Procedures for Handling Public Interest Disclosure

Pursuant to an instrument of delegation dated 13 December 2013 made for the purposes of section 77 of the Public Interest Disclosure Act 2013 (the Act) and section 4 of the Acts Interpretation Act 1901, I, Ross Carter, Executive General Manager, hereby establish the following procedures under section 59 of the Public Interest Disclosure Act 2013 (the PID Act).

These procedures commence on 15 January 2014.2

The following procedures should be read in conjunction with the PID Act (including any rules made under section 83 of that Act [the PID Rules]) and the Public Interest Disclosure Standard 2013 (the Ombudsman’s Standard), as amended from time to time. In the event of any inconsistency between these procedures and the PID Act or the Ombudsman’s Standard, the PID Act and the Ombudsman’s Standard must be complied with.

Dated: 15 January 2014

Signed: [Signature]

Ross Carter
Delegate and Executive General Manager

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1 The Clean Energy Regulator Procedures for Handling Public Interest Disclosure are based on material developed by Australian Government Solicitor and supplied to the Clean Energy Regulator for its own use.

2 The Public Interest Disclosure (Consequential Amendment) Act 2013 repeals section 16 of the Public Service Act 1999. The ‘Procedures for reporting and dealing with Whistleblower reports’ established by the Chair on 1 September 2013 will cease to have effect on and from 15 January 2014, except in relation to whistleblower reports made before that date.
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CHAPTER 1 – INTRODUCTION

The Agency encourages the making of reports of disclosable conduct

1. The Clean Energy Regulator (the Agency) encourages and supports the reporting of wrongdoing by public officials in accordance with PID Act.

2. The Agency will take active steps to support and to protect persons who make disclosures under the PID Act. These steps will include:
   - acknowledgement for having come forward with a report of wrongdoing
   - an offer of support and information about what options are available
   - an assurance that the Agency will take all reasonable steps necessary to protect them, and
   - access to staff support services and mechanisms within the Agency, where the discloser is a member of staff.

3. The Agency 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 workers in the way the Agency is managed.

4. The Agency also recognises that a decision by the Agency 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 the Agency.

What is disclosable conduct?

5. The full definition of disclosable conduct is set out in section 29 of the PID Act. That definition applies for the purposes of these procedures.

6. In summary terms, disclosable conduct is conduct by an Agency or by a public official 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 or public official and that corresponds to a law in force in the Australian Capital Territory, or
   - perverts, or attempts to pervert, the course of justice or involves corruption of any other kind, or
   - constitutes maladministration, including conduct that:
     - is based on improper motives
     - is unreasonable, unjust or oppressive, or
     - is negligent, or
e. is an abuse of public trust, or
f. is fabrication, falsification, or deception in relation to scientific research, or misconduct in relation to scientific work, or

g. results in the wastage of public money or public property or of the money or property of an authority covered by the PID Act, or

h. 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

i. results in a danger to the environment or results in or increases the risk of a danger to the environment, or

j. is prescribed by the PID Rules, or

k. is engaged in by a public official that:
   – involves abuse of the public official’s position, or
   – could, if proved, give reasonable grounds for disciplinary action against the public official.

7. It does not matter whether disclosable conduct occurred before or after 15 January 2014.

8. It does not matter whether the public official who carried out the alleged conduct has ceased to be a public official since the time the conduct is alleged to have occurred, but it is necessary that they carried out the conduct in connection with their position as a public official.

The Principal Officer

9. The Principal Officer has specific responsibilities that include establishing PID Act procedures, investigating and providing reports on disclosures and ensuring that appropriate action is taken in relation to recommendations arising from an investigation.

10. As the head of the Agency, the Chair is the Agency’s Principal Officer, and is able to delegate any or all of these functions or powers to another public official in the Agency.

Authorised Officers

11. Authorised Officers are senior officers (appointed by the Principal Officer or delegate) who are authorised to receive reports of disclosable conduct and have a range of decision-making, notification and other responsibilities under the PID Act. The Principal Officer is also an Authorised Officer.

12. Authorised Officers and contact details may be found on REGi and the Clean Energy Regulator’s website.

Managers and Supervisors

13. Under the PID Act, managers and supervisors are able to receive public interest disclosure reports and have specific obligations in dealing with disclosures. Supervisors and managers play a key role in ensuring that the Agency’s workplace culture supports the making of public interest disclosures in a safe environment.

