

PUBLIC INTEREST DISCLOSURE PROCEDURE

1. INTRODUCTORY MATTERS

Section 3 of this document constitutes IP Australia's procedures for facilitating and dealing with public interest disclosures for the purposes of section 59(3) of the *Public Interest Disclosure Act 2013 (Cth)* ("**PID Act**"). Disclosures made prior to 1 July 2023 are to be dealt with under the Department of Industry, Science and Resources procedures, as they applied at the time. Disclosures made on or after 1 July 2023 are to be dealt with under these procedures.

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

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

In these procedures, all references to the Director General or principal officer include references to their delegate(s).

2. WHAT ARE PUBLIC INTEREST DISCLOSURES?

It is important to note that not all disclosures of information that might be made to IP Australia will be a "public interest disclosure" for the purposes of the PID Act ("**a PID**"). There are 5 kinds of PID – internal, external, emergency, legal practitioner, and NACC disclosure. These procedures focus on internal disclosures under the PID Act. Further information on other types of disclosure is available on the Commonwealth Ombudsman's website: <https://www.ombudsman.gov.au/>.

A disclosure of information will only be an internal PID to which these procedures relate if it meets the following requirements:

- (a) it is made by a public official or a person who has been a public official;¹
- (b) 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 and the disclosure is not made in the course of performing the discloser's ordinary functions as a public official;² and
- (c) the disclosure is made to an appropriate person.³

An overview of these key requirements, prepared by the Commonwealth Ombudsman, is set out at [Attachment A](#).

Only if each of the above requirements has been met will the disclosure be an internal PID 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 of information carefully review the contents of the PID Act and seek their own independent legal advice

¹ This includes a current or former APS employee or contracted service provider: see section 69 of the [PID Act](#).

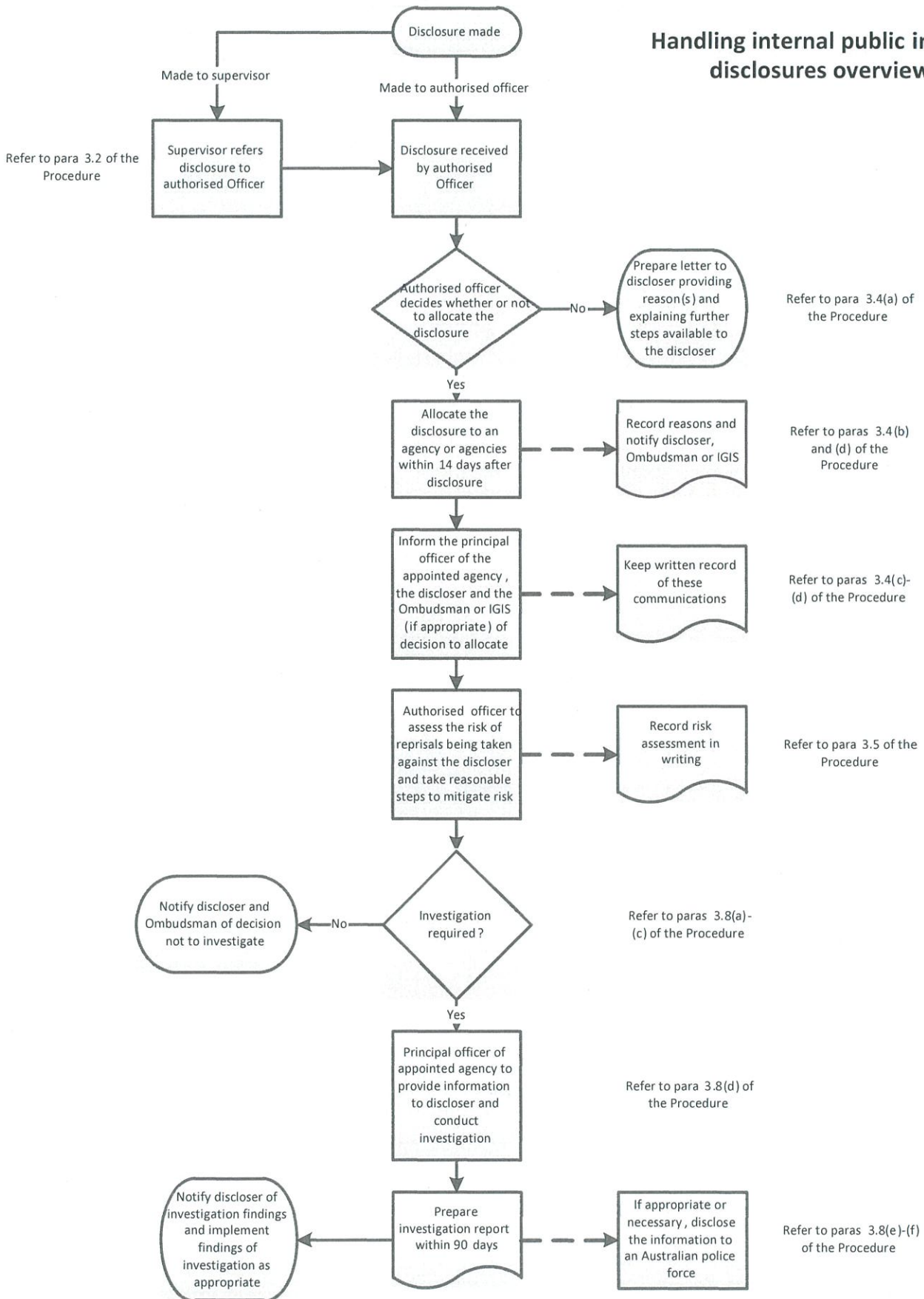
² What does and does not constitute disclosable conduct is defined in sections 29-33 of the [PID Act](#).

