commission	The National Anti-Corruption Commission is an independent Commonwealth agency operating under the <i>National Anti-Corruption Commission Act 2022</i> to detect, investigate and report on serious or systemic corruption in the Commonwealth public sector.
PID Support Unit	The principal officer has delegated the Fraud, Control and Assurance team as a PID Support Unit to assist the principal officer, authorised officers and delegates to meet their obligations under the PID Act and NACC Act.
Principal officer	The principal officer of an agency is responsible for ensuring public officials are aware of their right to make disclosures and that the agency deals appropriately with them. In the context of the agency, the Chair is the principal officer.
Public Interest Disclosure	A public interest disclosure is a disclosure of information relating to disclosable conduct alleged to have occurred within a Commonwealth agency.
Public officials	Under the PID Act, 'public official' is a broad term that includes: <ul style="list-style-type: none"> • any person employed by the Australian Government • individuals employed by Commonwealth companies, statutory authorities, statutory agencies, the Parliamentary service, statutory officeholders and government business enterprises • service providers under contract to the Commonwealth and their staff.
Supervisor	In relation to a person who makes a disclosure, is a public official who supervises or manages the person making the disclosure.



1. Introduction

This document sets out the Clean Energy Regulator's (the agency) procedures for facilitating and dealing with internal public interest disclosures (PID) in accordance with subsection 59(1) of the [Public Interest Disclosure Act 2013](#)¹ (PID Act).

The agency is committed to the highest standards of ethical and accountable conduct and encourages and supports the reporting of wrongdoing by public officials under the PID Act.

The purpose of the PID Act is to promote the integrity and accountability of the Commonwealth public sector by:

- encouraging and facilitating the making of disclosures of wrongdoing by public officials and former public officials
- ensuring public officials and former public officials who make protected disclosures, and witnesses who aid in relation to disclosures, are supported and protected from adverse consequences relating to the making of a disclosure
- ensuring that disclosures are properly investigated and dealt with.

Who to contact if you need help

The PID Coordination Unit manages and maintains the agency's PID framework and can provide help and assistance with these procedures and public interest disclosures if required.

Email: PID@cer.gov.au

2. What are public interest disclosures?

A PID may be an internal disclosure, external disclosure, emergency disclosure, a legal practitioner disclosure, or a [National Anti-Corruption Commission](#)² (NACC) disclosure, as set out in ss 26(1) and (1A) of the PID Act and s 23 of the [National Anti-Corruption Commission Act 2022](#)³ (NACC Act), respectively.

An 'internal disclosure' is the most common type of disclosure under the PID Act. To make an internal public interest disclosure, the person disclosing suspected wrongdoing must:

1. be a current or former public official (or deemed to be a public official), and
2. make their disclosure to an authorised person within an Australian Government agency (their supervisor or an authorised internal recipient), and
3. provide information that they believe tends to show, on reasonable grounds, disclosable conduct within an Australian Government agency or by a public official.

More detailed information of these key requirements can be found at [Ombudsman Guide: Chapter 2 – How](#)

¹ <https://www.legislation.gov.au/C2013A00133/latest/text>

² <https://www.nacc.gov.au/>

³ <https://www.legislation.gov.au/C2022A00088/latest/text>



[the PID scheme works](#)⁴.

Only if each of the above requirements has been met will the disclosure be covered by the PID Act, and the discloser have the benefit of the protections that it confers. Accordingly, it is important that persons contemplating making a disclosure carefully review the contents of the PID Act and seek legal advice where appropriate in order to determine whether the disclosure can be made in a way that attracts the protections of the PID Act.

In addition, making a disclosure will not protect a discloser from the consequences of their own wrongdoing, including where they have been involved in the misconduct they are reporting. The discloser's immunity from liability under the PID Act relates only to the act of making the public interest disclosure, not the conduct the disclosure is about.

Similarly, the immunities under the PID Act do not extend to protect a person from liability for knowingly making false or misleading statements.

The [Commonwealth Ombudsman](#)⁵ (Ombudsman) has oversight of the PID scheme and has set the [standards](#)⁶ for which the agency must comply⁷. An overview of how PID are handled can be seen at [Handling-a-PID-Flowchart-November-2023.pdf](#)⁸

A summary of the rights and responsibilities of a discloser and a person who is the subject of a disclosure are set out in [ATTACHMENT A](#) and [ATTACHMENT B](#) respectively.

