



**safe work australia**

# **Procedures for Making and Dealing with Public Interest Disclosures**

**August 2022**

---

Policy Owner	Legal and Procurement
Document Status	Final
Point of Contact	General Counsel Telephone: (02) 6121 6374
Approver	Michelle Baxter
Approval Authority	Chief Executive Officer Safe Work Australia
Date of Approval	26 August 2022
Date of Effect	26 August 2022

---

### Document revision

Legal and Communications is responsible for periodically revising this document and keeping it up-to-date.

Date	Version	Changes
March 2017	Version 1	
August 2022	Version 2	Correction of minor errors and updating to reflect the Agency's current structure and the Ombudsman's reporting process.

### Supporting resources

- [Public Interest Disclosure Act 2013](#)
- [Public Interest Disclosure Standard 2013](#)
- [Agency Guide to the Public Interest Disclosure Act 2013 \(April 2016 – Version 2\)](#)
- [Public Service Act 1999](#)
- [Public Service Regulations 1999](#)
- [Need to Know Sheets – Public Interest Disclosure Act 2013](#)
- [Public Interest Disclosure Act 2013 – Training Presentation](#)
- [Public Interest Disclosure Act 2013 - Forms](#)
- [Ombudsman's Website](#)



## **TABLE OF CONTENTS**

1	PURPOSE.....	4
2	DATE OF EFFECT .....	4
3	WHAT IS A PUBLIC INTEREST DISCLOSURE? .....	4
4	WHAT IS DISCLOSABLE CONDUCT? .....	5
5	MAKING AN INTERNAL PUBLIC INTEREST DISCLOSURE.....	7
6	DISCLOSURES TO LEGAL PRACTITIONERS.....	8
7	PROCEDURES FOR SUPERVISORS .....	9
8	PROCEDURES FOR AUTHORISED OFFICERS.....	10
9	INITIAL INFORMATION TO DISCLOSER .....	13
10	DISCRETION TO NOT INVESTIGATE OR TO DISCONTINUE INVESTIGATION .....	13
11	INVESTIGATING A DISCLOSURE.....	14
12	TIME LIMITS FOR INVESTIGATIONS .....	15
13	INTERVIEWS .....	15
14	PROCEDURAL FAIRNESS .....	16
15	REPORT & OUTCOMES.....	16
16	ANONYMOUS DISCLOSURES.....	18
17	DISCLOSURE TO THE OMBUDSMAN .....	18
18	OTHER TYPES OF PUBLIC INTEREST DISCLOSURE .....	19
19	PROTECTIONS.....	21
20	IF DISSATISFIED WITH OUTCOMES – MAKING A COMPLAINT TO THE COMMONWEALTH OMBUDSMAN.....	22
21	RECORD KEEPING .....	22
22	MONITORING AND EVALUATION .....	22
23	CONFIDENTIALITY.....	22
24	SUPPORT .....	23
25	FURTHER INFORMATION .....	23

## CHAPTER 1 – INTRODUCTION

### 1 PURPOSE

- 1.1. These procedures are made by the Chief Executive Officer (CEO) under s 59 of the *Public Interest Disclosure Act 2013* (Cth) (the PID Act) in their capacity as the ‘Principal Officer’ of Safe Work Australia.
- 1.2. This document sets out the procedures for making and dealing with ‘public interest disclosures’ under the PID Act.
- 1.3. All Safe Work Australia employees, former employees and contracted service providers are entitled to make a disclosure under the PID Act, as are other persons who are ‘public officials’ under the PID Act (e.g. employees of other Australian Public Service (APS) agencies).
- 1.4. Safe Work Australia encourages and supports the reporting of wrongdoing by public officials under the PID Act.
- 1.5. Safe Work Australia will take active steps to support and protect persons who make disclosures under the PID Act.
- 1.6. Safe Work Australia recognises that it is important to have an effective system for reporting and investigating disclosable conduct. Some of the potential benefits of such a system are reducing the work health and safety risks to our workers, saving money and making our programs and processes more efficient. Another potential benefit is increasing the confidence of our employees in the way the Agency is managed.
- 1.7. It is important that Safe Work Australia properly manages internal public interest disclosures to prevent external public interest disclosures from occurring.
- 1.8. Safe Work Australia also recognises that a decision not to deal with a disclosure as a disclosure under the PID Act, when as a matter of law that is how the disclosure should have been dealt with, could be seriously detrimental to the discloser and to the effective operation and the good reputation of Safe Work Australia.
- 1.9. For more information about how these procedures work in practice, see the Commonwealth Ombudsman’s [‘Agency Guide to the Public Interest Disclosure Act 2013’](#), April 2016 (the Ombudsman’s Guide).
- 1.10. The CEO as Principal Officer may delegate any of their functions or powers to a public official who belongs to the Agency (s 77). A delegate appointed to carry out an investigation must be impartial and free of actual or apparent bias.

### 2 DATE OF EFFECT

- 2.1. These procedures take effect from 26 August 2022.