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

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, a person who is the subject of a disclosure and a public official assisting with the investigation of a disclosure under this procedure are set out at **Attachment B**, **Attachment C** and **Attachment D** respectively. Further guidance material can also be obtained from the following website:
<<http://www.ombudsman.gov.au/pages/pid/>>

Handling internal public interest disclosures overview



3. PROCEDURES

3.1 AUTHORISED OFFICERS

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

The list of authorised officers, and their contact details, can be accessed at [Accountability And Reporting | IP Australia](#)

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 appropriate authorised officer as soon as reasonably practicable. The definition of disclosable conduct can be found at [Attachment A](#).

The supervisor must also:

- inform the discloser that the disclosure could be treated as a PID
- explain to the discloser that the procedures under the PID Act require:
 - the supervisor (or manager) to give the disclosure to an authorised officer
 - the authorised officer to decide whether to allocate the disclosure to IP Australia or to another agency, and
 - if the PID is allocated, the principal officer (or delegate) must investigate it
- advise the discloser about the circumstances (if any are applicable) in which a disclosure must be referred to another agency or person under another law of the Commonwealth
- explain to the discloser the protections under the PID Act.

3.3 PROTECTING CONFIDENTIALITY

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

Only individuals directly involved in dealing with the PID (such as the authorised officer, Director General or delegate) may be advised of the details of the PID. However, it may also be necessary for information about the discloser's identity, or information that would effectively identify them, to be reported to certain other people if it is necessary for the purposes of the PID Act such as to investigate the disclosure effectively, or to protect the individual making the disclosure from reprisals. These other 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.

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 other than in accordance with the PID Act.

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

3.4 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 consider whether:

- there are reasonable grounds on which the disclosure could be considered to be an internal disclosure made in accordance with the PID Act; and
- the conduct disclosed would be more appropriately investigated under another Commonwealth law or power

If the authorised officer is satisfied there is an internal disclosure and it should be investigated under the PID Act rather than another Commonwealth law or power:

- the authorised officer will allocate the disclosure to one or more agencies (which may include IP Australia) for further handling and investigation in accordance with the process outlined at [Step 2](#).

