

**DEPARTMENT OF INFRASTRUCTURE, TRANSPORT, REGIONAL DEVELOPMENT,
COMMUNICATIONS AND THE ARTS**

PUBLIC INTEREST DISCLOSURE PROCEDURES

1. INTRODUCTORY MATTERS

Section 3 of this document constitutes the Department of Infrastructure, Transport, Regional Development, Communications and the Arts' procedures for facilitating and dealing with internal public interest disclosures for the purposes of section 59(1) of the [Public Interest Disclosure Act 2013 \(Cth\)](#) (**PID Act**).

The Department is committed to the highest standards of ethical and accountable conduct and encourages the reporting of wrongdoing under the PID Act. The Department will act on disclosures where appropriate and protect disclosers from any reprisals or threats of reprisals as a result of making a disclosure.

The operation of these procedures will be reviewed regularly to ensure their continued effectiveness.

In these procedures, all references to the principal officer (that is, the Secretary of the Department) include references to the principal officer's delegate.

Unless specified otherwise, terms used in this procedure have the same meaning as set out in the PID Act and the *Public Interest Disclosure Standards 2013 (Cth)*.

2. WHAT ARE PUBLIC INTEREST DISCLOSURES?

Not all disclosures of information that might be made to the Department will be a "public interest disclosure" for the purposes of the PID Act (**a PID**). 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 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 within an Australian Government agency (generally their supervisor or an authorised internal recipient).³

Information about these key requirements, informed by information prepared by the Commonwealth Ombudsman (**Ombudsman**), is set out at **Schedule 1**.

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 a person contemplating making a disclosure of information carefully

¹ This includes a current or former APS employee or contracted service provider: see section 69 of the PID Act. A person may be "deemed" to be a public official by an authorised officer.

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. In some limited circumstances, a disclosure can be made to an external party. The PID Act sets out strict requirements which must be met for such external disclosures to be afforded the protections contained in the PID Act: see section 26 of the PID Act.

reviews the PID Act and seeks 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.

Summaries of the rights and responsibilities of a discloser and a person who is the subject of a disclosure under this procedure are set out at **Schedule 2** and **Schedule 3** respectively.

Further guidance material can also be obtained from the following websites:

- <https://www.ombudsman.gov.au/Our-responsibilities/making-a-disclosure>
- https://www.ombudsman.gov.au/_data/assets/pdf_file/0020/37415/Agency_Guide_to_the_PID_Act_Version_2.pdf

3. PROCEDURES

3.1 DISCLOSURE TO AN AUTHORISED OFFICER

The Department maintains a list of "authorised officers" for the purposes of the PID Act who have been appointed by the principal officer. A PID can be made to an authorised officer of the Department if the PID relates to the Department or the discloser belongs, or last belonged to, the Department.

The list of authorised officers can be accessed on the Department's website.

A disclosure may also be made by emailing PID@infrastructure.gov.au.

To the Authorised Officer [or insert name of nominated Authorised Officer]
Department of Infrastructure, Transport, Regional Development, Communications and
the Arts
GPO Box 594
CANBERRA ACT 2601

Disclosures may be made verbally or in writing, and can be made anonymously.

3.2 DISCLOSURE TO A SUPERVISOR

If a public official discloses information to a supervisor and the supervisor has reasonable grounds to believe that the information concerns, or could concern, disclosable conduct, the supervisor must give the information to an authorised officer of the Department 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 discloser from the time the disclosure is made. Disclosures should be assessed and investigated discreetly and confidentially, with a strong emphasis on maintaining confidentiality of both the discloser and any person who is the subject of the disclosure.

Only individuals directly involved in dealing with the PID (such as the authorised officer and principal officer) may be advised of the details of the PID. These individuals must not disclose the identity of the discloser or any information which is likely to reveal the identity of the discloser without the consent of the discloser, unless one of the relevant exceptions under the PID Act applies.

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 public interest disclosure except where one of the exceptions apply:

- the disclosure or use of the information is for the purposes of the PID Act or for the purposes of, or in connection with, the person's powers and functions under the PID Act;
- the disclosure or use is for the purposes of, or in connection with, taking action in response to a disclosure investigation; or
- the information has previously been lawfully published and is not intelligence information, or if it is intelligence information, the principal officer of the source agency for the information has consented to the disclosure or use (s 65(2)).

Similarly, if a person discloses information to another person or uses information otherwise than in accordance with the PID Act, the person commits an offence if the information was obtained by the person:

- in the course of conducting a disclosure investigation; or
- in connection with the performance of a function or the exercise of a power by the person under the PID Act.