### 3 WHAT IS A PUBLIC INTEREST DISCLOSURE?

- 3.1. Under the PID Act, there are four types of protected public interest disclosure. These are:
  - internal disclosures to authorised internal recipients or a supervisor of the discloser
  - external disclosure to any person other than a foreign public official
  - emergency disclosures to any person other than a foreign public official, and
  - disclosure to an Australian legal practitioner for purposes connected with making a public interest disclosure.
- 3.2. These procedures primarily concern internal disclosures. The other types of disclosures are described in more detail at Chapter 6.

- 3.3. The PID Act protects public officials from adverse consequences for making a disclosure. However, protections only apply if the internal disclosure:
- is made by a current or former public official—including Safe Work Australia staff, contracted service providers and those individuals who may be deemed a public official under the Act, and
  - involves information that tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of ‘disclosable conduct’, and
  - is made to an authorised internal recipient such as an ‘Authorised Officer’ or is made to the discloser’s supervisor.
- 3.4. It does not matter whether the public official who is alleged to have engaged in the disclosable conduct has ceased to be a public official after the alleged conduct occurred, but it is necessary that they engaged in the conduct in connection with their position as a public official.
- 3.5. Further information about protections is contained at Chapter 7.
- 3.6. The following persons are Authorised Officers in Safe Work Australia:
- Branch Manager, WHS Framework and Workers’ Compensation Policy Branch, and
  - the CEO.

## **4 WHAT IS DISCLOSABLE CONDUCT?**

### *The definition of disclosable conduct*

- 4.1. The definition of disclosable conduct is set out in s 29 of the PID Act. Examples of disclosable conduct include conduct that:
- contravenes a law of the Commonwealth, a state or a territory, or
  - occurs in a foreign country and contravenes a law in force in that country that applies to the Agency, public official or contracted service provider and that corresponds to a law in force in the Australian Capital Territory, or
  - perverts, or is engaged in for the purpose of perverting, or attempting to pervert the course of justice, or involves or is engaged in for the purpose of corruption of any other kind, or
  - constitutes maladministration, including conduct that:
    - a) is based, in whole or in part, on improper motives,
    - b) is unreasonable, unjust or oppressive, or
    - c) is negligent, or
  - results in the wastage of public money or public property or the money or property of an authority covered by the PID Act, or
  - is an abuse of public trust or the public official’s position, or
  - is conduct that could, if proved, give reasonable grounds for disciplinary action against a public official, or
  - is fabrication, falsification, or deception in relation to scientific research, or misconduct in relation to scientific work, or



- unreasonably results in a danger to the health and safety of a person or unreasonably results in or increases the risk of a danger to the health and safety of a person, or
- results in a danger to the environment or results in or increases the risk of a danger to the environment.

*What is not disclosable conduct?*

- 4.2. Individual grievances or workplace conflicts would generally be appropriately dealt with under other issue resolution procedures.
- 4.3. Disclosable conduct does not include conduct of Ministers, the Speaker of the House of Representatives or the President of the Senate, and cannot be used to challenge government policy, action or expenditure.

## CHAPTER 2 – INFORMATION FOR DISCLOSERS

### 5 MAKING AN INTERNAL PUBLIC INTEREST DISCLOSURE

#### Who can make a public interest disclosure?

- 5.1. All employees in the Agency and former employees of the Agency are entitled to make a disclosure under the PID Act.
- 5.2. All contracted service providers and their employees who provide, or who provided, services to the Agency under a contract with the Agency are entitled to make a disclosure under the PID Act.

#### How is a public interest disclosure made?

- 5.3. Public interest disclosures can be made orally or in writing.
- 5.4. Public interest disclosures can be made openly or anonymously. Anonymous disclosures are described in more detail at Chapter 6.
- 5.5. A person is not required to assert that a disclosure is made for the purpose of the PID Act for it to be a public interest disclosure.
- 5.6. A disclosure can be a public interest disclosure under the PID Act regardless of the whether this is the intention of the discloser.

#### Who is a public interest disclosure made to?

- 5.7. Employees of the Agency may make a disclosure to their supervisor, to an Authorised Officer, or in certain circumstances, to the Commonwealth Ombudsman (the Ombudsman).
- 5.8. Former employees of the Agency, or current or former employees or officers of contracted service providers, may make a disclosure to an Authorised Officer, or in certain circumstances, to the Ombudsman.
- 5.9. Where possible, employees in the Agency are encouraged to make public interest disclosures to an Authorised Officer. These officers have been trained in receiving public interest disclosures and can usually provide more information about the process than a supervisor.
- 5.10. A supervisor under the PID Act is a public official who supervises or manages the person making the disclosure. A person may have more than one supervisor.