14. Further information for supervisors and managers can be found in Need to Know: Supervisors on REGi.
CHAPTER 2 – THE DISCLOSURE PROCESS

Making a disclosure under the PID Act

15. All officials3 of the Agency and former officials of the Agency are entitled to make a disclosure under the PID Act.

16. 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.

17. All public officials and former public officials are entitled to make a disclosure under the PID Act.

18. A public interest disclosure may be made anonymously or openly.

19. A public interest disclosure may be made orally or in writing.

20. Where a public official makes a public interest disclosure, they do not have to state or intend that they are doing so under the PID Act.

21. Where a public official is considering making a disclosure, they should, in the first instance, contact one of the Agency’s Authorised Officers to get information about making a public interest disclosure under the PID Act.

22. Officials in the Agency may make a disclosure of disclosable conduct to their supervisor or their manager, or to an Authorised Officer, or in certain circumstances, to the Ombudsman. Where the official of the Agency is a member of the Regulator, the member may make a disclosure to the principal officer, or in certain circumstances, the Ombudsman.

23. Officials or former officials or officers of contracted service providers may make a disclosure of disclosable conduct to an Authorised Officer or, in certain circumstances, to the Ombudsman.

24. The names and contact details of the Agency’s Authorised Officers are set out on REGi and the Clean Energy Regulator’s website.

25. Where possible, current officials of the Agency should make their public interest disclosure to an Authorised Officer rather than their supervisor or manager.

   Note: Authorised Officers in the Agency have been trained in receiving public interest disclosures and they can provide information about how to make a public interest disclosure and about the protections given to disclosers under the PID Act.

   Note: This clause does not prevent current officials from making a disclosure to their supervisor or manager.

26. 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.

27. A potential discloser should not investigate a matter themselves before making a disclosure.

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3 ‘Official of the Regulator’ is defined in section 4 of the Clean Energy Regulator Act 2011 and includes staff, members of the Regulator, and certain service providers and consultants.
28. A person who knowingly makes a false or misleading disclosure will not have any protections under the PID Act.

29. 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.

30. Once a public interest disclosure 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.

31. 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.

32. A supervisor or manager or Authorised Officer who receives a disclosure of disclosable conduct from a public official must deal with the disclosure in accordance with the PID Act and in accordance with the Ombudsman’s Standard and these procedures.

CHAPTER 3 – PROCEDURES FOR SUPERVISORS AND MANAGERS

33. Where a public official in the Agency discloses information to their supervisor or manager and that supervisor or manager has reasonable grounds to believe that the information concerns, or could concern, disclosable conduct, the supervisor or manager must, as soon as practicable, give the information to an Authorised Officer in the Agency.

34. Where such a disclosure is made to a supervisor or manager, 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.

35. The person to whom the disclosure has been made must ask the discloser to sign the record of the disclosure, where this is practicable.

36. At the time a supervisor or manager gives information to an Authorised Officer under paragraph 27, 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 or manager.

37. Where a supervisor or manager has given information to an Authorised Officer under paragraph 33, and where the supervisor or manager 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 that Authorised Officer. The supervisor or manager must provide all records in relation to the disclosure to the Authorised Officer.
CHAPTER 4 – PROCEDURES FOR AUTHORISED OFFICERS

Authorised Officer must advise disclosers and potential disclosers about the PID Act

38. Where:

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

  b. 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

  c. the Authorised Officer is aware of the contact details of the person

The Authorised Officer must:

  d. inform the person that the disclosure could be treated as an internal disclosure for the PID Act, and

  e. explain to the person what the PID Act requires for a disclosure to be an internal disclosure, and

  f. explain to the person the protections provided by the PID Act to persons who make disclosures under the Act, and

  g. advise the person of any orders or directions that may affect disclosure of the information.

Authorised Officer must decide whether or not to allocate a disclosure

39. 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 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.

40. The Authorised Officer must ask the discloser to sign the written record of the disclosure, where this is practicable.

41. Where a disclosure has been given to 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 to or made to the Authorised Officer.

42. 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.

The bases 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 carried out that conduct, and
• that the disclosure is not otherwise a public interest disclosure within the meaning of the PID Act.

43. Where an Authorised Officer receives a disclosure, the Authorised Officer may obtain information and may make such inquiries as they think fit, for the purposes of deciding the allocation of the disclosure, including for the purposes of deciding whether the disclosure is an internal disclosure or not.