For example, a person must not disclose details or information about a person who is the subject of a disclosure, unless doing so is 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 **RECORD KEEPING**

Written records should be kept of all communications, actions and decisions (including the reasons) relating to a disclosure.

All paper and electronic documents and files, as well as other relevant records including interview tapes, should be stored securely with the confidentiality obligations described above in mind. Where a form is required to be sent under these procedures, a copy of the form must be kept.

All records made for the purposes of the PID Act in accordance with these procedures must be appropriately marked in accordance with the Department's information classification markings, hard copies and electronic copies stored in the appropriate storage container or record keeping system.

3.5 **INITIAL CONSIDERATION AND ALLOCATION**

(a) **Step 1: Consider whether a disclosure meets the requirements for a PID**

When an authorised officer receives a disclosure of information, they will consider the information disclosed and determine whether there are reasonable grounds on which the disclosure could be considered to be an internal disclosure made in accordance with the PID Act.

If the authorised officer is satisfied that there are reasonable grounds on which the disclosure could be considered to be an internal disclosure, they will allocate the disclosure to one or more agencies for further handling and investigation in accordance with the process outlined at Step 2.

Where the authorised officer is aware of the contact details of the discloser, the authorised officer must, as soon as practicable after receiving the disclosure and before allocating the

disclosure, ask the discloser whether they consent to the authorised officer giving the discloser's name and contact detail/s to the principal officer or the principal officer's delegate/s under the PID Act.

Where a disclosure was made initially to a supervisor, consent to disclose the discloser's name and contact details to the principal officer must be sought even where consent was given to the supervisor to whom the disclosure was made.

The authorised officer must make a written record of the discloser's responses (if any) to this question. Where a discloser does not respond within 7 days to the question listed above the discloser is taken not to have consented to the authorised officer giving their name and contact details to the principal officer.

If the authorised officer has reasonable grounds to believe that the information concerns or could concern disclosable conduct and the discloser may be unaware of what the PID Act requires for the disclosure to be an internal disclosure, the authorised officer must:

- inform the discloser that the disclosure could be treated as an internal disclosure for the purposes of the PID Act; and
- explain to the discloser what the PID Act requires for a disclosure to be an internal disclosure; and
- advise the discloser of any orders or directions of which the authorised officer is aware that are designated publication restrictions that may affect disclosure of the information.

If the authorised officer is *not* satisfied that there are reasonable grounds on which the disclosure could be considered to be an internal disclosure, the disclosure will not be allocated and:

- if contacting the discloser is reasonably practicable, the authorised officer will, within 14 days of the decision, 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; and
- if the disclosure relates to conduct that may need to be addressed under, for example:
 - the Department's Procedures for Determining Suspected Breaches of the Australian Public Service Code of Conduct; or
 - the Commonwealth Fraud Control Framework; or
 - any applicable work health and safety procedures; or
 - any other Departmental policies or procedures,

the authorised officer may refer the matter to be dealt with in accordance with the relevant policy or procedure.

For the purposes of determining whether there are reasonable grounds on which the disclosure could be considered to be an internal disclosure, the authorised officer may obtain information from such persons, and make such inquiries, as the authorised officer thinks fit.

(b) **Step 2: Allocate the disclosure**

Once the authorised officer is satisfied that the disclosure of information is an internal disclosure, they must allocate it for handling under the PID Act.

The authorised officer will use their best endeavours to allocate the disclosure within 14 days after the disclosure is made.

In deciding the agency or agencies to which a disclosure will be allocated, the authorised officer will have regard to:

- the principle that an agency – other than the Ombudsman, the Inspector-General of Intelligence and Security (**IGIS**) or an investigative agency prescribed by the Public Interest Disclosure Rules⁴ – should only deal with disclosures that relate to that agency; and
- such other matters (if any) as the authorised officer considers relevant.

This means that, generally, a disclosure relating to the Department should be allocated to the principal officer of the Department. 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 IGIS or an investigative agency that has been prescribed by the Public Interest Disclosure Rules, the authorised officer must have regard to additional matters set out in the PID Act.⁵ For the purposes of deciding the allocation, the authorised officer may obtain information from such persons, and make such inquiries, as the authorised officer thinks fit.

(c) **Step 3: Inform relevant persons of the allocation**

Informing the receiving agency

When the authorised officer allocates the handling of a disclosure to an agency, the authorised officer will inform the principal officer of that agency 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 the discloser consents to the principal officer being informed – the discloser's name and contact details.