#### What precautions should a potential discloser take?

- 5.11. The information contained in a disclosure should be clear and factual, and should, as far as possible, avoid speculation, personal attacks and emotive language. It should contain supporting evidence where that is available to the discloser and should, where possible, identify any witnesses to the disclosable conduct.
- 5.12. A potential discloser should not investigate a matter themselves before making a disclosure.
- 5.13. Disclosers should not discuss details of their disclosure with anyone who does not need to know about it. Discussions with these people are not protected.
- 5.14. A person who knowingly makes a false or misleading disclosure will not have any protections under the PID Act.
- 5.15. Public interest disclosures cannot be withdrawn once made. Disclosers however may express their wishes about the process including stating that they do not wish the disclosure to be investigated, and may refuse to consent to their name and contact details being provided to the CEO or delegate.

- 5.16. A person who is considering making a disclosure should be aware that making a disclosure does not entitle them to protection from the consequences of their own wrongdoing.

*Duty of a supervisor or Authorised Officer*

- 5.17. A supervisor or an Authorised Officer who receives a disclosure of disclosable conduct from a public official must deal with the disclosure in accordance with the PID Act, the *Public Interest Disclosure Standard 2013* (Cth) (the PID Standard) and these procedures.
- 5.18. The duties of supervisors are described in more detail in Chapter 3 and the duties of Authorised Officers are described in more detail at Chapter 4.

*Further information about making public interest disclosures*

- 5.19. Information about making a public interest disclosure is available from Safe Work Australia's Authorised Officers and the Ombudsman.
- 5.20. For information on making a public interest disclosure to another agency, see the [Ombudsman's Guide](#).
- 5.21. Where a public official is considering making a disclosure, they should, in the first instance, contact one of the Agency's Authorised Officers for information about making a public interest disclosure under the PID Act.

## **6 DISCLOSURES TO LEGAL PRACTITIONERS**

- 6.1. Public officials may disclose information to an Australian legal practitioner for purposes of seeking legal advice or professional assistance in relation to making a disclosure. Public officials must not, however, disclose intelligence information even for these purposes.
- 6.2. Legal practitioner disclosures are a separate type of public interest disclosure under the PID Act. A disclosure to an Australian legal practitioner is protected under the PID Act in the same way as an internal public disclosure.
- 6.3. An Australian legal practitioner is an Australian lawyer who holds a current practising certificate under a law of a State or Territory.



## CHAPTER 3 – PROCEDURES FOR SUPERVISORS

### 7 PROCEDURES FOR SUPERVISORS

#### Who can make a public interest disclosure to a supervisor?

- 7.1. Employees in the Agency may make a disclosure to their supervisor.
- 7.2. Supervisor is defined in the PID Act as a public official who supervises or manages the person making the disclosure. A person may have more than one supervisor for the purposes of the PID Act.

#### Supervisor's duty to pass on disclosure to an Authorised Officer

- 7.3. Where an employee in the Agency discloses information to their supervisor and that supervisor has reasonable grounds to believe that the information concerns, or could concern, disclosable conduct, the supervisor must, as soon as practicable, give the information to an Authorised Officer in the Agency.
- 7.4. Where such a disclosure is made to a supervisor, that person must make a written record of the fact of the disclosure, and if the disclosure is not in writing, they must make a written record of the substance of the disclosure and of the time and date of the disclosure.
- 7.5. The person to whom an oral disclosure has been made must ask the discloser to sign the record of the disclosure, where this is practicable.
- 7.6. Where a supervisor has given information to an Authorised Officer under paragraph 7.3, and where the supervisor is able to contact the discloser, they must inform the discloser that they have given the information to an Authorised Officer in the Agency and advise the discloser of the name and contact details of the Authorised Officer.

#### Supervisor's Risk Assessment

- 7.7. At the time a supervisor gives information to an Authorised Officer under paragraph 7.3, they must also give the Authorised Officer their written assessment of any risks that reprisal action might be taken against the person who disclosed the information to the supervisor.

## CHAPTER 4 – PROCEDURES FOR AUTHORISED OFFICERS

### 8 PROCEDURES FOR AUTHORISED OFFICERS

#### Preliminary steps – advise disclosers and potential disclosers about the PID Act

#### 8.1. Where:

a person discloses, or is proposing to disclose, information to an Authorised Officer which the Authorised Officer has reasonable grounds to believe may concern disclosable conduct, and

- a) the Authorised Officer has reasonable grounds to believe that the person may be unaware of what the PID Act requires for the disclosure to be an internal disclosure, and
- b) the Authorised Officer is aware of the contact details of the person,

the Authorised Officer must:

- a) inform the person that the disclosure could be treated as an internal disclosure for the PID Act
- b) explain to the person what the PID Act requires for a disclosure to be an internal disclosure
- c) explain to the person the protections provided by the PID Act to persons who make disclosures under the Act, and
- d) advise the person of any orders or directions that may affect the disclosure of the information.

#### Making an allocation decision – initial steps

#### 8.2. Where a public official, or a person who has been a public official, makes a disclosure of disclosable conduct directly to an Authorised Officer, the Authorised Officer must:

- a) make a written record of the fact of the disclosure, and if the disclosure is not in writing, they must make a written record of the substance of the disclosure and of the time and date of the disclosure, and
- b) ask the discloser to sign the written record of an oral disclosure, where this is practicable.