If the authorised officer is not satisfied there is an internal disclosure or considers that it should be investigated under another Commonwealth law or power rather than the PID Act the PID Act:

- the disclosure will not be allocated and:
 - the authorised officer will inform the Ombudsman, Inspector General of Intelligence and Security (**IGIS**) and the discloser (if it is reasonably practicable), in writing of:
 - the reasons why the disclosure will not be allocated to an agency;
 - whether the authorised officer has taken, or proposes to take any action to facilitate its referral, for investigation under another other law or power; 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 IP Australia policies relating to Code of Conduct, Work Health and Safety, fraud and corruption, or any other of IP Australia's policies or procedures;

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

(b) Step 2: Allocate the disclosure

The authorised officer will use their best endeavours to decide the allocation 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 IGIS or an investigative agency prescribed by the Public Interest Disclosure Rules⁴ – should only deal with disclosures that relate to that agency;
- whether IP Australia’s portfolio Department would be better able to handle the disclosure, and they have consented to the disclosure being allocated to them; and
- such other matters (if any) as the authorised officer considers relevant.

In addition, 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

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

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

Informing the receiving agency

When the authorised officer allocates the handling of a disclosure to IP Australia or another agency, the authorised officer will inform the principal officer of that agency of:

⁴ At the time of publication of this policy, no [Public Interest Disclosure Rules](#) relating to allocating a disclosure have been made.

⁵ See section 43(5)(a)(ii)-(iv) of the [PID Act](#).

- 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 of the agency being informed – the discloser's name and contact details.

Informing the discloser

If contacting the discloser is reasonably practicable, as soon as reasonably practicable after the allocation has occurred, the authorised officer will also inform the discloser in writing of the allocation and of the information that has been provided to the principal officer of that agency.

Informing other relevant bodies

If the authorised officer allocated a disclosure to IP Australia, or another 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, or decides not to allocate the disclosure, 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; and
- if applicable, the consent provided by the authorised officer of the agency to which the allocation is made.

When an authorised officer notifies the NACC of a corruption issue and the NACC issues a stop action direction, they must keep an appropriate record of:

- the direction;
- when the direction was made;
- when it no longer applies; and
- whether the principal officer considers that it is reasonably practicable or appropriate for the discloser to be given a copy of the notice.

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 or not, or stop action direction (if applicable) and, if so, of:

- the day and time the discloser was notified; and
- the means by which the discloser was notified; and
- the content of the notification.

These records should be kept confidential.

(e) Step 5: Consider referral to the NACC

The authorised officer must also consider whether the internal disclosure raises a corruption issue under the National Anti-Corruption Commission Act (NACC Act). If the authorised officer suspects a disclosure raises a corruption issue that is **serious or systemic** and which concerns the conduct of a person who is, or was, a staff member of IP Australia while that person is or was a

staff member:

- they **must** refer that issue to the National Anti-Corruption Commission (**NACC**) unless they have reasonable grounds to believe the NACC is already aware, or the NACC has advised the authorised officer that the provision of information about the corruption issue is not required; and
- continue dealing with the disclosure, unless the NACC issues a stop action direction.

It is also possible to make a voluntary referral.

For information about these concepts, see [Factsheet-PID-and-NACC-interactions- - September-2023.pdf \(ombudsman.gov.au\)](#).

If the NACC makes a stop action direction, the authorised officer must keep a record of:

- details of the stop action direction;
- when the direction was made;
- when the direction no longer applies.

The authorised officer must give notice to the Ombudsman (or the IGIS regarding intelligence agencies and functions), and to the discloser if reasonably practicable or as soon as reasonably practicable of:

- the information that was disclosed
- the conduct disclosed
- if the discloser's name and contact details are known to the authorised officer, and the discloser consents to the Commonwealth Ombudsman (or IGIS) being informed—the discloser's name and contact details, and
- the stop action direction under the NACC Act that prevents allocation of some or all of the PID.

If it is not reasonably practicable or appropriate for the discloser to be given a copy of the stop action direction, then the authorised officer should keep a record of those reasons.

3.5 **RISK ASSESSMENT**

When the Director General receives a PID that has been allocated to IP Australia, the authorised officer will assess the risk that reprisals will be taken against the discloser. The authorised officer may also assess the risk that reprisal action will be taken against any other public official who belongs to the agency.