44. Where an Authorised Officer decides that a disclosure that has been made to them is not to be allocated, they must where the discloser's contact details are known to the Authorised Officer, advise the discloser in writing that the disclosure is not to be allocated, by sending to them a completed Form 1.

45. 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 the discloser:
   a. consents to the Authorised Officer giving the discloser's name and contact details to the principal officer and to the principal officer's delegates, and
   b. wishes the disclosure to be investigated.

46. The Authorised Officer must make a written record of the discloser's responses (if any) to the questions referred to in paragraph 45.

47. Where a discloser does not respond within 7 days to the question referred to:
   a. in paragraph 45.a – the discloser is taken not to have consented to the disclosure of their name and contact details to the principal officer and their delegates, and
   b. in paragraph 45.b – the discloser is taken to wish the disclosure to be investigated.

Where Authorised Officer allocates an internal disclosure

48. Where an Authorised Officer decides that a disclosure that has been made to them must be allocated, they must allocate the handling of the disclosure to one or more agencies (which may include this Agency). In allocating the handling of the disclosure, the Authorised Officer must have regard to the principle that an agency should not handle the disclosure unless any of the following apply:
   (i) in any case—some or all of the suspected disclosable conduct relates to the agency
   (ii) if the agency is the Ombudsman—some or all of the suspected disclosable conduct relates to an agency other than an intelligence agency or the IGIS
   (iii) if the agency is the IGIS—some or all of the suspected disclosable conduct relates to an intelligence agency,
   (iv) if the agency is an investigative agency (other than the Ombudsman or the IGIS)—the investigative agency has power to investigate the disclosure otherwise than under the PID Act.

49. 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. The first Authorised Officer must maintain a record of this consent.
50. Where an Authorised Officer in the Agency allocates a disclosure to an agency (including this Agency) they must complete Form 2 and send it to the principal officer or the principal officer’s delegate in that agency. The Authorised Officer must maintain a copy of the completed Form 2 in addition to a record of the reasons for the allocation.

51. The Authorised Officer must copy the completed Form 2 to the relevant contact officer in the Ombudsman’s Office.

52. Where the Authorised Officer is aware of the contact details of the discloser the Authorised Officer must inform the discloser of the allocation using completed Form 3.

53. Where an Authorised Officer in the Agency allocates a disclosure, they must assess the risk that reprisals may be taken against the discloser based on a checklist of risk factors, and having regard to any assessment of risk provided under these procedures by the discloser’s supervisor or manager.

54. The Ombudsman’s ‘Agency Guide to the Public Interest Disclosure Act 2013’ (the 2013 Guide), which can be found at [http://www.ombudsman.gov.au/docs/Agency_Guide_To_PID_Act_V1_Dec_2013.pdf](http://www.ombudsman.gov.au/docs/Agency_Guide_To_PID_Act_V1_Dec_2013.pdf) provides information on how to carry out a risk assessment. If the 2013 Guide is amended or replaced, the Authorised Officer should have regard to the most up to date version.

**CHAPTER 5 – ANONYMOUS DISCLOSURES**

55. 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.

**Where the discloser provides no name and no contact details or where the discloser provides no name but provides anonymous contact details**

56. 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.

57. Merely because a supervisor or manager or Authorised Officer has received a disclosure of one of these kinds that concerns disclosable conduct does not mean that it cannot be treated as a disclosure for the purposes of the PID Act.

58. Where a supervisor or manager receives a disclosure of one of these kinds they must refer it to an Authorised Officer as soon as is reasonably practicable.

59. The anonymous person does not need to prove their status as a current or former public official in order for the disclosure to be treated as a disclosure for the purposes of the PID Act. The person may give information that supports the status, for example, by stating that they used to work for the Agency or otherwise explaining how they know about the conduct they are reporting. If they do not, the Authorised Officer may ask questions along these lines (if they have the person’s contact details). Authorised Officers should be generous in their interpretation of the requirement that the discloser is a current or former public official, and treat an anonymous discloser as such unless there is evidence to suggest otherwise.
60. While disclosers may elect to remain anonymous there are reasons why a discloser may consider identifying themselves to an authorised officer, or at least provide a means of contact:

- The PID Act requires agencies to keep a discloser’s identity confidential, subject to limited exceptions including the discloser’s consent.
- It may be difficult to ensure protection from reprisal if an agency does not know the discloser’s identity.
- An Authorised Officer who receives a disclosure must consider 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. If they cannot contact the person to seek necessary further information, the matter may not be able to proceed.
- It may also be difficult to conduct an investigation if the discloser cannot be contacted for further information. An investigator has the discretion not to investigate, or investigate further, if the discloser does not provide their name and contact details or is unable to give the investigator further information or assistance if needed.
- A discloser who does not provide a means of contact cannot be updated on the progress of the matter, including the outcome of any investigation.