Informing the discloser

If it is reasonably practicable to do so, as soon as reasonably practicable after the disclosure has been allocated the authorised officer will also inform the discloser in writing of the

⁴ For example, the *Public Interest Disclosure Rules 2019*, which prescribes the Australian Securities and Investments Commission for the purposes of subsection 72(1)(p)(ii) of the PID Act.

⁵ PID Act, section 44(3)(a)(ii)-(iv).

allocation and of the information that has been provided to the principal officer of the agency that has been allocated the disclosure.

If it is not reasonably practicable for the discloser to be informed of the allocation, the authorised officer will record why doing so is not reasonably practicable, and (if applicable) details of any attempts made to inform the discloser of the allocation.

Informing other relevant bodies

If the authorised officer allocates a disclosure to an agency other than the Ombudsman, the IGIS or an intelligence agency, they will inform the Ombudsman of this in writing. If the disclosure is allocated to an intelligence agency, the authorised officer will inform the IGIS of this in writing.

(d) **Step 4: 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 (including if the disclosure is allocated to the Department), the authorised officer 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; and
- the consent provided by the authorised officer of the agency to which the allocation is made.

Record of communication of decision to discloser

In addition, 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;
- the means by which the discloser was notified; and
- the content of the notification.

These records should be kept confidential. Where an authorised officer is required to keep a record under this procedure, the record can be kept in either hard copy or electronic form.

3.6 RISK ASSESSMENT

(a) Step 1: Conduct a risk assessment

When the authorised officer decides to allocate a PID, they will assess the risk that reprisals will be taken against the discloser.

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

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

Criteria for assessing likelihood of potential reprisals

When considering the likelihood of a reprisal being taken against a discloser, the authorised officer should take into account all relevant factors, including to the extent relevant:

- 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; and
- the number of people implicated in the disclosure;
- the subject matter of the disclosure;
- the number of people who are aware of the disclosure or are likely to become aware of the disclosure (for example, through participation in an investigation as witnesses);
- the culture of the workplace;
- whether any specific threats against the discloser have been 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; and
- whether the disclosure can be investigated 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 take into account all relevant factors, including, to the extent relevant:

- the significance of the issue being disclosed;
- the likely outcome if the conduct disclosed 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; and
- the relative positions of the discloser and the person whose alleged wrongdoing is the subject of the disclosure.

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).

When conducting the risk assessment, 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 may also speak to the discloser's supervisor or manager.

(b) Step 2: Develop a risk mitigation strategy if necessary

Where the risk level is assessed as anything greater than low, the authorised officer will develop a risk management strategy for mitigating the risk of reprisals being taken against the discloser. This strategy may include some or all of the support measures set out at paragraph 3.8 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.

(c) Step 3: Monitor and review risks

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

3.7 **SUPPORT FOR DISCLOSERS**

Regardless of the outcome of the risk assessment, the authorised officer and principal 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 Department's 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 Department; or
- transferring the discloser to a different area within the workplace or approving remote working (where remote working arrangements are not already in place) with the consent of the discloser.

3.8 **SUPPORT FOR A PERSON AGAINST WHOM A DISCLOSURE HAS BEEN MADE**

The 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 Department'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 is reasonably practicable;
- where there are any concerns about the health and wellbeing of the employee, liaising with officers responsible for work health and safety at the Department; or
- transferring the employee to a different area within the workplace or approving remote working arrangements (where these are not already in place) with the consent of the employee.

3.9 **CONSIDERATION AND INVESTIGATION BY PRINCIPAL OFFICER**

(a) **Step 1: Provide initial information to disclosers**

Within 14 days of the Department being allocated a PID, the principal officer will provide the discloser with the following information about their powers to:

- decide not to investigate the disclosure;
- decide not to investigate the disclosure further; or

- decide to investigate the disclosure under a separate investigative power.

(b) **Step 2: Consider whether to investigate the disclosure**

If a PID is allocated to the Department, the principal officer must investigate the disclosure.

However, the principal officer may decide not to investigate a disclosure if the principal officer considers that:

- 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 disclosable conduct that has been, or is currently being, investigated as part of another disclosure investigation; or
- the information concerns disclosable conduct that is the same or substantially the same as disclosable conduct that is being investigated under a law of the Commonwealth or the executive power 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 further matters concerning the disclosure that warrant investigation; or
- the discloser has informed the principal officer that the discloser does not wish for the investigation of the disclosure to be pursued and the principal officer is reasonably satisfied that there are no matters concerning the disclosure that warrant investigation; or
- 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.