3. Protecting confidentiality

Individuals directly involved in dealing with the PID⁹ **must**:

- take all reasonable steps to protect the identity of both the discloser and the person(s) alleged to have engaged in the disclosable conduct¹⁰, from the time the disclosure is made.

The steps that the agency may take to protect a discloser's identity include:

- limiting the number of people who are aware of the discloser's identity or information that would tend to identify them
- reminding each person who has the information that they **must** keep it confidential, and that unauthorised disclosure may be a criminal offence
- assessing whether anyone who is aware of the discloser's identity may have a motive to take reprisals against the discloser or impede the progress of the investigation, and monitor the situation

⁴ <https://www.ombudsman.gov.au/industry-and-agency-oversight/public-interest-disclosure-whistleblowing/tools-and-resources>

⁵ <https://www.ombudsman.gov.au/industry-and-agency-oversight/public-interest-disclosure-whistleblowing>

⁶ <https://www.legislation.gov.au/F2013L02146/latest/text>

⁷ Agency obligations under the PID Act are set out in the [Ombudsman: Agency Guide to the PID Act V2](#)

⁸ https://www.ombudsman.gov.au/__data/assets/pdf_file/0020/301565/Handling-a-PID-Flowchart-November-2023.pdf

⁹ Such as the authorised officer, principal officer, investigator or witnesses.

¹⁰ Section 20(3)(e) PID Act – Disclosure or use of identifying information



- ensuring the discloser can communicate with a support person, the authorised officer or investigator without alerting other staff.

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

Where the identity of a discloser is relevant to a corruption issue referred to the NACC, the PID officer may be required to include the identity of the discloser in the referral.

If a person improperly discloses information about a PID investigation, including details about a discloser or witnesses, they may be in breach of the duty to maintain confidentiality in relation to official information they have gained in the course of their work. Furthermore, the person may be subject to other civil, criminal or disciplinary action³.

4. Procedures: Supervisor

Step 1: Initial receipt

If a public official discloses information to their supervisor and the supervisor has reasonable grounds to believe the information concerns, or may concern, disclosable conduct, the supervisor **must not**:

- conduct any investigation to find out whether the disclosed information is true
- discuss or reveal the information that was disclosed to them, or discuss or reveal any information that might identify the discloser, except for the purposes of:
 - » making a referral to an authorised officer
 - » advising the discloser when the information has been referred to an authorised officer, or
 - » subsequently assisting someone performing a function under the PID Act in relation to that disclosure, for example, a delegated investigator, an official who is conducting a risk assessment.

Step 2: Keep a record

Where a public official has made the disclosure orally and/or provided or withheld consent for their name to be disclosed, the supervisor **must**:

- make a written record of what was said. Where possible, they should also request the public official sign the written record, or otherwise confirm in writing, to acknowledge it is correct.

Step 3: Inform the discloser

Where a matter is referred to an authorised officer, the supervisor **must**¹¹:

- inform the discloser their disclosure may be treated as an internal PID and as a supervisor they have an obligation to refer the information to an authorised officer

¹¹ Section 60A PID Act - Additional obligations of supervisors



- explain the PID process¹², this being initially that the authorised officer will decide whether to allocate the disclosure for investigation
- explain that disclosures that involve suspected serious or systemic conduct must be referred to the NACC for consideration, and in some cases, must be referred to the Australian Federal Police¹³.
- the civil and criminal protections that may be provided
- seek the discloser's consent to identify¹⁴ them as the source of the information when providing it to an authorised officer.

The supervisor **should also**:

- seek the discloser's views about which authorised officer should or should not be provided with the information disclosed
- confirm their understanding of the information disclosed
- explain to the discloser that even if they do not consent to being identified, their identity may be ascertained from the nature of the information or the circumstances of the disclosure.

Step 4: Inform an authorised officer

The supervisor **must**¹⁵:

- inform an authorised officer of the disclosure as soon as is reasonably practicable, noting they must not name the discloser unless the discloser has provided consent¹⁶.

When a supervisor refers a disclosure to an authorised officer, they **should also**:

- provide the authorised officer with information about any reprisal risk for the discloser ([see 5.2 Managing the risk of reprisals](#)), themselves or any other public official. This would include information about any workplace conflict that might be relevant to a reprisal risk assessment.

Further information on what supervisors need to know to meet their responsibilities and obligations under the PID Act are outlined in [Supervisors and the PID Act](#)¹⁷.

5. Procedures: Authorised officers

The processes undertaken by an authorised officer can be seen at [Authorised-Officer-Flowchart-October-2023.pdf](#)¹⁸.