#### 8.3. Where a disclosure has been given or made to an Authorised Officer, the Authorised Officer must use their best endeavours to decide on the allocation of the disclosure within 14 days after the disclosure is given or made to the Authorised Officer.

#### First decision - deciding whether or not to allocate the disclosure

#### 8.4. An Authorised Officer who receives a disclosure must decide whether they are satisfied, on reasonable grounds, that there is no reasonable basis on which the disclosure could be considered to be an internal disclosure.

#### 8.5. The basis on which an Authorised Officer could be satisfied of this include:

- that the disclosure has not been made by a person who is, or was, a public official
- that the disclosure was not made to an authorised internal recipient or supervisor
- that the disclosure is not about disclosable conduct
- that the person who is alleged to have carried out the disclosable conduct was not a public official at the time they are alleged to have engaged in that conduct, and

- that the disclosure is not otherwise a public interest disclosure within the meaning of the PID Act.

8.6. Where an Authorised Officer decides that a disclosure that has been made to them is not to be allocated on the basis that it is not an internal disclosure, they must, where the discloser's contact details are known to the Authorised Officer, advise the discloser in writing using **Form 1** that the disclosure is not to be allocated. They must also notify the discloser of the reasons for this decision and any options that may be available under other Commonwealth laws.

Second decision - allocating the disclosure

- 8.7. If the Authorised Officer decides that the disclosure is to be considered to be an internal disclosure, they must make an allocation decision.
- 8.8. For the purpose of deciding the allocation of a disclosure, an Authorised Officer may obtain information and make such inquiries as they think fit.
- 8.9. Any interviews should be conducted in private. Interviews with the discloser should be arranged so as to avoid the identification of the discloser by other staff of the Agency. The Authorised Officer should also have regard to Chapter 5 of the Ombudsman's Guide when conducting preliminary inquiries and making their decision.
- 8.10. Where the Authorised Officer is aware of the contact details of the discloser, they must, as soon as practicable after receiving the disclosure and before allocating the disclosure, ask the discloser whether they:
- a) consent to the Authorised Officer giving the discloser's name and contact details to the CEO and to the CEO's delegates, and
  - b) wish the disclosure to be investigated.
- 8.11. The Authorised Officer must make a written record of the discloser's responses (if any) to the questions referred to in paragraph 8.10.
- 8.12. Where the discloser does not respond within 7 days to the question:
- a) in paragraph 8.10(a), the discloser is taken not to have consented to the disclosure of their name and contact details to the CEO and their delegates, and
  - b) in paragraph 8.10(b), the discloser is taken to wish the discloser to be investigated.
- 8.13. An Authorised Officer must obtain the consent of an Authorised Officer in another agency before the first Authorised Officer can allocate an internal disclosure to that agency.

Notification of allocation decision

- 8.14. Where an Authorised Officer in the Agency allocates a disclosure (including to Safe Work Australia) they must complete a **Form 2** and send it to the CEO or to the delegate nominated by the CEO (if Safe Work Australia), or to the Principal Officer of the agency to which the Authorised Officer is allocating the disclosure.
- 8.15. The Authorised Officer must also send a copy of the completed **Form 2** to the contact officer in the Ombudsman's office.
- 8.16. Where the Authorised Officer is aware of the contact details of the discloser, the Authorised Officer must inform the discloser of the allocation using a completed **Form 3**.
- 8.17. The Authorised Officer must keep written records of the decision, the reasons for the decision and the consent provided by the agency to which the allocation is made. The records must also show whether the discloser was informed of the decision and if so of the



day and time the discloser was notified, how the discloser was notified and the content of the notification.

*Authorised Officer's Risk Assessment*

- 8.18. The Authorised Officer must prepare a written assessment of any risk that reprisal action might be taken against the discloser. If the discloser initially contacted their supervisor and wishes to remain anonymous, the risk assessment made by the discloser's supervisor at paragraph 7.7 should be finalised by the discloser's supervisor and given in an anonymised form to the Authorised Officer.
- 8.19. A risk assessment should be prepared following the procedures recommended in the Ombudsman's Guide.

*Anonymous disclosures*

- 8.20. An Authorised Officer may receive an internal disclosure anonymously. An Authorised Officer should also refer to Chapter 6 if they receive an anonymous disclosure.

## CHAPTER 5 - PROCEDURES FOR INVESTIGATORS

### 9 INITIAL INFORMATION TO DISCLOSER

- 9.1. Where the CEO or delegate has been given the contact details of the discloser, within 14 days after the disclosure has been allocated to the Agency, the CEO or delegate must ensure that the discloser is given a completed **Form 4** which includes 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.

