

PUBLIC INTEREST DISCLOSURE PROCEDURES

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1. Purpose

This document contains detailed procedures for receiving, managing and investigating public interest disclosures for the purposes of the *Public Interest Disclosure Act 2013* (Cth) (**PID Act**) and as set out in our Public Interest Disclosure (Whistleblower) Policy.

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

2. Making a Public Interest Disclosure

A **Public Official** can make a public interest disclosure (**PID**) about a suspected wrongdoing to their manager or supervisor or to an **Authorised Officer**.

The PID can be made in person, by telephone or in writing including by email or the dedicated form on our website.

A PID may be made anonymously although this may prevent a full investigation of the disclosure.

The information in the disclosure should:

- be clear and factual;
- avoid speculation, personal attacks and emotive language;
- provide supporting evidence where available; and
- where possible, identify any witnesses to the conduct.

The **Discloser** should not investigate a matter themselves before making a disclosure.

Once a PID has been made, it cannot be withdrawn. But a Discloser may state that they do not wish the disclosure to be investigated and they may refuse to consent to their name and contact details being provided to the **Principal Officer** and delegate.

A person who has made a disclosure under the PID Act should not discuss the details of their disclosure with anyone who does not have a need to know about it. Discussions with these people will not be protected by the PID Act.

In certain circumstances, disclosures can be made to an external party. The PID Act sets out strict requirements which must be met for such disclosures to be afforded the protections under the PID Act.

3. Procedures for managers and supervisors

Where a Public Official discloses information to their manager or supervisor and the disclosure meets the requirements for a PID, the supervisor must report the matter to an Authorised Officer in a timely and confidential manner.

Before referring a disclosure to an Authorised Officer, the manager or supervisor must:

- explain to the Discloser the PID process and the supervisor's obligations to pass the information to an Authorised Officer;
- take a written record of the facts of the disclosure, including the time and date of the disclosure;
- if the Discloser wishes to remain anonymous, complete an assessment of any risks that reprisal action might be taken against the Discloser and ensure the information contained in the disclosure does not reveal their identity; (see **4.3. Conducting a risk assessment**)
- obtain the Discloser's consent to disclose their name and contact details to the Authorised Officer; and
- ask the Discloser to sign the record of the disclosure, where this is practicable.

At the time a manager or supervisor gives information to an Authorised Officer, the manager or supervisor must also:

- give the Authorised Officer all records in relation to the disclosure;
- if the person wishes to remain anonymous, give the Authorised Officer their written assessment of the risk of reprisal; and
- if the supervisor or manager is able to contact the Discloser, they must inform the Discloser they have given the information to an Authorised Officer and advise the Discloser of the name and contact details of that Authorised Officer.

Where a disclosure does not meet the requirements for a PID, the supervisor is to consider if the disclosure can be dealt with under other procedures such as the Incident and Issue Reporting Policy.

Managers and supervisors must treat disclosures with the highest degree of confidentiality. For further information please refer to our Public Interest Disclosure (Whistleblower) Policy.

4. Procedures for Authorised Officers

4.1. Advice to Disclosers and potential Disclosers of the PID Act

Where the Authorised Officer has reasonable grounds to believe that the Discloser may be unaware of the PID Act requirements, the Authorised Officer must:

- inform the Discloser that the information could be treated as an internal disclosure;
- explain the requirements of the PID Act;
- explain the protections provided by the PID Act; and
- advise of any orders or directions that may affect disclosure of the information.

4.2. Assessing the potential internal PID

Where a disclosure has been made to an Authorised Officer and the disclosure meets the requirements for a PID, the Authorised Officer must:

- take a written record of the facts of the disclosure, including the time and date of the disclosure;
- ask the Discloser to sign the record of the disclosure, where this is practicable;
- complete an assessment of any risks that reprisal action might be taken against the Discloser;
- obtain the Discloser's consent to disclose their name and contact details to the Principal Officer; and
- allocate the PID to the Principal Officer and/or another agency within 14 days of becoming aware of the disclosure.

Where a disclosure does not meet the requirements for a PID, the Authorised Officer is to consider if the disclosure can be dealt with under other procedures.

The Authorised Officer will advise the Discloser and the Commonwealth Ombudsman of their decision.