61. An anonymous discloser may reveal their identity at a later stage and seek protections under the PID Act.

CHAPTER 6 – INDIVIDUALS TAKEN TO BE PUBLIC OFFICIALS

62. Where an Authorised Officer receives a disclosure from an individual who was not a public official at the time they obtained the information they intend to disclose, or an anonymous person who they are not satisfied was a public official at that time, an Authorised Officer may, on their own initiative or on a request from the individual, under section 70 of the PID Act, deem that they are to be taken to be a public official in relation to the making of the disclosure if the Authorised Officer reasonably believes that the individual has information that concerns disclosable contained.

Note: However, if the Authorised Officer cannot contact an anonymous discloser, no determination can be made because the Authorised Officer must be able to give written notice of the determination to the individual (see s 70(1)).

63. 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.

64. 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 section 70, they must also give the discloser reasons for their decision.

65. Where an Authorised Officer decides to make a determination under section 70 that the Act has effect as if the individual had been a public official, the Authorised Officer should seek assistance from the Office of General Counsel on the drafting of the written notice. The Authorised Officer must keep a record of the notice and the reasons for the decision.
66. The written notice must be given to the individual. A copy of the determination notice should also be given to principal officer or their delegate at the same time as Form 2.

CHAPTER 7 – DECIDING WHETHER OR NOT TO INVESTIGATE

67. Where an Authorised Officer allocates an internal disclosure to the principal officer or their delegate and the principal officer or delegate has been given the contact details of the discloser, the principal or delegate must, within 14 days after the disclosure was allocated to the Agency, inform the discloser in writing using Form 3A that the principal officer or delegate may decide:

a. not to investigate the disclosure, or
b. not to investigate the disclosure further

and the principal officer or delegate must inform the discloser of the grounds on which that decision will be taken.

68. The principal officer or delegate must, as soon as practicable after receiving an allocation of a disclosure from an Authorised Officer (whether from within or without the Agency) consider whether to exercise the discretion under s 48 of the PID Act not to investigate the disclosure under the PID Act.

69. In broad terms, the principal or delegate may decide not to investigate (or may decide to discontinue an investigation already begun) if:

a. the discloser is not a current or former public official (and a determination has not been made under section 70 of the PID Act), or
b. the information does not to any extent concern serious disclosable conduct, or
c. the disclosure is frivolous or vexatious, or
d. the disclosure is substantially the same as a disclosure that has been, or is being, investigated under the PID Act, or
e. 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
   – it would be inappropriate to conduct another investigation at the same time, or
   – the principal officer is reasonably satisfied that there are no matters that warrant further investigation, or
f. the discloser has informed the principal officer that they do not wish the disclosure to be pursued and the principal officer is reasonably satisfied that there are no matters concerning the disclosure that warrant investigation, or
g. it is impracticable to investigate the disclosure because:
   – the discloser has not revealed their name and contact details, or
   – the discloser has refused or has failed or is unable to give the investigator the information they requested, or
   – of the age of the information.
70. Guidance on factors that might go towards the exercise of the power in section 48 is provided in the Ombudsman’s ‘Agency Guide to the Public Interest Disclosure Act 2013’, which can be found at http://www.ombudsman.gov.au/docs/Agency_Guide_To_PID_Act_V1_Dec_2013.pdf. If the Guide is amended or replaced, the most up to date version should be consulted.

CHAPTER 8 – PROCEDURES FOR INVESTIGATORS

71. Where the principal officer or delegate has decided under paragraph 67 to commence an investigation into an internal disclosure, they may conduct the investigation as they think fit.

72. The principal officer or delegate must be independent and unbiased in the matter. They must ensure that they do not have an actual or reasonably perceived conflict of interest.