¹² It is recommended that the supervisor provide the discloser a copy of these PID procedures.

¹³ See the [NACC factsheet](#) and [Ombudsman: Agency Guide to the PID Act V2](#) for more information.

¹⁴ Section 20(3)(e) PID Act – Disclosure or use of identifying information

¹⁵ Section 60A(3) PID Act - Additional obligations of supervisors

¹⁶ Section 20(3)(e) PID Act – Disclosure or use of identifying information

¹⁷ https://www.ombudsman.gov.au/__data/assets/pdf_file/0012/301206/Guide-Supervisors-and-the-PID-Act.pdf

¹⁸ https://www.ombudsman.gov.au/__data/assets/pdf_file/0019/301564/Authorised-Officer-Flowchart-October-2023.pdf



5.1 Initial consideration and allocation

Step 1: Consider if the disclosure meets the requirements for PID

When an authorised officer receives a disclosure of suspected wrongdoing, they **must**:

- consider the disclosed information and decide whether it meets the criteria for an internal disclosure under the PID Act
- consider if there is a mandatory referral obligation.

Mandatory referral obligations:

If the authorised officer receives an internal disclosure under the PID Act that raises a corruption issue under the NACC Act, the authorised officer **must** refer the matter to the NACC **if all the following apply**:

- the authorised officer became aware of the corruption issue in the course of exercising their powers or functions of the PID Act, and
- the corruption issue concerns the conduct of a person who is, or was, a staff member of the agency at the time the conduct occurred, and
- the authorised officer suspects the issue could involve serious or systemic corrupt conduct.

Unless there is a conflict of interest, the authorised officer:

- may seek assistance from the principal officer and General Counsel in determining if the corrupt conduct raised in the internal disclosure would be considered serious or systemic.
- should inform the principal officer a referral will be made.

An authorised officer can make a referral to the NACC via the [NACC website](#)¹⁹. Further information about how to refer a corruption issue to the NACC can be found on the NACC website at: [How to make a report](#)²⁰.

Guidance on determining if a referral to the NACC is required can be found at [Ombudsman Guide: Chapter 10 - Interaction between the National Anti-Corruption Commission and the PID](#)²¹.

If the authorised officer is satisfied the disclosure meets the requirements for a PID:

- they will allocate the disclosure to a principal officer of one or more agencies for further handling and investigation in accordance with the process outlined at Step 2, **unless**
- a mandatory referral to the NACC has been made and the NACC has issued a stop action direction preventing the PID process from continuing, then the authorised officer **must**:
 - » not allocate the disclosure or take further action until the direction no longer applies
 - » inform the Ombudsman using [Form 6 - Notification of a stop action direction](#)²².

¹⁹ <https://www.nacc.gov.au/reporting-and-investigating-corruption>

²⁰ <https://www.nacc.gov.au/reporting-and-investigating-corruption/how-to-make-report>

²¹ https://www.ombudsman.gov.au/__data/assets/pdf_file/0025/301399/Chapter-10-Interaction-between-the-National-Anti-Corruption-Commission-and-the-PID-Framework.pdf

²² https://www.ombudsman.gov.au/__data/assets/word_doc/0026/299303/Form-6-s44B-and-s50A-Notification-of-a-stop-action-direction-V7.0-A2344839.docx



If the authorised officer is not satisfied the disclosure meets the requirements for a PID:

- they may refer the matter to be dealt with in accordance with the relevant policy or procedure if the disclosure relates to conduct that may need to be addressed under the agency's:
 - » Fraud and Corruption Control Framework
 - » [Procedures for determining breaches of the Code of Conduct and for determining sanction](#)²³, or
 - » any other of the agency's policies or procedures

Step 2: Allocate the disclosure

The authorised officer will use their best endeavours to allocate the disclosure to a principal officer within 14 days of receiving the disclosure, noting they **must**:

- not name the discloser unless the discloser has provided consent.

In most cases, allocation of the disclosure should be to the agency to which the disclosure relates. When deciding to which agency to allocate a disclosure, the authorised officer will have regard to:

- the assumption that an agency should only deal with disclosures that relate to itself²⁴; and
- such other matters (if any) as the authorised officer considers relevant.