4.3. Conducting a risk assessment

As soon as possible after a PID is received, an Authorised Officer must assess risks that reprisal may be taken against the Discloser. If the PID is made to their manager or supervisor and the person wishes their identity to remain anonymous, the manager or supervisor must conduct the risk assessment.

The Risk Assessment takes the following form:

i) Identify

Risk Assessment should consider and identify indicators of higher risk of reprisals or workplace conflict.

See table at Schedule 1.

ii) Assess

The person assessing the risk should consider:

- the likelihood of reprisals or related workplace conflict occurring; and
- the potential consequences if they do occur – both to the Discloser's immediate and long term wellbeing and the cost to the agency.

The person assessing the risk may request additional information and may make inquiries of the Discloser as part of their assessment.

iii) Control

The person assessing the risk will plan and implement strategies to control the risks likely to expose a Discloser to reprisals or related workplace conflict.

They may consult Compliance for assistance with this Risk Assessment.

The Discloser will be consulted before any decision is made.

iv) Monitor and Review

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.

5. Procedures for the Principal Officer

5.1. Consideration whether to investigate the disclosure

Within 14 days of being allocated a PID, the Principal Officer must provide to the Discloser information of their discretionary powers to make the decision not to investigate.

The Principal Officer will then consider whether to exercise their powers under section 48¹ of the PID Act not to investigate the disclosure.

Where the Principal Officer decides not to investigate a disclosure, they will:

- Inform the Ombudsman in writing of that decision and the reasons for that decision; and
- If reasonably practicable to contact the Discloser, inform the Discloser of that decision, of the reasons for the decision and of other courses of action that may be available to the Discloser under the laws of the Commonwealth.

Where the Principal Officer decides to investigate the disclosure, they will, as soon as reasonably practicable, inform the Discloser:

- They are required to investigate the disclosure; and
- Of the estimated length of the investigation.

6. Procedures for the investigator

6.1. Investigate the disclosure

If the Principal Officer decides to investigate, they will investigate whether there are one or more instances of **disclosable conduct**.

Where reports are to be investigated internally, it is preferable to select an internal investigator with experience in conducting PID investigations or, where such a person is not available, someone with relevant investigative experience. If possible, the internal investigator should not be the Authorised Officer who receives the disclosure.

i) General principles

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

- maintaining the confidentiality of the identity of the Discloser will be paramount when conducting the investigation;
- the investigation will be conducted in accordance with the principals of procedural fairness;
- 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; and
- a decision whether evidence is sufficient to prove a fact will be determined on the balance of probabilities.

¹ Guidance can be found in the "Agency Guide to the Public Interest Disclosure Act 2013", which can be found at www.ombudsman.gov.au.

If a disclosure relates to conduct relating to any other internal policies or procedures, the processes set out in these policies or procedures must be complied with in the conduct of any investigation under these procedures.

ii) Obtaining information

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

During the investigation, the Principal Officer may, for the purposes of the investigation, obtain information from such persons and make such inquiries as they see fit.

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

- the identity and function of each individual conducting the interview;
- the process of conducting an investigation;
- the authority of the Principal Officer under the PID Act to conduct the investigation;
- the protections provided to witnesses under section 57 of the PID Act; and
- the person's duty:
 - if they are a public official – to use their best endeavours to assist the investigators in the conduct of an investigation under the PID Act (subject to the public official's privilege against incriminating themselves or exposing themselves to a penalty);
 - not to take or threaten to take reprisal action against the Discloser; and
 - subject to the PID Act, not to disclose the identity of the person who made the disclosure.

The Principal Officer will ensure:

- an audio or visual recording of the interview is not made without the interviewee's knowledge;
- when 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.

iii) Time Limits

The investigator has 90 days from the date the disclosure was allocated to complete the investigation.

It is possible to seek one or more extensions of time from the Ombudsman.

A request to the Ombudsman for an extension of time must be made where an investigation has not been completed within 70 days of the date the disclosure was allocated.

The Ombudsman has indicated that an application for extension should include reasons why the investigation cannot be completed within the time limit, the views of the Discloser and an outline of action take to progress the investigation.