73. The principal officer or delegate may, for the purposes of the investigation, obtain information from such persons, and make such inquiries, as they think fit.

74. When conducting an investigation the principal officer or delegate must ensure that a decision whether evidence is sufficient to prove a fact is made on the balance of probabilities.

75. Despite paragraphs 69 and 71, the principal officer or delegate, in conducting an investigation under these procedures, must comply with:
   a. the Ombudsman’s Standard, and
   b. to the extent they are relevant to the investigation:
      – the Commonwealth Fraud Control Guidelines, and
      – these procedures, and
      – the procedures established under s 15(3) of the Public Service Act 1999.

Interviewing witnesses

76. Subject to any restrictions imposed by a law of the Commonwealth other than the PID Act, the investigator must ensure that, if a person is interviewed as part of the investigation of an internal disclosure, that person is informed of:
   a. the identity and function of each person conducting the interview, and
   b. the process of conducting an investigation, and
   c. the authority of the investigator under the PID Act to conduct an investigation, and
   d. the protections provided to the person by section 57 of the PID Act, and
   e. the person’s duty:
      – if they are a public official – to use their best endeavours to assist the investigator 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), and
      – not to take or threaten to take reprisal action against the discloser,
subject to the PID Act, not to disclose the identity of the person who made the disclosure.

The investigator must also ensure that an audio or visual recording of the interview is not made without the interviewee’s knowledge.

77. 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.

78. 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.

**Procedural fairness**

79. Procedural fairness does not require that a person against whom allegations are made must be advised as soon as the disclosure is received or as soon as an investigation is commenced.

80. Procedural fairness may require that the discloser’s identity be revealed to the person who is the subject of the disclosure.

81. 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 or delegate must give the person who is the subject of that proposed finding or opinion a copy of the evidence that is relevant to that proposed finding or opinion and must give the person a reasonable opportunity to comment on it.

   Note: Paragraph 85 will not apply where the investigation does not make substantive findings or express adverse opinions but instead simply recommends or decides that further investigation action should or should not be taken or will or will not be taken.

82. The investigator must ensure that a finding of fact in a report of an investigation under the PID Act is based on logically probative evidence.

   Note: In broad terms, this is material that tends logically to prove the existence or non-existence of a fact.

83. The investigator must ensure that the evidence that is relied on in an investigation is relevant.

   Note: 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.

**Time limits**

84. The investigator has 90 days from the date the disclosure was allocated in which to complete the investigation. The investigation is completed when the principal officer or delegate has prepared the report of the investigation (see section 52 of the PID Act).
85. It is possible to seek one or more extensions of time from the Ombudsman.

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

87. 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 taken to progress the investigation. Where the Ombudsman extends, or further extends, the 90-day period, the principal officer or delegate must, as soon as reasonably practicable after the extension or further extension inform the discloser of the progress of the investigation.

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

CHAPTER 9 – REPORTS OF INVESTIGATIONS

89. In preparing a report of an investigation under the PID Act the investigator must comply with the PID Act, the Ombudsman’s Standard and these procedures.

90. A report of an investigation under the PID Act must set out:
   a. the matters considered in the course of the investigation, and
   b. the duration of the investigation, and
   c. the investigator’s findings (if any), and
   d. the action (if any) that has been, is being or is recommended to be taken, and
   e. any claims made about, and any evidence of, detrimental action taken against the discloser, and the Agency’s response to those claims and that evidence

   and, where relevant, a report must:
   f. identify whether there have been one or more instances of disclosable conduct, and
   g. identify any regulations, rules, administrative requirements or similar matters to which the disclosable conduct (if any) relates, and
   h. explain the steps taken to gather evidence, and
   i. set out a summary of the evidence, and
   j. set out any findings and recommendations made based on that evidence.

91. 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 7:
   a. that the report has been completed, and
   b. whether the report was completed within the time limit provided for by the PID Act.

92. 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.
93. Despite paragraph 94, the investigator may delete 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:
      – that is exempt for the purposes of Part IV of the Freedom of Information Act 1982, or
      – having, or being required to have, a national security or other protective security classification, or
      – containing intelligence information.

94. Despite paragraph 94, the investigator should delete from the copy of a report given to the discloser any material which would result in the report contravening a designated publication restriction.