The authorised officer **must**:

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

If the authorised officer is contemplating allocating the disclosure to the Ombudsman, the Inspector-General of Intelligence and Security (IGIS) or an investigative agency prescribed by the Public Interest Disclosure Rules, the authorised officer must have regard to additional matters set out in the PID Act.²⁵

Step 3: Inform relevant persons of the allocation or decision not to allocate

Informing a receiving agency

When the authorised officer allocates the handling of a disclosure to a principal officer of an agency, the authorised officer **must** inform that principal officer of:

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

²³ <https://cer.gov.au/about-us/our-reports-and-accountability#breaches-of-the-code-of-conduct>

²⁴ This assumption does not apply to the Ombudsman, the IGIS or an Investigative agency prescribed by the PID Rules. At the time of publication, no PID Rules under section 83 of the PID Act had been published.

²⁵ See section 43(3)(a)(ii)-(iv) of the PID Act.



Informing the discloser

If the disclosure is to be allocated and if contacting the discloser is reasonably practicable, as soon as possible after the allocation, the authorised officer **must**:

- inform the discloser in writing of the allocation decision and set out the information that has been provided to the principal officer of that agency.

If the disclosure will not be allocated and if contacting the discloser is reasonably practicable, the authorised officer **must**:

- inform the discloser in writing of:
 - » the reasons why the disclosure will not be allocated to an agency, and
 - » any other course of action that might be available to the discloser under other laws of the Commonwealth.

Informing the Commonwealth Ombudsman

The authorised officer **must**:

- inform the Ombudsman in writing of an allocation of a disclosure or a decision not to allocate to an agency, including an allocation to the agency itself, unless the authorised officer allocated the disclosure to the Ombudsman, the IGIS or an intelligence agency.

To inform the Ombudsman of:

- an allocation, use [Form 1 - Notification of allocation form](#)²⁶.
- a decision not to allocate, use [Form 4 - Notification of decision not to allocate](#)²⁷.

If allocation of the disclosure is to an intelligence agency, the authorised officer will inform the IGIS of this in writing.

Step 4: Make a record

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 agency to which the allocation is made
 - » any consent provided by the discloser.

²⁶ https://www.ombudsman.gov.au/__data/assets/word_doc/0040/299299/Form-1-s-44-Notification-of-allocation-form.docx

²⁷ https://www.ombudsman.gov.au/__data/assets/word_doc/0025/299302/Form-4-s-44A-Notification-of-decision-not-to-allocate.docx



Record of communication with discloser

The authorised officer **must**:

- keep appropriate records of whether the discloser was informed of the allocation decision and, if so, of:
 - » the day and time the discloser was notified
 - » how the discloser was notified
 - » the content of the notification
 - » any consent provided by the discloser.

These records **must** be kept confidential.

Further information on assessing and allocating a PID is outlined in [Ombudsman Guide: Chapter 5 - Initial assessment and allocation under the PID Act](#)²⁸.

5.2 Managing the risk of reprisals

The PID Act provides protections to a person who makes a disclosure if the disclosure meets the requirements of being a 'public interest disclosure'. A key protection is that it is an offence to take, or threaten to take, 'reprisal' action against a discloser.

A reprisal occurs when someone causes by an act or omission, detriment to another person because they believe or suspect that person, or anyone else, may have made or intends to make a PID. This could include an action or omission (or threat of action or omission), or detriment that results in:

- disadvantage to a person, including dismissal, injury in their employment, discrimination between them and other employees or alteration of their position to their disadvantage
- a physical or psychological injury, including a stress-related injury
- intimidation, harassment, victimisation, loss, or damage to property
- disadvantage to a person's career (for example, denying them a reference or a promotion without appropriate reasons).

The agency has no appetite for any reprisal action against a person who makes a public interest disclosure.

Every allegation of reprisal will be taken seriously, recorded, and responded to.

All those involved in handling the public interest disclosure and are aware of the discloser's identity for the purposes of the PID Act will monitor the work environment for signs of detriment and if necessary, take corrective action early.

What is not a reprisal?

Reasonable administrative action taken to protect a discloser from detriment is not a reprisal. Supervisors are not prevented from taking legitimate disciplinary or management action to address unsatisfactory performance in the workplace where that action is unrelated to the discloser having made a disclosure.

²⁸ https://www.ombudsman.gov.au/__data/assets/pdf_file/0035/299618/Chapter-5-Initial-assessment-and-allocation-under-the-PID-Act.pdf



Step 1: Conduct a risk assessment

When an authorised officer decides to allocate a PID to the agency, they **must**:

- assess the risk of reprisals against the discloser.