An investigation that is not completed within time does not become invalid.

iv) Referral of information to police and others

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

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

6.2. Outsourcing the investigation

It may not be appropriate for a PID to be investigated internally if the report relates to:

- the Principal Officer or other authorised officer or investigator;
- the conduct of more than one organisation;
- a matter that is highly politically sensitive; or
- a matter where there is an actual or reasonably perceived conflict of interest.

If an investigation is outsourced, it is important to advise the Discloser.

It is also important to provide appropriate terms of reference to the person appointed to complete the investigation. This will set out the scope of the investigation and provide guidance for them.

6.3. Prepare investigation report

Once the Principal Officer or external investigator has completed their investigation, they will prepare a report of the investigation.

The investigation report must be completed within 90 days after the disclosure was allocated to the Principal Officer, unless this period is extended by the Ombudsman. If the period is extended, the Principal Officer will inform the Discloser of the progress of the investigation.

Content of the report

The report must set out:

- the matters considered in the course of the investigation;
- the duration of the investigation;
- the investigators' findings (if any);
- any regulations, rules, administrative requirements or similar matters to which the disclosable conduct relates; and
- the action (if any) that has been, is being, or is recommended to be taken.

Where relevant, a report must:

- explain the steps taken to gather evidence;
- set out a summary of the evidence; and
- any claims made about and any evidence of detrimental action taken against the Discloser, and the agency's response to those claims and evidence.

6.4. Provide report to Discloser

If it is reasonably practicable to contact the Discloser, the Principal Officer will provide the Discloser a copy of the report within a reasonable time after preparing the report. However, the Principal Officer may delete from the copy of the report given to the Discloser any material:

- That is likely to enable the identification of the Discloser or another person; or
- Would be exempt for the purposes of Part IV of the *Freedom of Information Act 1982*, would require a national security or other protective security clearance, contains intelligence information or contravenes a designated publication restriction as defined in the PID Act.

Definitions

In this Procedure:

Authorised Officer means an Authorised Officer as authorised by the Principal Officer under the PID Act. Our Managing Director & Chief Executive Officer (**CEO**) has appointed as Authorised Officers of our organisation the members of the Executive (including persons from time to time holding, occupying or performing the duties of the offices of the Executive) under an Instrument of Appointment.

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; or
- conduct by a Public Official that, if proved, would give rise to disciplinary conduct against the

official,

but excludes disagreeing with government policy, action or expenditure.

Discloser means an individual who makes or intends to make a PID.

Executive means collectively the Managing Director & CEO, and/or the persons from time to time holding, occupying or performing the duties of the offices of the Executive of Export Finance Australia.

PID Act means the *Public Interest Disclosure Act 2013* (Cth).

Principal Officer means the Managing Director & CEO, or their delegate as appointed from time to time.

Public Interest Disclosure (PID) means information disclosed by a Discloser who is or was a Public Official to an Authorised Officer or a supervisor of the Discloser, being 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.

Public Official means any person who is, or was:

- employed by the Australian Government, or a Commonwealth entity, company or agency;
- a service provider (or an employee of a service provider) under a Commonwealth contract;
- a person taken to be a Public Official;
- a Parliamentary Service employee; or
- a statutory officeholder