If an investigation has started, the principal officer may subsequently decide not to investigate the disclosure further if the above circumstances apply.

(c) **Step 3: Notify the discloser and Ombudsman**

If the disclosure will not be investigated

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

- if it is reasonably practicable to contact the discloser, inform the discloser that the principal officer has 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 be 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
- inform the Ombudsman of the decision not to investigate and the reasons for that decision.

The principal officer must use their best endeavours to decide within 14 days after the disclosure is made to the principal officer.

If the disclosure will be investigated

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

- that they are required to investigate the disclosure;
- of the estimated length of the investigation (not exceeding 90 days from the date of allocation, unless an extension is granted); and
- when it is anticipated that an investigation will take more than 90 days, an extension of time will be sought from the Ombudsman.

(d) **Step 4: Conduct an investigation**

If the principal officer decides to investigate, the principal officer will investigate whether there are one or more instances of disclosable conduct.

Investigations should be conducted in a manner consistent with the *Public Interest Disclosure Standard 2013* (Cth) and the general principles set out below.

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 will be carried out with as little formality as a proper consideration of the matter allows;
- a decision about whether evidence is sufficient to prove a fact will be determined on the balance of probabilities;
- a finding of fact will be based on logically probative evidence;
- the evidence relied on in an investigation must be relevant to the investigation; and
- the investigation will be conducted in accordance with the principles of procedural fairness, including that a person who is the subject of the investigation will be provided with an opportunity to respond.

Aside from compliance with these principles, the principal officer is free to conduct the investigation as they see fit. The way in which the investigation is conducted may vary

depending on the alleged conduct which is being investigated. The principal officer may seek the assistance of another person to investigate the allegations.

In circumstances where the principal officer considers that the nature of the disclosure is such that the outcome of the investigation is likely to be referral of the matter for investigation under another Commonwealth law, the investigation under these procedures may appropriately be conducted in a circumscribed way.

The principal officer should maintain regular contact with the discloser throughout the investigation, and keep clear records of those contacts. This includes responding to enquiries within a reasonable time.

Additional procedures required in particular circumstances

If a disclosure relates to conduct that would require the Department to take steps under:

- the Department's Procedures for Determining Suspected Breaches of the Australian Public Service Code of Conduct; or
- the Commonwealth Fraud Control Framework; or
- any applicable work health and safety procedures; or
- any other Departmental policies or procedures,

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

If the principal officer is required, as part of their investigation, to act in accordance with any rules relating to fraud that are made for the purposes of the *Public Governance, Performance and Accountability Act 2013* (Cth), the *Public Interest Disclosure Standard 2013* (Cth) will only apply to the extent that it is not inconsistent with those rules.

If the principal officer considers that information disclosed in the course of a PID may be appropriately dealt with under another procedure or policy of the Department, they may recommend in the investigation report that this occur and refer the matter to the relevant part of the Department.

Obtaining information

Instances of disclosable conduct may relate to information that is disclosed or information obtained in the course of the investigation rather than information provided in the initial disclosure.

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

When being interviewed as part of an investigation, an interviewee will be informed of the following:

- the identity and function of each individual conducting the interview;
- the process of conducting an investigation;
- the authority of the principal officer under the PID Act to conduct the investigation;
- the protections provided to witnesses under section 57 of the PID Act; and

- the interviewee's duties:
 - if they are a public official – to use their best endeavours to assist the principal officer or the principal officer's delegate/s in the conduct of an investigation under the PID Act;
 - not to take or threaten to take reprisal action against the discloser; and
 - subject to the PID Act, not to disclose the identity of the person who made the disclosure.

The principal officer will ensure:

- an audio or visual recording of the interview is not made without the interviewee's knowledge;
- when an interview ends, the interviewee is given an opportunity to make a final statement or comment, or express a position; 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 investigations or inquiries under other Commonwealth laws or executive powers, or other investigations under the PID Act.

Referral of information to police and others

If, during the course of the investigation, the principal officer suspects on reasonable grounds that some of the information disclosed or obtained in the course of the investigation is evidence of the commission of an offence against a law, the principal officer may disclose the information to a member of an Australian police force. If the information relates to an offence that is punishable for a period of at least two years, the principal officer must disclose the information to a member of an Australian police force.

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.

(e) **Step 5: Prepare investigation report**

Once the principal officer has completed the investigation, they will prepare a report of the investigation.

The principal officer must complete the investigation report within 90 days after the disclosure is allocated to the principal officer, unless this period is extended by the Ombudsman.