In assessing the risk of reprisals, the authorised officer should use the risk matrix from the CER Risk Management Criteria:

		IMPACT			
		Minor	Moderate	Major	Severe
LIKELIHOOD	Very Likely	Medium	High	Very High	Very High
	Likely	Medium	High	High	Very High
	Even chance	Medium	Medium	High	High
	Unlikely	Low	Medium	Medium	High
	Very unlikely	Low	Low	Medium	Medium

Examples of the impact 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 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).
- **Severe:** 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 against a discloser, the authorised officer should consider all relevant factors, including the following:

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- 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 are 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 against a discloser, the authorised officer should consider 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 is isolated
- whether the discloser is employed on a full-time, part-time or casual basis
- whether the alleged wrongdoing that is the subject of the disclosure was directed at the discloser
- the relative positions of the discloser and the person whose alleged wrongdoing is the subject of the disclosure.

Where consistent with protecting the discloser's confidentiality, the authorised officer may ask the discloser why they are reporting the wrongdoing and who they might fear a reprisal from, and they may speak to the discloser's supervisor or manager.

Step 2: Develop a risk mitigation strategy

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 4.2 and, in appropriate circumstances could include raising the matter with employees by reminding staff that taking or threatening to take a reprisal against a discloser is a criminal offence.

Step 3: Monitor and review risks

The authorised officer **should** monitor and review the risk assessment as necessary throughout the



investigation process.

5.3 Support for disclosers

Regardless of the outcome of the risk assessment, the authorised officer will take all reasonable steps to protect public officials who have made a PID from detriment or threats of detriment relating to the PID. This may include taking one or more of the following actions:

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

5.4 Support for a person against whom a disclosure has been made

The authorised 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 agency'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 agency, and
- transferring the employee to a different area within the workplace.

Procedures: Principal officer

6.1 Initial consideration and responsibilities

Step 1: Provide initial information to discloser

Within 14 days of an authorised officer allocating a PID to the agency, the principal officer **must**:

- provide the discloser with the following information about the principal officer's powers to:
 - » decide not to investigate the disclosure
 - » decide not to investigate the disclosure further
 - » decide to investigate the disclosure under a different investigative power
 - » decide to investigate the disclosure under another law or power.

Once a disclosure had been allocated to the agency under the PID Act, the principal officer is obliged to



investigate it, except in the following two circumstances:

- the principal officer or their delegate decides not to investigate the disclosure in accordance with s48 of the PID Act.
- the Commissioner of the NACC has issued a stop action direction under the NACC Act, directing that the agency does not commence or continue with the investigation.

If the principal officer decides not to investigate the disclosure, or to stop investigating it, the discloser continues to have access to the protections and civil remedies provided by the PID Act.

Step 2: Consider whether to investigate the disclosure

As soon as practicable after receiving an allocation of a disclosure from an authorised officer (whether from within or without the agency), the principal officer **must**:

- consider whether to exercise their discretion under s48 of the PID Act to not investigate the disclosure under the PID Act
- consider if there is alleged serious or systemic corrupt conduct and mandatory referral obligations exist.

If the above circumstances do not apply, the principal officer will investigate.

A decision not to investigate a disclosure (or stop investigating it) under the PID Act does not prevent any other type of investigation of the matter.

Section 48 of the PID Act

In broad terms, the principal officer may decide not to investigate (or may decide to discontinue an investigation already begun) 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 disclosure is substantially the same as a disclosure that has been, or is being, investigated under the PID Act
- the disclosure is substantially the same as a disclosure that has already been investigated or is currently being investigated, under another law of the Commonwealth and:
 - » it would be inappropriate to conduct another investigation at the same time, or
 - » the principal officer is reasonably satisfied that there are no matters that warrant further investigation
- the discloser has informed the principal officer that they do not wish the disclosure to be pursued, and the principal officer is reasonably satisfied that there are no matters concerning the disclosure that warrant investigation
- it is impracticable to investigate the disclosure because:
 - » the discloser has not revealed their name and contact details
 - » the discloser has refused or has failed or is unable to give the investigator the information they requested
 - » of the age of the information makes this the case.



Mandatory referral obligations:

The principal officer **must**:

- refer the matter to the NACC if all the following apply:
 - » the principal officer becomes aware of the corruption issue while exercising their powers or functions of the PID Act, **and**
 - » the corruption issue concerns the conduct of a person who is, or was, a staff member of the agency at the time the conduct occurred, **and**
 - » the principal officer suspects the issue could involve serious or systemic corrupt conduct.