CHAPTER 10 – CONFIDENTIALITY

95. The investigation of the disclosure should be conducted in as confidential a manner as is possible. In particular, the identity of both the discloser and the person(s) alleged to have engaged in the 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).

96. Any email correspondence between supervisors or managers, Authorised Officers, the principal officer or delegates should include in the subject line **For Addressee Eyes Only – Public Interest Disclosure.** This alerts any support staff who may have access to emails that this email is not to be opened. If emails are opened and the identity of the discloser is seen, support staff may be subject to criminal prosecution.

97. Any interviews conducted by an Authorised Officer or delegates (including investigators) should be conducted in private.

98. Any interviews with the discloser should be arranged so as to avoid the identification of the discloser by other staff of the agency.

CHAPTER 11 – RECORD-KEEPING

99. An Authorised Officer who receives a disclosure or consents to a disclosure being allocated to the Agency must create a new official file for each distinct disclosure. The Authorised Officer will maintain the records for the disclosure, including those regarding any investigations in relation to disclosure conducted by the principal officer or a delegate under the PID Act.

100. Where an Authorised Officer is required to keep or maintain a record under these procedures, the record must be kept in hard copy or in an electronic form, or both where practicable. Access to the records must be restricted to the Authorised Officers, the principal officer, 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 (for example, under the Work Health and Safety Act 2011 or the Public Service Act 1999).

101. Where a form is required to be sent under these procedures, a copy of the form must be kept.

102. All records made for the purposes of the PID Act in accordance with these procedures must be marked as ‘in-confidence’ and hard copies stored in the appropriate storage container.
103. Where a person will cease being an Authorised Officer in the Agency (including because of resignation or movement to another agency), their PID records must be transferred to another Authorised Officer in the Agency.

CHAPTER 12 – MONITORING AND EVALUATION

104. Each Authorised Officer must provide a monthly report to the principal officer 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). The report must also include any disclosures that have been allocated to the agency by another agency’s Authorised Officer.

105. A delegate will collate the Agency’s report to the Ombudsman on disclosures made during the financial year (the monitoring delegate).

106. Each investigator must advise the monitoring delegate of every decision made by the investigator to investigate a disclosure during the financial year.

107. Each delegate of the principal officer who takes action in response to a recommendation made in an investigation report must make a report of this action to the monitoring delegate.

108. The monitoring delegate must prepare the agency’s report for the principal officer’s consideration within the time specified by the principal officer.

The principal officer will send the Agency’s report to the Ombudsman within the time requested by the Ombudsman or as otherwise agreed with the Ombudsman.

CHAPTER 13 – MISCELLANEOUS

Public Interest Disclosure Forms

109. Forms prescribed for use in these Procedures are set out in Annex A.

110. Wherever these Procedures prescribe the use of a form, strict compliance with the form is recommended but not required, and substantial compliance, including using an alternative document setting out the same or substantially similar substance is sufficient. For example, using a form provided by the Ombudsman will be sufficient.
Public Interest Disclosure Act 2013
Notice to discloser — Decision not to allocate (s 44(2))

Discloser

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On, [insert date], I [insert name], an authorised officer of the Clean Energy Regulator received a disclosure from you.

In accordance with s 43(2) of the Public Interest Disclosure Act 2013, I decided not to allocate this disclosure.

Reasons

I was satisfied that that there were no reasonable grounds on which the disclosure could be considered an internal disclosure because:

[Insert one or more of the following grounds relied on]

111. you, the discloser, are not a public official and have not been a public official

112. the information does not tend to show one or more instances of disclosable conduct

113. the conduct was not engaged in by:
   (i) an agency
   (ii) a public official in connection with his or her position as a public official
   (iii) a contracted service provider for a Commonwealth contract in connection with entering into, or giving effect to, that contract

114. the disclosure was not made to:
   (i) an authorised internal recipient or
   (ii) your supervisor.

Other courses of action

Other courses of action that may be available to you under other laws of the Commonwealth are:

[Include only those that are relevant to the kind of disclosable conduct in question, for example]:
1. a complaint to the Commonwealth Ombudsman under the Ombudsman Act 1976
2. an application for an order to stop bullying under the Fair Work Act 2009, or
3. making an adverse actions claim under the Fair Work Act 2009.

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Public Interest Disclosure Act 2013

Notice of allocation of disclosure (s 44(1))

I, [insert name], an authorised officer of the Clean Energy Regulator having received a disclosure under the Public Interest Disclosure Act 2013, have decided to allocate the disclosure to [insert agency or agencies] (our reference PID2014/*****).

