

The logo for Export Finance Australia is located in the top left corner. It consists of the words "export", "finance", and "australia" stacked vertically in a white, sans-serif font. The text is enclosed within a black rectangular border that has a thin orange and green line along its inner edge.

export
finance
australia

A decorative graphic on the right side of the page features three overlapping, stylized arrows pointing to the right. The arrows are rendered in various shades of green, creating a sense of depth and movement.

PUBLIC INTEREST DISCLOSURE PROCEDURES

Policy owner: Executive
Version No: 1.0
Effective Date: 6 January 2014

Table of contents

1. Document Purpose	3
2. Scope	3
3. Definitions	3
4. Key concepts	3
5. Obligations of supervisors, authorised officers and all staff	4
6. Assessment of risks of reprisal	5
7. Confidentiality	5
8. Investigation	6
9. Outline of process	6
10. Record keeping and reporting	6
11. After the investigation	7
12. Seeking assistance	7

1. Document Purpose

The purpose of this document is to inform current and former staff members, current and former officials in any other agency and current and former service providers to Export Finance Australia under Commonwealth contracts of the procedures to investigate and respond to public interest disclosures relating to Export Finance Australia.

2. Scope

This procedure applies to allegations of wrongdoings and sets out:

- (a) who can make a public interest disclosure;
- (b) what can be reported;
- (c) how a public interest disclosure can be made; and
- (d) how and when a public interest disclosure will be investigated.

3. Definitions

authorised officer means an authorised officer as authorised by the principal officer under the PID Act. For Export Finance Australia, the Chief Executive Officer (CEO) has appointed the persons from time to time holding, occupying or performing the duties of the offices of the Executive, except for an officer holding the office of Executive Director, Human Resources as authorised officers.

disclosable conduct is conduct by an agency, a public official or a contracted Commonwealth service provider (in connection with the contract) that:

- contravenes the law
- is corrupt
- perverts the course of justice
- results in wastage of public funds
- is an abuse of public trust
- unreasonably endangers health and safety or endangers the environment
- is maladministration, including conduct that is unjust, oppressive or negligent,
- if proved, would give rise to disciplinary conduct against the public official

but excludes disagreeing with government policy, action or expenditure.

discloser means an individual who discloses information.

disclosure means information disclosed by a discloser.

PID Act means the Public Interest Disclosure Act 2013

principal officer means the CEO or his delegates as appointed from time to time.

public official is a broad term which includes any person who is or was employed or appointed by the Australian Government, staff of Commonwealth companies, Commonwealth authorities and statutory agencies, the Parliament Service, statutory officeholders and service providers under the Contract to the Commonwealth, and includes all current and former Export Finance Australia staff and directors.

public interest disclosure means a disclosure made by a discloser who is or was a public official to an authorised officer or a supervisor of the discloser with information which tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of disclosable conduct.

4. Key concepts

4.1. Who can make a public interest disclosure

A current or former “public official” can make a public interest disclosure and can do so anonymously.

4.2. What can be reported

A current or former public official can disclose information that they believe on reasonable grounds tends to show “disclosable conduct”.

4.3. How a public interest disclosure can be made

A current or former public official can make the disclosure in person, by telephone or in writing including by email and can remain anonymous although Export Finance Australia has the discretion not to investigate if they cannot contact the person disclosing the information to seek further information.

A current or former public official can report the suspected wrongdoing to Export Finance Australia, either to their supervisor or to an authorised officer.

If person disclosing the information believes on reasonable grounds that it is appropriate for the Ombudsman to investigate instead, the person can make their disclosure directly to the Ombudsman. Ombudsman contact details: <http://www.ombudsman.gov.au/pages/contact-us/>.

5. Obligations of supervisors, authorised officers and all staff

5.1. Authorised officers

Authorised officers have a range of decision-making, notification and other responsibilities under the PID Act, including:

- receiving disclosures from current or former public officials about disclosable conduct;
- deeming a person to be a public official to facilitate the making of a public interest disclosure;
- informing a person who may be unaware of the PID Act requirements that information that the authorised officer reasonably believes could concern disclosable conduct could be treated as an internal disclosure, explaining the requirements of the PID Act and advising the person of any designated publication restrictions that may affect disclosure;
- assessing reported information to determine if there are no reasonable grounds to believe the information could be considered to be a public interest disclosure;
- making any preliminary inquiries necessary to make an allocation decision;
- allocating all or part of the disclosure to the principal officer of their agency and/or another agency, with that agency’s consent, within 14 days of becoming aware of the disclosure;
- informing the principal officer of each relevant agency, and the Ombudsman or IGIS as appropriate, of allocation decisions and associated information;
- informing the discloser of the allocation decision;
- consenting to the allocation of a disclosure by an authorised officer of another agency; and
- advising the discloser of a decision not to allocate, the reasons why and any other course of action that may be available under Commonwealth law.