Guidance on determining whether if a referral to the NACC is required can be found at [Ombudsman Guide: Chapter 10 - Interaction between the National Anti-Corruption Commission and the PID](#)²⁹

A principal officer can make a referral to the NACC via the [NACC website](#)³⁰. Further information about how to refer a corruption issue to the NACC can be found on the NACC website at: [How to make a report](#)³¹.

The investigation of the PID will continue following the referral unless the NACC has issued a stop action direction. If a stop action direction is issued by the NACC which prevents an agency from investigating a disclosure, the PID Support Unit **must**:

- inform the Ombudsman using [Form 6 - Notification of a stop action direction](#)³².

Step 3: Notify the discloser and the Ombudsman

If the disclosure will not be investigated

If the principal officer decides not to investigate a disclosure, they **must**:

- inform the discloser (if reasonably practicable to contact) in writing that they have decided not to investigate the disclosure, identifying:
 - » the reasons for the decision not to investigate, other than those reasons that
 - › would be exempt for the purposes of Part IV of the *Freedom of Information Act 1982*
 - › have or are required to have a national security or other protective security classification, or
 - › contain intelligence information), and
 - » any courses of action that might be available to the discloser under other laws of the Commonwealth; and

²⁹ https://www.ombudsman.gov.au/__data/assets/pdf_file/0025/301399/Chapter-10-Interaction-between-the-National-Anti-Corruption-Commission-and-the-PID-Framework.pdf

³⁰ <https://www.nacc.gov.au/reporting-and-investigating-corruption>

³¹ <https://www.nacc.gov.au/reporting-and-investigating-corruption/how-to-make-report>

³² https://www.ombudsman.gov.au/__data/assets/word_doc/0026/299303/Form-6-s44B-and-s50A-Notification-of-a-stop-action-direction-V7.0-A2344839.docx



- inform the Ombudsman of the decision not to investigate and the reasons for that decision using [Form 2 – Notification of decision not to investigate or not investigate further](#)³³.

Further information on deciding whether to investigate is outlined in [Ombudsman Guide: Chapter 6 - Deciding whether to investigate under the PID Act](#)³⁴.

6.2 Investigation

If the principal officer decides to investigate the disclosure, they may delegate, in writing, any of their functions or powers to a public official who belongs to the agency. This includes delegating the function of investigating a disclosure to assist in determining whether there has been one or more instances of disclosable conduct.

Step 1: Notify the discloser

The principal officer **must**:

- will inform the discloser as soon as reasonably practicable:
 - » that the disclosure will be investigated
 - » who will be conducting the investigation
 - » the estimated length of the investigation.

Regardless of the estimation provided, the PID Act requires an investigation to be completed within 90 days of allocation, reallocation, a decision to reinvestigate or, if relevant, when a stop action direction under the NACC Act no longer applies.

If a longer time is required, the agency should seek an extension of time from the Ombudsman using [Form 3 – Extension of time to investigate a PID](#)³⁵ and inform the discloser an extension of time has been requested.

Step 2: Conducting the investigation

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
- 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
- a decision whether evidence is sufficient to prove a fact will be determined on the balance of probabilities³⁶, and

³³ https://www.ombudsman.gov.au/__data/assets/word_doc/0037/298990/Form-2-s-48-Notification-of-decision-not-to-investigate-or-not-to-investigate-further-form-V1.0.docx

³⁴ https://www.ombudsman.gov.au/__data/assets/pdf_file/0036/299619/Chapter-6-Deciding-whether-to-investigate-under-the-PID-Act.pdf

³⁵ https://www.ombudsman.gov.au/__data/assets/word_doc/0024/299301/Form-3-s52-Extension-of-time-to-investigate-a-PID-V2.0-A2343342.docx

³⁶ The standard of proof in a PID investigation is the civil standard: a fact is only taken to be proved if there is sufficient



- 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 PID investigator is free to conduct the investigation as they see fit. The method of the investigation may vary depending on the alleged conduct being investigated.

Further information on conducting an investigation is outlined in [Ombudsman Guide: Chapter 7 - Conducting an investigation](#)³⁷ and relevant Commonwealth and agency policies and procedures.

Additional procedures required in particular circumstances

If a disclosure relates to conduct that would require the agency to take steps under the agency's:

- Fraud and Corruption Control Framework
 - » [Australian Government Investigation Standards](#)³⁸
 - » [Commonwealth Fraud Control Policy](#)³⁹
- [Procedures for determining breaches of the Code of Conduct and for determining sanction](#)⁴⁰
- any other of the agency's policies or procedures

The processes set out in those procedures and policies must be complied with in the conduct of an investigation.