### 10 DISCRETION TO NOT INVESTIGATE OR TO DISCONTINUE INVESTIGATION

#### Who is an investigator?

- 10.1. Under the PID Act, the CEO as Principal Officer or their delegate is required to investigate internal disclosures. These procedures refer to the CEO or their delegate as 'the investigator' when referring to their investigative function under the PID Act.

#### Discretion not to investigate

- 10.2. The investigator must, as soon as practicable after receiving an allocation from an Authorised Officer (whether from within or from outside the Agency), consider whether to exercise the discretion under s 48 of the PID Act not to investigate the disclosure.
- 10.3. The investigator may decide not to investigate, or may discontinue an investigation, on a ground set out in s 48:
- the discloser is not a current or former public official (and a determination has not been made under s 70 of the PID Act), or
  - the information does not to any extent concern serious disclosable conduct, or
  - the disclosure is frivolous or vexatious, or
  - 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
    - a) it would be inappropriate to conduct another investigation at the same time, or
    - b) the CEO is reasonably satisfied that there are no matters that warrant investigation, or
  - the discloser has informed the CEO that they do not wish the disclosure to be pursued and the CEO is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation, or
  - it is impracticable to investigate the disclosure because:
    - a) the discloser has not revealed their name and contact details, or
    - b) the discloser has refused or has failed or is unable to give the investigator the information they requested, or
    - c) of the age of the information.
- 10.4. Disclosers must be made aware that, to investigate a matter, their identity may possibly be revealed. While confidentiality may not be able to be maintained, they are still protected

against reprisal (paragraph 13.6 and 16.7 require that a discloser generally be consulted before their identity is revealed).

- 10.5. Further guidance on the factors that might go towards the exercise of the power in s 48 is provided in the Ombudsman's Guide.

*Investigator's obligations if a decision is made not to investigate.*

- 10.6. Where the investigator decides under s 48 of the PID Act not to investigate a disclosure, the investigator must, as soon as reasonably practicable,
- inform the Ombudsman of that decision and of the reasons for that decision, by completing **Form 8** and sending it to the Agency's contact at the Ombudsman's office, and
  - in cases where they have been given the contact details of the discloser, inform the discloser of that decision, of the reasons for that decision, and of other courses of action that may be available to the discloser under other laws of the Commonwealth, by completing **Form 5** and sending it to the discloser.

*Investigator's obligations if a decision is made to investigate*

- 10.7. Where the investigator has considered exercising the discretion under s 48 of the PID Act and has decided that they are required to investigate the disclosure, and where the investigator has been given the contact details of the discloser, the investigator must inform the discloser that they are required to investigate the disclosure and inform the discloser of the estimated length of the investigation by completing **Form 7** and sending it to the discloser.

*Investigator's obligations if a decision is made to cease an investigation*

- 10.8. An investigator has the discretion to cease an investigation after it has commenced in accordance with s 48 of the PID Act. If the investigator decides to cease an investigation, they must inform:
- a) the Ombudsman of that decision and of the reasons for that decision by completing **Form 9** and sending it to the Agency's contact in the Ombudsman's office, and
  - b) the discloser of that decision, of the reasons for that decision, and of other courses of action that might be available to the discloser under other laws of the Commonwealth, by completing **Form 6** and sending it to the discloser.

## **11 INVESTIGATING A DISCLOSURE**

- 11.1. Where the investigator has decided to commence an investigation into an internal disclosure, the investigator may conduct the investigation as they think fit.
- 11.2. The investigator must be independent and unbiased in the matter. They must ensure that they do not have an actual or perceived conflict of interest.
- 11.3. The investigator may, for the purposes of the investigation, obtain information from such persons and make such inquiries, as they think fit.
- 11.4. When conducting an investigation, the investigator must ensure that any finding of fact is based on logical and probative evidence.
- 11.5. The standard of proof for a decision whether evidence is sufficient to prove a fact is the balance of probabilities.
- 11.6. The investigator must ensure that the evidence that is relied on in an investigation is relevant. Note that in broad terms, evidence is relevant to an investigation if it is of

consequence to the matter under investigation and makes the existence of a fact more probable or less probable than it would be without the evidence.

- 11.7. The investigator, in conducting an investigation under these procedures, must comply with:
- a) the PID Standard
  - b) the Commonwealth Fraud Control Guidelines (if the investigation relates to fraud against the Commonwealth), and
  - c) any other Commonwealth laws or procedures that may apply (e.g. these procedures or procedures made under s 15(3) of the PS Act).

## **12 TIME LIMITS FOR INVESTIGATIONS**

- 12.1. The investigator is subject to a 90 day statutory timeframe to complete the investigation.
- 12.2. This 90 day statutory time frame commences on the day the disclosure was allocated to the Agency.
- 12.3. It is possible to seek one or more extensions of time from the Ombudsman.
- 12.4. A request to the Ombudsman for an extension of time must be made where an investigation has not been completed within 70 days from the date the disclosure was allocated.
- 12.5. An application for an extension of time should include reasons why the investigation cannot be completed within the time limit, the views of the discloser, and an outline of the steps taken to progress the application.
- 12.6. An investigation that is not completed within time does not become invalid.