The principal officer may seek one or more extensions of time from the Ombudsman. A request to the Ombudsman for an extension of time must be made at least 10 days prior to the expiry of the investigation completion date.

If the 90-day period is extended:

- the Ombudsman must inform the discloser of the reasons for the extension; and
- the principal officer will 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), including an adequate explanation of the basis of the investigator's findings and how the evidence has informed those findings;
- where the findings of an external report have been adopted, details of those findings;
- the action (if any) that has been, is being or is recommended to be taken;
- 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.

To the extent relevant, the report will also set out:

- whether there have been one or more instances of disclosable conduct;
- any regulations, rules, administrative requirements or similar matters to which the disclosable conduct relates;
- the steps taken to gather evidence; and
- a summary of the evidence, as well as any findings and recommendations based on that evidence.

(f) **Step 6: Provide report to discloser**

If it is reasonably practicable to contact the discloser, the principal officer will provide the discloser with a copy of the report 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; or
- 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.

(g) **Step 7: Recommendations in the report**

The principal officer must ensure that appropriate action is taken in response to recommendations in a report under section 51 of the PID Act, or any other matters raised in such a report, that relate to the Department.

SCHEDULE 1

INFORMATION FROM THE COMMONWEALTH OMBUDSMAN'S AGENCY GUIDE TO THE PUBLIC INTEREST DISCLOSURE ACT 2013

Who can make a public interest disclosure?

A person must be a current or former 'public official', as defined in section 69 of the PID Act, to make a public interest disclosure. This is a broad term which includes a Commonwealth public servant, member of the Defence Force, appointee of the Australian Federal Police, Parliamentary Service employee, director or staff member of a Commonwealth company, statutory office holder or other person who exercises powers under a Commonwealth law. Individuals and organisations that provide goods or services under a Commonwealth contract, as defined in section 30(3), and their officers or employees are also included. This includes subcontractors who are responsible for providing goods or services for the purposes of the Commonwealth contract.

The principal officer may deem an individual to be a public official if they reasonably believe the individual has information that concerns disclosable conduct, was not a public official when the individual obtained the information, and proposes to make a disclosure. The principal officer may make the determination on request by the individual or by their own initiative. The principal officer must provide the individual with a written notice of the determination.

How can a public interest disclosure be made?

A public interest disclosure may be made:

- orally or in writing;
- anonymously (if the identity of the disclosure is not revealed and if no contact details for the discloser are provided or the discloser does not disclose their name but provides anonymous contact details); and
- without the discloser asserting that the disclosure is made for the purposes of the PID Act.

What can be disclosed?

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

- 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;

if that conduct:

- 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.

Without limiting any of those grounds, 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, and conduct that could give reasonable grounds for disciplinary action against the public official.

It is preferable for public officials to use other mechanisms to report and resolve grievances relating to their own employment, rather than using the PID Act.

What is not disclosable conduct?

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

- a Commonwealth 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; or
- expenditure or proposed expenditure related to such policy or action.

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.

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

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.

A disclosure must be made to an appropriate person in order to gain the protections available under the PID Act. The PID Act focuses on the reporting and investigating of wrongdoing within government, but allows for reporting outside government in specified circumstances.

Making an internal disclosure

Public officials can report suspected wrongdoing either to their current supervisor (defined in section 8 to mean someone who supervises or manages them) in an agency, or to an authorised officer of their agency or the agency to which they previously belonged. Authorised officers are the principal officer (i.e. the agency head) and officers that the principal officer appoints under the PID Act.

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.

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 like a journalist or union representative, unless the conditions for an external or emergency disclosure are 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.

SCHEDULE 2

RIGHTS AND RESPONSIBILITIES OF DISCLOSERS

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;
 - the decision of the Department to investigate their disclosure;
 - the estimated duration of the investigation into their disclosure;
 - if the Department 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 or IGIS, 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); and
- given support in accordance with paragraph 3.7 of the procedures; and
- 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 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' functions under the PID Act; and
- report to the principal officer any detriment the discloser believes they have been subjected to as a result of making the disclosure.

SCHEDULE 3

RIGHTS AND RESPONSIBILITIES OF PERSONS WHO ARE THE SUBJECT OF A PID

Rights

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

- given support in accordance with paragraph 3.8 of the procedures; and
- able to seek assistance from the Ombudsman in relation to the operation of the PID Act.

Responsibilities

A Departmental 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' functions under the PID Act; and
- comply with action taken by the Department 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.