5.2. Supervisors

- If the supervisor or manager believes that the information given to them concerns, or could concern, disclosable conduct, they must give that information to an authorised officer as soon as reasonably practicable. However, because of the confidentiality requirements, the supervisor should obtain the person’s consent before passing on their identifying information.
- Managers and supervisors also have a key role in ensuring that the workplace culture supports the making of public interest disclosures. They can help to do so by:
 - being knowledgeable about the PID Act and agency procedures, particularly in relation to confidentiality requirements;
 - being approachable to staff who wish to raise concerns;
 - ensuring staff undergo available training;
 - confronting any workplace prejudices about making a disclosure;
 - supporting a staff member who they know has made a public interest disclosure and ensuring they are protected from reprisal;

- increasing management supervision of the workplace if necessary (for example, if workplace conflict occurs because a disclosure has been made or an investigation is under way);
- ensuring identified problems in the workplace are corrected; and
- setting an example for staff.

5.3. All staff

- The PID Act requires all public officials to use their best endeavours to assist the principal officer in the conduct of an investigation. They must also use their best endeavours to assist the ombudsman in their functions under the PID Act.
- Beyond those specific responsibilities, all staff share the responsibility of ensuring the PID Act works effectively. Their role includes:
 - reporting matters where there is evidence that shows or tends to show disclosable conduct;
 - identifying areas where there may be opportunities for wrongdoing to occur because of inadequate systems or procedures, and proactively raising those with management;
 - supporting staff who they know have made public interest disclosures; and
 - keeping confidential the identity of a discloser and anyone against whom an allegation has been made, if they become aware of those matters.

6. Assessment of risks of reprisal

As soon as possible after a disclosure is received, an authorised officer must assess risks that reprisal may be taken against a person who makes a public interest disclosure. If the disclosure is made to the manager or supervisor and the person wishes their identity to remain anonymous, the manager or supervisor must conduct a risk assessment as soon as possible after the disclosure is made.

6.1. Identify risks:

See the table at Schedule 1.

6.2. Assess risks

The person assessing the risk should consider:

- the likelihood of reprisals or related workplace conflict occurring which may be high if:
 - there have already been threats;
 - there is already conflict in the workplace;
 - a combination of circumstances and risk factors indicate reprisals or related workplace conflict are likely; and
- the potential consequences if they do occur – both to the discloser’s immediate and long term wellbeing and the cost to the agency.

6.3. Control risks

The person assessing the risk in consultation with the Compliance Counsel will plan and implement strategies to control the risks likely to expose a discloser to reprisals or related workplace conflict. The discloser will be consulted before any decision is made.

6.4. Monitor and review risks

The risk assessment should be monitored and reviewed by the risk assessor as necessary including by checking with the discloser to see if reprisals have been made or threatened.

7. Confidentiality

Export Finance Australia will make every reasonable effort to protect the discloser’s identity. It is a criminal offence for a public official who is involved in handling a disclosure to reveal the discloser’s identifying information to anyone else without their consent or use it for another purpose, unless it is for the purposes of the PID Act, an investigation by the Ombudsman, or another Commonwealth law or prescribed law, or if the information has already lawfully been published.

However, the discloser's identity, or information that would effectively identify them, may need to be disclosed to certain other people if that is necessary:

- to investigate the disclosure effectively (for example, if the wrongdoing that was reported was directed solely against the discloser), or
- to protect them against reprisals (for example, if there are concerns that it is impossible for them to remain in their current workplace).

If it is necessary or highly likely that the discloser's identity will be revealed, Export Finance Australia will, unless it is not reasonably practicable, discuss this with the discloser before proceeding.

8. Investigation

The principal officer is responsible for conducting an investigation and may delegate those powers and functions by an instrument.

Investigations under the PID Act will be conducted by an investigator skilled in conducting investigations, and familiar with the PID Act and any standards as required, especially the confidentiality requirements and the protections for discloser.

9. Outline of process

See the flow chart at Schedule 2.

10. Record keeping and reporting

The authorised officer must securely keep records of how and when a public interest disclosure was made. Each disclosure should be given a unique reference number. Details of the risk assessment of reprisal, allocation, the investigation, notification to the discloser and others will also be kept.

10.1. Reporting to the Ombudsman

The following details will be disclosed by the principal officer to the Ombudsman as required under the Public Interest Disclosure Standard 2013:

- the number of public interest disclosures received by authorised officers of the agency during the relevant financial year;
- the kinds of disclosable conduct to which those public interest disclosures related;
- the number of disclosure investigations that the principal officer of the agency conducted during the relevant financial year;
- the actions that the principal officer has taken during the relevant financial year in response to recommendations in reports relating to those disclosure investigations; and
- any other information requested by the Ombudsman.