## **13 INTERVIEWS**

- 13.1. Interviews should be conducted in private. Interviews with the discloser should be arranged so as to avoid the identification of the discloser by other staff of the Agency.
- 13.2. Care should be taken to avoid any unauthorised divulging of information.
- 13.3. All information obtained during the interview, including documents and interview tapes, should be stored securely and be only accessible by those who need to see them.
- 13.4. The investigator must ensure interviewees are informed of (subject to any Commonwealth laws):
  - the identity and function of each individual conducting the interview
  - the process of conducting an investigation
  - the authority of the CEO under the Act to conduct the investigation
  - the protections provided by s 57 of the Act
  - the privilege against self-incrimination (if appropriate)
  - their duty to use their best endeavours to assist the investigator if they are a public official
  - the confidentiality of the proceedings and that the release of information may jeopardise the investigation
  - the risk they may be committing an offence if they divulge any information likely to identify the discloser, and
  - the prohibition on talking or threatening reprisal action against the discloser.



- 13.5. Where the investigator conducts an interview as part of an investigation, at the end of the interview, the interviewee must be given an opportunity to make a final statement or comment or express a position. The investigator must include any final statement, comment or position in the record of the interview.
- 13.6. Where the investigator is aware of the discloser's identity and considers that it is necessary to reveal the discloser's identity to a witness, the investigator must consult with the discloser, where practicable, before proceeding.
- 13.7. The identity of both the discloser and the person alleged to have engaged in disclosable conduct should not be revealed except where this is reasonably necessary for the effective investigation of the disclosure (including because of the need to afford procedural fairness).

## **14 PROCEDURAL FAIRNESS**

- 14.1. Where the investigator in preparing the report of their investigation proposes to:
  - a) make a finding of fact, or
  - b) express an opinion that is adverse to the discloser, to a public official who is the subject of the disclosure or to another person,

the investigator must give the person who is the subject of that proposed finding or opinion details of the evidence that is relevant to that proposed finding or opinion and must give the person a reasonable opportunity to comment. This paragraph does not apply where the investigation does not make substantive findings or express adverse opinions but instead simply recommends that further investigation action should or should not be taken.

- 14.2. Procedural fairness may require that the discloser's identity be revealed to the person who is the subject of the disclosure.
- 14.3. Procedural fairness does not require that a person against whom allegations are made be advised as soon as the disclosure is received or as soon as an investigation is commenced.

## **15 REPORT & OUTCOMES**

### *The requirement to complete a report*

- 15.1. On completing an investigation under the PID Act, the investigator must prepare a report on the investigation. At a minimum, the report must set out the following:
  - the matters considered in the course of the investigation
  - the duration of the investigation
  - the investigator's findings
  - the action (if any) that has been, is being, or is recommended to be taken to address those findings, and
  - any claims made about, and any evidence taken against the discloser, and the Agency's response to those claims and that evidence.
- 15.2. The report must comply with the PID Standard. Currently the PID Standard states that such a report must, where relevant:
  - identify where there have been one or more instances of disclosable conduct
  - identify any regulations, rules, administrative requirements or similar matters to which the disclosable conduct relates
  - 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.

Requirement to give a copy of the report to the discloser

- 15.3. Where an investigator has completed a report of an investigation under the PID Act, and where they have been given the discloser's contact details, the investigator must, as soon as practicable, advise the discloser in writing by completing **Form 10**:
- a) that the report has been completed, and
  - b) whether the report was completed within the time limit provided for by the PID Act.
- 15.4. The investigator must, within a reasonable time of preparing a report of an investigation under the PID Act, give a copy of the report to the discloser.

Redactions from the copy of the report given to the discloser

- 15.5. Despite paragraph 15.4, the investigator may redact from the copy of the report given to the discloser, any material:
- a) that is likely to enable the identification of the discloser or another person, or
  - b) the inclusion of which would result in the copy being a document:
    - i) that is exempt for the purpose of Part IV of the *Freedom of Information Act 1982*, or
    - ii) having, or being required to have, a national security or protective security classification, or
    - iii) containing intelligence information.
- 15.6. The investigator must also delete from the copy of the report given to the discloser any material which would result in the report contravening a designated publication restriction.

Outcomes from the report

- 15.7. The investigator must ensure the outcomes of the investigation are dealt with as soon as practicable.

## CHAPTER 6 – ANONYMOUS DISCLOSURES AND OTHER TYPES OF DISCLOSURE

### 16 ANONYMOUS DISCLOSURES

#### What is an anonymous disclosure?

- 16.1. A disclosure is anonymous if the identity of the discloser is not revealed and if no contact details for the discloser are provided. It is also anonymous if the discloser does not disclose their name but does provide anonymous contact details.