Any risk assessment must be completed in line with IP Australia's Enterprise Risk Framework and in consultation with the Chief Risk Officer.

3.6 **SUPPORT FOR DISCLOSERS AND PUBLIC OFFICIALS WHO BELONG TO THE AGENCY**

Regardless of the outcome of the risk assessment, the Director General will take all reasonable steps to protect public officials who belong to the agency from detriment or threats of detriment relating to the PID.

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

- (a) appointing a support person to assist the discloser or other public official, who is responsible for checking on the wellbeing of the person regularly;
- (b) informing the discloser, or other public official of the progress of the investigation;
- (c) advising the discloser, or other public official of the availability of the Employee Assistance Program;
- (d) where there are any concerns about the health and wellbeing of the discloser, or other public official, liaising with officers responsible for work health and safety in IP Australia; or
- (e) transferring the discloser, or other public official to a different area within the

workplace or approving remote/teleworking (with the consent of the person). This is only likely to be appropriate in cases involving very major or extreme risk.

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

The Director General 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:

- (a) advising the employee of their rights and obligations under the PID Act and about IP Australia's investigation procedures, including the employee's rights to procedural fairness;
- (b) informing the employee of the progress of the investigation, to the extent appropriate;
- (c) advising the employee of the availability of the Employee Assistance Program;
- (d) ensuring that the identity of the employee is kept confidential as far as reasonably practicable;
- (e) where there are any concerns about the health and wellbeing of the employee, liaising with officers responsible for work health and safety in IP Australia; or
- (f) transferring the employee to a different area within the workplace or approving an arrangement in accordance with the Flexible Working Arrangements Policy (with the consent of the employee). This is only likely to be appropriate in cases involving very major or extreme risk.

3.8 **CONSIDERATION AND INVESTIGATION BY PRINCIPAL OFFICER**

(a) Step 1: Provide initial information to disclosers

As soon as reasonably practicable after IP Australia is allocated a PID, the Director General will provide the discloser with the following information about their:

- power to decide not to investigate the disclosure;
- power to decide not to investigate the disclosure further;
- power to decide to investigate the disclosure under a separate investigative power; or
- duty to not investigate, or not further investigate the disclosure, because of a stop action direction under the NACC.

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

If a PID is allocated to IP Australia, the Director General will consider whether or not to investigate the PID.

The Director General may decide not to investigate a disclosure if the Director General 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 previously disclosed and:
 - a decision was previously made to not investigate the earlier disclosure, or not investigate the earlier disclosure further, or
 - the earlier disclosure has been, or is being, investigated as a disclosure investigation;
- the conduct disclosed, or substantially the same conduct, 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;
- the conduct disclosed, or substantially the same conduct, has been investigated under a law of the Commonwealth or the executive power of the Commonwealth, and the Director General is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation;

- the Director General is satisfied, on reasonable grounds, that the conduct disclosed would be more appropriately investigated under another law of the Commonwealth or the executive power of the Commonwealth;
- the discloser, authorised officer of IP Australia, or the principal officer or authorised officer of another agency, have informed the Director General that the discloser does not wish for the investigation of the disclosure to be pursued and the Director General is reasonably satisfied that there are no matters concerning the disclosure that warrant investigation;
- it is impracticable for the disclosure to be investigated because:
 - the discloser's name and contact details have not been disclosed;
 - the discloser fails or is unable to give such information or assistance as the person who is or will be investigating asks the discloser to give; or
 - the age of the information makes this the case.

If the above circumstances do not apply, the Director General will conduct an investigation.

(c) Step 3: Notify the discloser and Ombudsman or IGIS

If the disclosure will not be investigated

If the Director General decides not to investigate a disclosure, they will:

- if reasonably practicable to contact the discloser, inform the discloser that the Director General 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
 - if relevant, the reasonable steps taken to refer the conduct disclosed, or to facilitate its referral, for investigation under the other law or power; and
- inform the Ombudsman or IGIS of the decision not to investigate and the reasons for that decision.