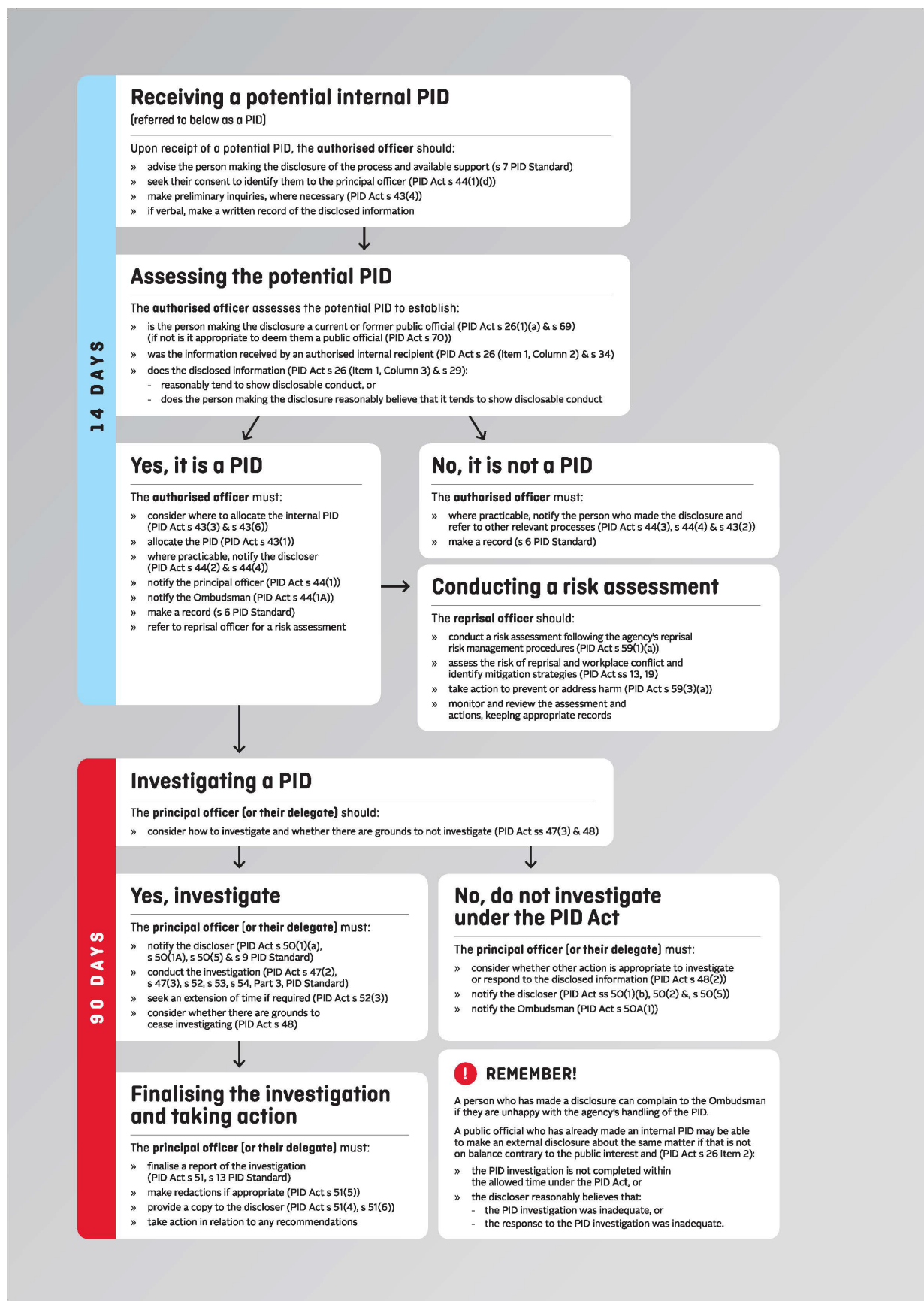
Schedule 1: Indicators of a higher risk of reprisals or workplace conflict

Indicators of a higher risk of reprisals or workplace conflict²

Threats or past experience	<ul style="list-style-type: none"> • Has a specific threat against the Discloser been received? • Is there a history of conflict between the Discloser and the subject/s 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	<ul style="list-style-type: none"> • 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	<p>Are there allegations about individuals in the disclosure?</p> <p>Who are their close professional and social associates within the workplace?</p> <p>Is there more than one wrongdoer involved in the matter?</p> <p>Is the reported wrongdoing serious?</p> <p>Is or was the reported wrongdoing occurring frequently?</p> <p>Is the disclosure particularly sensitive or embarrassing for any subjects, senior management, the agency or government?</p> <p>Do these people have the intent to take reprisals – for example, because they have a lot to lose?</p> <p>Do these people have the opportunity to take reprisals – for example, because they have power over the Discloser?</p>
Vulnerable Discloser	<p>Is or was the reported wrongdoing directed at the Discloser?</p> <p>Are there multiple subjects of the disclosure?</p> <p>Is the disclosure about a more senior officer? Is the Discloser employed part-time or on a casual basis?</p> <p>Is the Discloser isolated – for example, geographically or because of shift work?</p> <p>Are the allegations unlikely to be substantiated – for example, because there is a lack of evidence?</p> <p>Is the disclosure being investigated outside your organisation?</p>

² Adapted from Public Interest Disclosure Scheme Managing the risk of reprisal factsheet

Schedule 2 Dealing with an internal disclosure



Commonwealth Ombudsman PID Flowchart