#### Who can make an anonymous disclosure?

- 16.2. All persons, including public officials, persons who have been public officials and others are encouraged to make disclosures in an anonymous way if they wish to do so. However, if a person is not a current or former public official, their disclosure will not be protected under the PID Act unless an Authorised Officer deems them to be a public official.

#### Obligations of a supervisor if they receive an anonymous disclosure

- 16.3. Where a supervisor receives a disclosure of one of these kinds, they must refer it to an Authorised Officer as soon as reasonably practicable.

#### Obligations of an Authorised Officer if they receive an anonymous disclosure

- 16.4. Where an Authorised Officer receives an anonymous disclosure, they must consider whether to exercise the power in s 70 of the PID Act to determine on their own initiative that a person who has disclosed information to them is a public official in relation to the making of the disclosure. However, if the Authorised Officer cannot contact the discloser in writing, no determination can be made because the Authorised Officer must be able to give written notice of the determination to the individual (s 70(1)).
- 16.5. It is anticipated that an Authorised Officer would make this decision having regard to whether it is in the public interest, in the Agency's interest and in the discloser's interest to have the disclosure dealt with as a disclosure under the PID Act.
- 16.6. Where the discloser requests the Authorised Officer to make this determination, the Authorised Officer must make a decision on this request and must inform the discloser accordingly, and if the Authorised Officer's decision is to decline the request to make a determination under s 70, they must also give the discloser reasons for their decision.
- 16.7. Where an Authorised Officer decides to make a determination under s 70, the Authorised Officer should seek assistance from the Legal Team on the drafting of the written notice.
- 16.8. The written notice must be given to the individual. A copy of the determination notice should also be given to the CEO or their delegate or to the Principal Officer of the agency to which the disclosure is allocated at the same time as **Form 2**.

#### Risk Assessment

- 16.9. Where an Authorised Officer receives an anonymous disclosure, the risk assessment referred to in paragraph 8.18 should also include an assessment of the risk that the discloser's identity can be readily ascertained or may be ascertained during an investigation. The size of the Agency is likely to be a factor in determining the risk that a person's identity is or may be ascertained during an investigation.

### 17 DISCLOSURE TO THE OMBUDSMAN

- 17.1. A public official can make an internal disclosure to the Ombudsman if the discloser believes on reasonable grounds that it would be more appropriate for the disclosure to be investigated by the Ombudsman.

- 17.2. Even if a disclosure is made to the Ombudsman, that disclosure may be allocated to the Agency.

## **18 OTHER TYPES OF PUBLIC INTEREST DISCLOSURE**

- 18.1. As stated in paragraph 3.1, apart from internal public interest disclosures, the PID Act allows for three other types of public interest disclosure: external public interest disclosures, emergency disclosures and legal practitioner disclosures.
- 18.2. Legal practitioner disclosures are described in paragraph 6. They involve the disclosure of information concerning disclosable conduct to an Australian legal practitioner for the purposes of seeking advice.

### External disclosure

- 18.3. If certain circumstances are satisfied, the PID Act also allows a person to make an external public interest disclosure i.e. a disclosure to any person other than a foreign official.
- 18.4. An external disclosure can only be made by a discloser who has made an internal disclosure and who reasonably believes an investigation under the PID Act was inadequate or the Agency's response was inadequate.
- 18.5. Specifically, external disclosures can be made if **all** of the following criteria are satisfied:
- the person has information that tends to show or they believe on reasonable grounds that the information tends to show, one or more instances of disclosable conduct
  - the person had made an internal disclosure of the information on a previous occasion
  - a disclosure investigation relating to the internal disclosure was conducted and either:
    - the discloser believes on reasonable grounds that the investigation was inadequate
    - the discloser believes on reasonable grounds that the response to the investigation was inadequate
    - or an investigation was not completed with 90 days after the disclosure was allocated to an agency,
  - the disclosure is not, on balance, contrary to the public interest
  - no more information is publicly disclosed than is reasonably necessary to identify one or more instances of disclosable conduct
  - the disclosure does not consist of, or include intelligence information, and
  - none of the conduct with which the disclosure is concerned relates to an intelligence agency.
- 18.6. It is recommended that public officials obtain legal advice prior to making an external disclosure.

### Emergency disclosure

- 18.7. In limited circumstances, a discloser may make an emergency disclosure. An emergency disclosure does not need to be made to an Authorised Officer or the discloser's supervisor in the first instance; it can be made to any person other than a foreign official.
- 18.8. An emergency disclosure can be made if the discloser believes on reasonable grounds that the information they have concerns a substantial or imminent danger to the health or safety



of one or more people or to the environment.

18.9. If a discloser makes an emergency disclosure, they must satisfy the following requirements:

- they can only disclose information which is necessary to alert the recipient of the substantial and imminent danger
- if they have not previously made an internal disclosure about the matter, or if they have done so and the investigation is not yet completed, there must be exceptional circumstances justifying their action, and
- they must not disclose intelligence information including sensitive law enforcement information.