If the disclosure will be investigated

If the Director General decides to investigate the disclosure, they will, as soon as reasonably practicable, inform the discloser that they are required to investigate the disclosure and of the estimated length of the investigation.

(d) Step 4: Conduct an investigation

If the Director General decides to investigate, the Director General will investigate whether there are one or more instances of disclosable conduct in the information disclosed or in the information obtained in the course of the investigation, unless satisfied on reasonable grounds that such information is tangential or remote to the disclosure.

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

General principles

An investigation must be conducted in accordance with the requirements of the PID Act and the *PID Standard 2013*.

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

- the investigation must be conducted confidentially;
- 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 have an opportunity to respond or provide information;
- in the event that an interview is to be conducted it is conducted in a manner consistent with the *PID Standard 2013*;
- if rules relating to fraud that are made for the purposes of the Public Governance, Performance and Accountability Act 2013, the PID Standard will apply only to the extent that it is not inconsistent with those rules;

- a decision whether evidence is sufficient to prove a fact will be determined on the balance of probabilities
- a finding of fact must be based on logically probative evidence, and the evidence relied on in an investigation must be relevant.

Aside from compliance with these principles, the Director General 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.

Obtaining information

During the investigation, the Director General may, for the purposes of the investigation, obtain information from such persons and make such inquiries as the Director General 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 Director General under the PID Act to conduct the investigation; and
- the protections provided to disclosers and witnesses under Part 2 of the PID Act.

The Director General will ensure:

- an audio or visual recording of the interview is not made without the interviewee's knowledge;
- when the 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 Director General 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 Director General 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 Director General 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 Director General must disclose the information to a member of an Australian police force unless an exception applies as specified in s 56.

Referral of information to the NACC

At any time during the course of the investigation, if the Director General becomes aware of a corruption issue that:

- concerns the conduct of a person who is, or was, a staff member of the agency while that person is, or was, a staff member, and
- the Director General suspects could involve corrupt conduct that is serious and systemic,

they must refer the corruption issue to the Commissioner, or in the case of an intelligence agency, to the IGIS, unless they have reasonable grounds to believe the NACC is already aware, or the NACC has advised the authorised officer that the provision of information about the corruption issue is not required.

It is also possible to make a voluntary referral.

For information about these concepts, see [Factsheet-PID-and-NACC-interactions- - September-2023.pdf \(ombudsman.gov.au\)](#).

The Director General must notify the discloser that the PID has been referred to the Commissioner, as soon as reasonably practicable, after the referral.

If referred, the Director General will continue dealing with the disclosure unless a stop action

direction is issued by the NACC.

(e) Step 5: Prepare investigation report

Once the Director General has completed the investigation, they will prepare a report of the investigation.

The Director General must complete the investigation report within 90 days after the disclosure was allocated to the Director General, unless this period is extended by the Ombudsman. If the period is extended, the Director General 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 (noting that an investigation is ordinarily required to be completed within 90 days after the relevant disclosure was allocated to the agency);
- the Director General's findings (if any);
- any regulations, rules, administrative requirements or similar matters to which the disclosable conduct relates;
- the action (if any) that has been, is being or is recommended to be taken.; and

to the extent relevant:

- the steps taken to gather evidence;
- a summary of the evidence; and
- any claims made about and any evidence of detrimental action taken against the discloser or other public officials, and the agency's response to those claims and that evidence.

The Director General will provide a copy of the report to the Ombudsman or IGIS but may delete from the copy any material that is likely to enable the identification of the discloser or another person, or the inclusion of which would contravene a designated publication restriction.

Step 6: Provide report to discloser

If it is reasonably practicable to contact the discloser, the Director General will provide the discloser with a copy of the report within a reasonable time after preparing the report. However, the Director General 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.