10.2. Authorised officer

- An authorised officer must keep an appropriate written record of the following when the authorised officer allocates the handling of a disclosure to one more agencies:
 - the decision (including the name of each agency to which the disclosure is to be allocated); and
 - the reasons for the decision; and
 - the consent provided by the agency to which the allocation is made.
- An authorised officer must inform a discloser of following matters as soon as practicable, unless contacting the discloser is not reasonably practicable:
 - If allocated: inform the discloser of the allocation.
 - If not allocated: inform the discloser of:
 - the reasons why the disclosure has not been allocated to an agency; and
 - any other courses of action that might be available to the discloser under other laws of the Commonwealth.

- An authorised officer must keep appropriate records of whether the discloser was informed of the decision 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.

10.3. Principal officer

The principal officer must, as soon as reasonably practicable (unless contacting the discloser is not reasonably practicable) inform the discloser of the following:

- If the matter is to be investigated: inform the discloser:
 - that the disclosure will be investigated; and
 - the estimated length of the investigation.
- If the matter is not to be investigated: inform the discloser:
 - of the decision not to investigate the disclosure
 - the reasons why the disclosure is not to be investigated; and
 - any other courses of action that might be available to the discloser under other laws of the Commonwealth.

The principal officer must give a copy of the investigation report to the discloser within a reasonable time of preparing it unless contacting the discloser is not reasonably practicable. The version given to the discloser may be redacted to the extent it is allowed under the PID Act.

10.4. Keeping discloser informed

The discloser will be notified at various stages in the process, provided the person's contact details are available. The discloser must be advised:

- when the disclosure is either allocated for investigation, or not allocated because it has been determined not to be an internal disclosure;
- of information about the principal officer's discretionary powers to not investigate within 14 days of the disclosure being allocated;
- if the agency decides to investigate;
- if the investigation is under the PID Act, the estimated length of the investigation;
- if the agency decides not to investigate, the reasons for the decision and any action that might 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, the progress of the investigation; and
- after the investigation report is completed.

11. After the investigation

The principal officer must take appropriate action in response to a recommendation and other matters contained in the investigation report.

12. Seeking assistance

If you have any queries or need any assistance in relation to the procedures, you may wish to discuss with your supervisor, the General Counsel or the Compliance Counsel.

General information on the Public Interest Disclosure scheme is also available on the Commonwealth Ombudsman's website: <http://www.ombudsman.gov.au/pages/pid/>.

Schedule 1: Indicators of a higher risk of reprisals or workplace conflict

Indicators of a higher risk of reprisals or workplace conflict¹

Threats or past experience	Has a specific threat against the discloser been received? Is there a history of conflict between the discloser and the subjects of the disclosure, management, supervisors or colleagues? Is there a history of reprisals or other conflict in the workplace? Is it likely that the disclosure will exacerbate this?
Confidentiality unlikely to be maintained	Who knows that the disclosure has been made or was going to be made? Has the discloser already raised the substance of the disclosure or revealed their identity in the workplace? Who in the workplace knows the discloser's identity? Is the discloser's immediate work unit small?* Are there circumstances, such as the discloser's stress level, that will make it difficult for them to not discuss the matter with people in their workplace? Will the discloser become identified or suspected when the existence or substance of the disclosure is made known or investigated? Can the disclosure be investigated while maintaining confidentiality?
Significant reported wrongdoing	Are there allegations about individuals in the disclosure? Who are their close professional and social associates within the workplace? Is there more than one wrongdoer involved in the matter? Is the reported wrongdoing serious? Is or was the reported wrongdoing occurring frequently? Is the disclosure particularly sensitive or embarrassing for any subjects of the disclosure, senior management, the agency or government? Do these people have the intent to take reprisals – for example, because they have a lot to lose? Do these people have the opportunity to take reprisals – for example, because they have power over the discloser?
Vulnerable discloser	Is or was the reported wrongdoing directed at the discloser? Are there multiple subjects of the disclosure? Is the disclosure about a more senior officer? Is the discloser employed part-time or on a casual basis? Is the discloser isolated – for example, geographically or because of shift work? Are the allegations unlikely to be substantiated – for example, because there is a lack of evidence? Is the disclosure being investigated outside your organisation?*

Table 1 – Indicators of a higher risk of reprisals or workplace conflict

* Note: Risks of poor treatment for reporting wrongdoing identified by research (Brown, AJ (ed.) 2008, *Whistleblowing in the Australian public sector: Enhancing the theory and practice of internal witness management in public sector organisations*, ANU E Press, Canberra, pp. 137-164).

¹ Adapted from NSW Ombudsman, *Managing risk of reprisals and conflict*, Public Interest Disclosure Guideline as provided in Commonwealth Ombudsman's Agency Guide to the Public Interest Disclosure Act 2013, at page 27

Schedule 2 Dealing with an internal disclosure