Step 3: Obtaining information

For the purposes of the investigation, the PID investigator may obtain information from such persons and make such inquiries as they see fit. This can include seeking further information from the discloser or any other person.

All current public officials (including contractors) are obliged to use their best endeavours to assist the principal officer, or their delegate, in a PID investigation. (s61(1) PID Act).

Persons who are interviewed **must** be informed:

- of the name of any person conducting the interview (including anyone who may be present in an assistance or record keeping capacity)
- of the function that each of the people present is performing in the investigation
- that the principal officer is required to investigate a disclosure to establish whether there has been disclosable conduct

evidence to prove it 'on the balance of probabilities' (s 11, PID Standard). This means that the principal officer, or their delegate, cannot make a finding that there has been disclosable conduct unless they are satisfied, on the basis of the evidence gathered during the investigation, it is more likely than not that the disclosable conduct occurred.

³⁷ https://www.ombudsman.gov.au/__data/assets/pdf_file/0028/299620/Chapter-7-Conducting-an-investigation.pdf

³⁸ <https://www.afp.gov.au/sites/default/files/2023-09/Australian-Government-Investigations-Standard-2022.pdf>

³⁹ <https://www.counterfraud.gov.au/sites/default/files/2024-06/cfpc-framework-2024.DOCX>

⁴⁰ <https://cer.gov.au/about-us/our-reports-and-accountability#breaches-of-the-code-of-conduct>



- of the legal authority for the PID investigator to conduct the investigation (for example, where the principal officer's investigative function under the PID Act has been delegated)
- of general information about the process of conducting a PID investigation, including the confidentiality of investigative processes and protection of the discloser's identity.

The PID investigator **must** ensure:

- 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.

Referral of information to police or others

If, during the investigation, the PID investigator suspects on reasonable grounds that some of the information disclosed or obtained is evidence of the commission of an offence against a Commonwealth, state or territory law, they may disclose the information to a member of a relevant Australian police force (s56(2) PID Act).

Police notification is mandatory if the suspected offence is punishable by imprisonment for 2 years or more. In limited circumstances, mandatory notification is not required. These exceptions are laid out in s56(4)(a) and s56(4)(b) of the PID Act.

The investigation may also include consideration of whether a different or further investigation should be conducted by the agency or another body under another law of the Commonwealth.

Unless there is a conflict of interest, the investigator:

- may seek assistance from the principal officer and General Counsel in determining if the conduct identified during the investigation should be referred to police.
- should inform the principal officer a referral will be made.

Step 4: Investigation report

Once the PID investigator has completed the investigation, they **must**:

- prepare a report in accordance with s 51(2) PID Act which includes:
 - » the matters considered during the investigation, and
 - » the duration of the investigation, and
 - » the investigator's findings (if any), and
 - » the action (if any) that has been, is being or is recommended to be taken, and
 - » any claims made about, and any evidence of, detrimental action taken against the discloser, and the Agency's response to those claims and that evidence

and, where relevant, the report **must**:

- identify whether there have been one or more instances of disclosable conduct, and
- identify any regulations, rules, administrative requirements or similar matters to which the disclosable conduct (if any) relates, and
- explain the steps taken to gather evidence, and



- set out a summary of the evidence, as well as any findings and recommendations made based on that evidence.

Step 5: Provide investigation report to the Ombudsman and discloser

Discloser

If reasonably practicable to contact the discloser, the principal officer **should**:

- provide the discloser with a copy of the report within a reasonable time.

The following may be deleted 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, or
- the inclusion of which would result in the copy being a document:
 - » that is exempt for the purposes of Part IV of the *Freedom of Information Act 1982*⁴¹
 - » having, or being required to have, a national security or other protective security classification
 - » containing intelligence information, or
 - » contravene a designated publication restriction⁴².

Ombudsman

On completion of the report, the PID Support Unit **must**:

- provide a copy of the report to the Ombudsman along with [Form 5: s51 Notification of a finalised PID Investigation](#)⁴³.

NOTE: While the agency may redact identifying information from s51 reports submitted to the Ombudsman, agencies are encouraged to consider limiting or avoiding redactions in order to facilitate Ombudsman oversight and review of investigation reports.

Step 6: After the investigation

While not a requirement under the PID Act, if the allegations in a disclosure have been investigated and the person who is the subject of them is aware of the allegations or that there has been an investigation, the investigation report should include a recommendation the person is formally advised of the outcome of the investigation as it relates to them.

It should be noted that this is not a procedural fairness requirement, and the person is not entitled to be told who made the disclosure.