[If a different agency] I received consent to this allocation from [insert name], authorised officer of [agency y] on [insert date].

Information disclosed

The information that was disclosed to me was [insert details – emails, letter, documents, and pictures].

Suspected disclosable conduct

The information that was disclosed to me tends to show the following suspected disclosable conduct:

[insert nature of disclosable conduct – refer s 29]

— corruption by a public official in the agency being provision of sensitive information about a prospective tender for money;

— conduct that could give reasonable grounds for disciplinary action against a public official in this agency, being

  — alleged bullying and harassment by a public official in this agency against another public official in the agency

— alleged misuse of Commonwealth resources

Discloser’s name and contact details

[Include only if the discloser has consented to their name and contact details being given to the principal officer/delegate].

The discloser has consented to me informing you of their name and contact details.
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Public Interest Disclosure Act 2013
Notice of allocation (s 44(2))

Discloser

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I, [insert name], an authorised officer of the Clean Energy Regulator, having received a disclosure from you under the Public Interest Disclosure Act 2013, have decided to allocate the disclosure to [insert agency or agencies].

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Authorised Officer
Public Interest Disclosure Act 2013
Notice to Discloser – Investigation powers (s 9, Public Interest Disclosure Standard 2013)

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I, [insert name], am the delegate of the principal officer of the Clean Energy Regulator who will be considering your disclosure and advise you that my powers as delegate include:

4. to decide under s 48 of the Public Interest Disclosure Act 2013 (the PID Act) not to investigate the disclosure on a ground or grounds set out in that section (refer to page 2)

5. to decide under s 48 of the PID Act not to investigate the disclosure further on a ground or grounds set out in that section (refer to page 2), if I decide to start to investigate the disclosure.

[If your agency is an investigative agency, include:]

6. to decide under s 49 of the PID Act to investigate the disclosure under a separate investigative power, that is, a power to investigate under another Act:

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Delegate of the principal officer
Section 48 of the Public Interest Disclosure Act 2013 – grounds on which to decide not to investigate or not to investigate further.

48 Discretion not to investigate

(1) Despite section 47, the principal officer of the agency may decide not to investigate the disclosure, or (if the investigation has started) not to investigate the disclosure further, if:

(a) the discloser is not, and has not been, a public official; or
(b) the information does not, to any extent, concern serious disclosable conduct; or
(c) the disclosure is frivolous or vexatious; or
(d) the information is the same, or substantially the same, as information the disclosure of which has been, or is being, investigated as a disclosure investigation; or
(e) the information concerns disclosable conduct that is the same, or substantially the same, as disclosable conduct that is being investigated under:
   (i) a law of the Commonwealth other than this Act; or
   (ii) the executive power of the Commonwealth;

and it would be inappropriate to conduct another investigation at the same time; or

(g) the information concerns disclosable conduct that is the same, or substantially the same, as disclosable conduct that has been investigated under:
   (i) a law of the Commonwealth other than this Act; or
   (ii) the executive power of the Commonwealth;

and the principal officer is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation; or

(h) the discloser has informed the principal officer of an agency that the discloser does not wish the investigation of the internal disclosure to be pursued, and the principal officer is reasonably satisfied that there are no matters concerning the disclosure that warrant investigation; or

(i) it is impracticable for the disclosure to be investigated:
   (i) because the discloser's name and contact details have not been disclosed; or
   (ii) because the discloser refuses or fails, or is unable, to give, for the purposes of the investigation, such information or assistance as the person who is or will be conducting the investigation asks the discloser to give; or
   (iii) because of the age of the information.
Public Interest Disclosure Act 2013
Notice to discloser — Decision not to investigate (s 50(2))

Discloser

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On [insert date], I, [insert name], a delegate of the principal officer of the Clean Energy Regulator, decided under s 48 of the Public Interest Disclosure Act 2013 (the PID Act) not to investigate the disclosure made by you and allocated to this agency on [insert date of allocation].

Reasons for decision

I decided not to investigate the disclosure on the ground that:

(a) [insert ground or grounds relied on from s 48(1)]

[for example:

— the disclosure is frivolous or vexatious;
— the information in your disclosure does not, to any extent, concern serious disclosable conduct]

because [insert findings of fact for this conclusion and the reasoning process that led to this conclusion].