4. What if the discloser is not satisfied with the agency's actions?

A discloser may make a complaint to the Commonwealth Ombudsman about IP Australia's handling of a PID. The Ombudsman may review the handling of the PID by any or all of the supervisor, authorised officer, Director General, or any other public official involved. As a result of the review, the Ombudsman may make written recommendations, including recommendations about allocation, reallocation, investigation, reinvestigation, or any other action. The Director General must consider and respond to any recommendation made by the Commonwealth Ombudsman in accordance with section 55 of the PID Act.

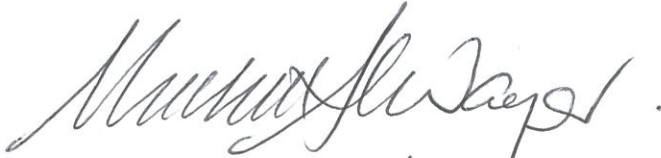
If a person who has made a PID believes, on reasonable grounds, that the investigation conducted by IP Australia was inadequate, the response to the investigation was inadequate, or the investigation was not completed within the time limit, it may be open to

the person to make an external disclosure under the PID Act.

For more information, please refer to the Commonwealth Ombudsman's website:
<https://www.ombudsman.gov.au/>.

These procedures for dealing with public interest disclosures have been issued by me in accordance with the *Public Interest Disclosure Act 2013*.

PID PROCEDURE ISSUED BY:



Murray Stewart
10/1/24

ATTACHMENT A – GUIDANCE SUMMARISED FROM THE COMMONWEALTH OMBUDSMAN'S AGENCY GUIDE TO THE PUBLIC INTEREST DISCLOSURE ACT 2013 VERSION 3 PUBLISHED JULY 2023

Who can make a public interest disclosure?

In general, a person can make a disclosure if they belong, or previously belonged, to one of the agencies covered by the PID Act. This includes Commonwealth public servants, members of the Defence Force, appointees of the Australian Federal Police, Parliamentary Service employees, directors or staff of Commonwealth companies, statutory office holders or any other person who exercises, or exercised, powers under a Commonwealth law. Individuals and organisations that provide goods or services under a Commonwealth contract (defined in s 30(3)), and their officers or employees, are also public officials for the purposes of the PID Act. This includes subcontractors who are responsible for providing goods or services, either directly or indirectly, to an agency covered by the PID Act for the purposes of a Commonwealth contract (s 30(2)). An authorised officer may deem an individual to be a public official if they reasonably believe the individual has information about wrongdoing and proposes to make a disclosure (s 70).

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

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 (s 29(1)).

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 resulting in the termination of the official's engagement or appointment (s 29(2)).

What is not disclosable conduct?

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

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

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

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

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

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 (s 33).

A disclosure must be made to an appropriate person in order to gain the protections available under the PID Act (s 26). 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 s 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 (s 36).

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.

ATTACHMENT B - 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 use or disclosure of their identity except where authorised by the PID Act. 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 IP Australia to investigate their disclosure;
 - the estimated duration of the investigation into their disclosure;
 - if IP Australia 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).
- given support in accordance with [paragraph 3.6](#) of the 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 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; and
- use their best endeavours to assist the IGIS in the performance of the IGIS's functions under the PID Act; and
- report to the Director General any detriment the discloser believes they have been subjected to as a result of making the disclosure.

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

Rights

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

- 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

An employee of IP Australia 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 IP Australia 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.

ATTACHMENT D - RIGHTS AND RESPONSIBILITIES OF PUBLIC OFFICIALS INCLUDING WITNESSES

Rights

A public official has a right to the protections set out in the PID Act, including protection from reprisals and, in the case of individuals who provide assistance in relation to a PID (ie witnesses), from civil and criminal liability. However, a disclosure does not protect the public official or witness 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 public official will be:

- given support in accordance with [paragraph 3.6](#) of the procedures.
- able to seek assistance from the Ombudsman in relation to the operation of the PID Act.

Responsibilities

A public official 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; and
- use their best endeavours to assist the IGIS in the performance of the IGIS's functions under the PID Act;
- use the public official's best endeavours to assist any other public official to exercise a right, or perform a duty or function, under this Act.
- report to the Director General any detriment the public official believes they have been subjected to as a result of assisting with the investigating of a disclosure.