18.10. Disclosers are advised to exercise a high degree of judgement before making an emergency disclosure.

## CHAPTER 7 - PROTECTIONS

### 19 PROTECTIONS

#### When is a discloser protected under the PID Act?

- 19.1. A person is protected if they report disclosable conduct in accordance with the PID Act.
- 19.2. Even if information provided by a discloser turns out to be incorrect or unable to be substantiated, they receive the protections of the Act, provided they made the disclosure to the right type of person and honestly believed on reasonable grounds that the information tended to show disclosable conduct.
- 19.3. Immunities do not apply if a discloser knowingly makes a statement that is false or misleading or makes a disclosure (without reasonable excuse) knowing it contravenes a designated publication restriction (s 11A).

#### What protections does the PID Act provide to a discloser?

- 19.4. The PID Act provides for protection of the discloser's identity, immunity from civil, criminal and administrative liability and protection from reprisal. Specific protections include:
  - it is an offence to disclose the identity of an individual who makes a public interest disclosure unless disclosing the identifying information is for the purposes of the PID Act or otherwise authorised or required by law (ss 20 and 21)
  - an individual is not subject to any civil, criminal or administrative liability (including disciplinary action) for making a public interest disclosure (s 10), and
  - it is an offence to take a reprisal or threaten to take a reprisal against a person because of a public interest disclosure. This includes a proposed or a suspected public interest disclosure (s 19).

## CHAPTER 8 – OTHER MATTERS

### **20 IF DISSATISFIED WITH OUTCOMES – MAKING A COMPLAINT TO THE OMBUDSMAN**

- 20.1. A discloser who is unhappy with the outcome or process, or how they have been treated, may complain to the Ombudsman.

### **21 RECORD KEEPING**

- 21.1. Where an Authorised Officer is required to keep a record under these procedures, the record may be kept in hard copy or in an electronic form, or both. Access to these records must be restricted to the Authorised Officers, delegates (including investigators) or other employees in the Agency who require access in order to perform some function under the PID Act or for the purposes of another law of the Commonwealth (e.g. under the *Work Health and Safety Act 2011* or the *Public Service Act 1999*).
- 21.2. Where a form is required to be sent under these procedures, a copy of the form must be kept.
- 21.3. All records made for the purpose of the PID Act in accordance with these procedures must be marked as ‘Sensitive: Personal’ and hard copies stored in an appropriately classified storage container.
- 21.4. Any email messages sent by Authorised Officers or delegates that contain identifying information must be clearly marked ‘Sensitive: Personal’.
- 21.5. Where a person will cease being an Authorised Officer in the Agency (including because of resignation or movement to another agency), their records under the PID Act must be transferred to another Authorised Officer in the Agency.

### **22 MONITORING AND EVALUATION**

#### *Authorised Officer’s Quarterly Report*

- 22.1. Each Authorised Officer must provide a quarterly report to the CEO specifying the number of public interest disclosures received by the Authorised Officer and the nature of the disclosable conduct for each disclosure (by reference to the relevant item or paragraph in the definition in s 29 of the PID Act). The report must also include any disclosures that have been allocated to the Agency by another agency’s Authorised Officer.

#### *Agency’s Report to the Ombudsman*

- 22.2. The CEO will appoint a delegate to prepare the Agency’s response to the Ombudsman on disclosures made during the financial year (the PID monitoring delegate) in accordance with the Ombudsman’s requirements.
- 22.3. Each investigator must advise the PID monitoring delegate of every decision made by the investigator to investigate a disclosure during the financial year.
- 22.4. Each delegate of the CEO who takes action in response to a recommendation made in an investigation report must make a report of this action to the PID monitoring delegate.
- 22.5. The CEO or PID monitoring delegate will send the Agency’s report to the Ombudsman within the time requested by the Ombudsman or as otherwise agreed with the Ombudsman.

### **23 CONFIDENTIALITY**

- 23.1. Safe Work Australia will make every reasonable effort to protect a discloser’s identity.

- 23.2. In addition to the practices already required under these procedures to maintain confidentially, employees of Safe Work Australia are required to comply with the PID Act with respect to information protected under s 65 of that Act. Information protected under s 65 of the PID Act includes:
- a) information obtained by a person in the course of conducting a disclosure investigation, and
  - b) information obtained by a person in connection with the performance of a function, or the exercise of a power, by a person under the PID Act.
- 23.3. Employees of Safe Work Australia are also required to comply with s 20 of the PID Act with respect to the use or disclosure of identifying information.

## **24 SUPPORT**

- 24.1. The following sources of support can be very helpful to anyone who is finding the process stressful: supervisors, managers, Authorised Officers, family and friends, Safe Work Australia's Employee Assistance Program.
- 24.2. Authorised Officers and delegates of the CEO can obtain legal advice from the Legal Team about the PID Act and the PID Standard and how to comply.

## **25 FURTHER INFORMATION**

- 25.1. For more information on the public interest disclosure scheme see the [Commonwealth Ombudsman website](#) or contact [People Strategies](#).