The agency will consider how they will support the subject of a disclosure when allegations, which may have been publicly disclosed, are shown to be wrong or unsubstantiated.

⁴¹ <https://www.legislation.gov.au/C2004A02562/latest/text>

⁴² A 'designated publication restriction' means certain restrictions listed in the PID Act (s 8). They generally concern protecting the identity of people by such means as court or tribunal orders that information not be published (such as under the Family Law Act 1975 and the Migration Act 1958), witness protection and law enforcement mechanisms.

⁴³ https://www.ombudsman.gov.au/__data/assets/word_doc/0016/300607/Form-5-s-51-Notification-of-a-finalised-PID-Investigation-V2.0-A2343427.docx



7. Key legislation and policy

The following documents directly relate to these procedures and should be reviewed in context to this document:

- [*Public Interest Disclosure Act 2013*](#)⁴⁴
- [*Public Interest Disclosure Standard 2013*](#)⁴⁵
- [*Commonwealth Ombudsman's Agency Guide to the Act*](#)⁴⁶
- [*Public Governance, Performance and Accountability Act 2013*](#)⁴⁷
- [*Public Governance, Performance and Accountability Rule 2014*](#)⁴⁸
- [*Commonwealth Fraud and Corruption Control Framework 2024*](#)⁴⁹
- [*Australian Government Investigations Standard 2022*](#)⁵⁰
- [*Freedom of Information Act 1982*](#)⁵¹
- [*Public Service Act 1999*](#)⁵²

⁴⁴ <https://www.legislation.gov.au/C2013A00133/latest/text>

⁴⁵ <https://www.legislation.gov.au/F2013L02146/latest/text>

⁴⁶ https://www.ombudsman.gov.au/__data/assets/pdf_file/0020/37415/Agency_Guide_to_the_PID_Act_Version_2.pdf

⁴⁷ <https://www.legislation.gov.au/Details/C2017C00269>

⁴⁸ <https://www.legislation.gov.au/F2014L00911/latest/text>

⁴⁹ <https://www.counterfraud.gov.au/library/commonwealth-fraud-and-corruption-control-framework-2024>

⁵⁰ <https://www.ag.gov.au/sites/default/files/2022-12/Australian-Government-Investigations-Standard-2022.pdf>

⁵¹ <https://www.legislation.gov.au/C2004A02562/latest/text>

⁵² <https://www.legislation.gov.au/C2004A00538/latest/text>



ATTACHMENT A – Discloser rights and responsibilities

Rights

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

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

During the 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
 - » if the agency decides to investigate their disclosure:
 - › who will be conducting the investigation
 - › the estimated duration of the investigation
 - » if the agency decides not to investigate their disclosure:
 - › the reasons for that decision
 - › any action that may be available to the discloser under other Commonwealth laws
 - » if an investigation is conducted under the PID Act:
 - › if an extension of time is granted by the Ombudsman or IGIS
 - › the progress of the investigation
 - › the outcome of the investigation (including provision of a copy of the investigation report except to the extent that it would be exempt for the purposes of Part IV of the Freedom of Information Act 1982, would require a national security or other protective security clearance, contains intelligence information or contravenes a designated publication restriction as defined in the PID Act).
- given support in accordance with section 4.3 of these procedures.
- able to seek assistance from the Ombudsman in relation to the operation of the PID Act.

Responsibilities

A discloser must:

- comply with the PID Act requirements and the procedures set out in this document when making a PID
- use their best endeavors to assist the principal officer/delegated PID investigator of any agency in the conduct of an investigation
- use their best endeavors to assist the Ombudsman in the performance of the Ombudsman's functions under the PID Act
- use their best endeavors to assist the IGIS in the performance of the IGIS's functions under the PID Act



- report to the authorised officer any detriment the discloser believes they have been subjected to because 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. Although a discloser will be consulted regarding any actions proposed to be taken, such actions may be taken without the consent of the discloser.



ATTACHMENT B – Rights and responsibilities of persons who are the subject of a PID

Rights

An agency employee who is the subject of a disclosure will be:

- given support in accordance with section 4.4 of these procedures
- able to seek assistance from the Ombudsman in relation to the operation of the PID Act.

Responsibilities

An agency 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 the IGIS's functions under the PID Act
- comply with action taken by the agency 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
- the agency may decide to act in relation to the employee, for example temporarily transferring the employee to another work area without the employee's consent, to discharge its obligations including under the PID Act and work health and safety legislation.