Other courses of action

Other courses of action that may be available to you under other laws of the Commonwealth are [include only those that are relevant to the kind of disclosable conduct in question, for example]:

7. a complaint to the Commonwealth Ombudsman under the Ombudsman Act 1976
8. an application for an order to stop bullying under the Fair Work Act 2009
9. seeking judicial review, under the Administrative Decisions (Judicial Review) Act 1977, of my decision not to investigate the disclosure
10. making an adverse action claim under the Fair Work Act 2009.
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Public Interest Disclosure Act 2013
Notice to discloser — Decision to cease investigation (s 50(2))

Discloser

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On [insert date], I, [insert name], a delegate of the principal officer of the Clean Energy Regulator, having started to investigate the disclosure allocated to this agency on [insert date of allocation] (our reference: [PID2014/*****.*]), decided not to investigate the disclosure further.

Reasons for decision

I decided not to investigate the disclosure further on the ground that:

(a) [insert ground or grounds relied on from s 48(1)]

[for example:
— the disclosure is frivolous or vexatious;
— the information you disclosed does not, to any extent, concern serious disclosable conduct]

because [insert findings of fact for this conclusion and reasoning process that led to this conclusion].

Other courses of action

Other courses of action that may be available to you under other laws of the Commonwealth are [include only those that are relevant to the kind of disclosable conduct in question, for example]:

(a) a complaint to the Commonwealth Ombudsman under the Ombudsman Act 1976
(b) an application for an order to stop bullying under the Fair Work Act 2009
(c) seeking judicial review, under the Administrative Decisions (Judicial Review) Act 1977, of my decision not to investigate the disclosure further
(d) making an adverse actions claim under the Fair Work Act 2009.
**Public Interest Disclosure Act 2013**

**Notice to discloser — Investigation of your disclosure (s 50(1))**

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On [insert date], I, [insert name], a delegate of the principal officer of the Clean Energy Regulator, decided under s 47 of the Public Interest Disclosure Act 2013 that I am required to investigate the disclosure made by you and allocated to this agency on [insert date of allocation].

**Estimated length of the investigation**

I estimate that the investigation will be completed in [insert number] days from the date your disclosure was allocated to this agency.

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Delegate of the principal officer
Public Interest Disclosure Act 2013
Notice to Ombudsman — Decision not to investigate (s 50A)

To: Ombudsman

On [insert date], I, [insert name], a delegate of the principal officer of the **Clean Energy Regulator**, decided under section 48 of the *Public Interest Disclosure Act 2013* not to investigate the disclosure allocated to this agency on [insert date of allocation] (our reference: [PID2014/******]).

**Reasons for decision**

I decided not to investigate the disclosure on the ground that:

- [insert ground or grounds relied on from s 48(1)]
  
  *[for example:]
  
  — the disclosure is frivolous or vexatious;
  
  — the information does not, to any extent, concern serious disclosable conduct*

because [insert findings of fact for this conclusion and reasoning process that led to this conclusion].

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Delegate of the principal officer
Public Interest Disclosure Act 2013
Notice to Ombudsman — Decision to cease investigation (s 50A)

To: Ombudsman

On [insert date], I, [insert name], a delegate of the principal officer of the Clean Energy Regulator, having started to investigate the disclosure allocated to this agency on [insert date of allocation] (our reference: [PID2014/******]), decided under s 48 of the Public Interest Disclosure Act not to investigate the disclosure further.

Reasons for decision

I decided not to investigate the disclosure further on the ground that:

[insert ground or grounds relied on in s 48(1)]

[for example:

— the disclosure is frivolous or vexatious;
— that the information does not, to any extent, concern serious disclosable conduct]

because [insert findings of fact for this conclusion and reasoning process that led to this conclusion].
**Public Interest Disclosure Act 2013**

**Notice to discloser of completion of investigation**

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I, [insert name], the delegate of the principal officer of the Clean Energy Regulator who investigated your disclosure, now advise you that the report of the investigation was completed on [insert date of completion of report].

The investigation [was therefore/was not] completed within the time limit under the *Public Interest Disclosure Act 2013* (the PID Act) for the investigation.

You will be provided with a copy of the report of the investigation shortly, but you should be aware that the copy provided to you may have material deleted from it, in accordance with the PID Act.

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