

Procedures for handling Public Interest Disclosures¹

I, David Parker, Chair, Clean Energy Regulator, establish these procedures under section 59(1) of the *Public Interest Disclosure Act 2013*.

These procedures commence November 2021.

I revoke all previous versions of the Procedures for handling Public Interest Disclosures made in relation to the Clean Energy Regulator.

Date: 11/11/21



Signed:
David Parker AM
Chair and Head of Agency/Principal Officer, Clean Energy Regulator.

¹ The Clean Energy Regulator Procedures for Handling Public Interest Disclosures are based on material developed by the Commonwealth Ombudsmans in the [Agency Guide to the Public Interest Disclosure Act 2013, April 2016, Version 2](#)

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CHAPTER 1 – INTRODUCTION

Purpose

1. The purpose of this document is to provide advice and guidance to staff and others about the Public Interest Disclosure Scheme and the procedures that have been established to deal with public interest disclosures made by public officials in accordance with the *Public Interest Disclosure Act 2013* (PID Act).
2. The Clean Energy Regulator (the Agency), is committed to the highest standards of ethical and accountable conduct. The Agency encourages and supports the reporting of wrongdoing by public officials under the PID Act. The Agency will act on disclosures as appropriate and protect disclosers from reprisals, or threats of reprisals, as a result of making a disclosure.
3. The PID Act promotes integrity and accountability in the Australian public sector by encouraging the disclosure of information about suspected wrongdoing, protecting people who make disclosures and requiring agencies to act in relation to public interest disclosures.
4. The objectives of the PID Act are:
 - to promote the integrity and accountability of the Commonwealth public sector; and
 - to encourage and facilitate the making of public interest disclosures by public officials; and
 - to ensure that public officials who make public interest disclosures are supported and protected from adverse consequences relating to the disclosures; and
 - to ensure that disclosures by public officials are properly investigated and dealt with.
5. Section 59 of the PID Act requires the Chair (as the Head of Agency and Principal Officer under the PID Act) to establish procedures for facilitating and dealing with public interest disclosures relating to the agency. An overview of the key requirements, prepared by the Commonwealth Ombudsman, is at [Attachment A](#).

What is a public interest disclosure?

6. There are four different types of disclosures that constitute a 'public interest disclosure' under the PID Act:
 - an 'internal disclosure',
 - an 'external disclosure',
 - an 'emergency disclosure' and
 - a 'legal practitioner disclosure'.
7. **Internal disclosures** are the focus of these procedures.
8. A disclosure will be an **internal disclosure** if it meets the following requirements:
 - it is made by a 'public official' or a person who has been a 'public official';
 - it is made to the discloser's supervisor or manager, or an Authorised Officer of the agency; and
 - the information disclosed tends to show, or the discloser believes on reasonable grounds the information tends to show, one or more instances of 'disclosable conduct' as defined in the PID Act.

What is disclosable conduct?

9. 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.

10. In summary terms, disclosable conduct is conduct by an Agency or by a public official that:
 - a. contravenes a law of the Commonwealth, a State or a Territory, or
 - b. 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
 - c. perverts, or attempts to pervert, the course of justice or involves corruption of any other kind, or
 - d. 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.
11. It does not matter when the disclosable conduct occurred.
12. 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.

What is not disclosable conduct?

13. As set out in section 31 of the Act, conduct is not 'disclosable conduct' if it relates only to a disagreement with:
 - a policy or proposed policy of the Commonwealth Government; or
 - an action that has, or is being, or is proposed to be, taken by a Minister, the Speaker of the House of Representatives, or the President of the Senate; or
 - amounts, purposes or priorities of expenditure or proposed expenditure relating to such a policy or proposed policy, or such action or proposed action.

Who is a public official?

14. The term 'public official' is defined in section 69 of the Act. The term includes, for example, a Commonwealth public servant, an individual who is a contracted service provider for a Commonwealth contract, and an officer or employee of a Commonwealth contracted service provider. Members of the Regulator would also fall within the definition. Accordingly, the people who can make an 'internal disclosure' relating to the agency include:

- employees of the agency and former employees of the agency;
 - members and former members of the Regulator; and
 - contracted service providers and their employees who provide, or who have provided, services to the agency under a contract with the agency.
15. Generally, the fact that a person or organisation receives financial assistance from the Commonwealth pursuant to a grant arrangement will not make the person or a staff member of the organisation a 'public official' for the purposes of the Act.
16. An Authorised Officer can also determine, pursuant to section 70 of the Act, that an individual is deemed to be a public official for the purposes of the Act if they reasonably believe the individual has information that concerns disclosable conduct and the individual has disclosed, or proposes to disclose, the information to an Authorised Officer.

The Principal Officer

17. 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.
18. 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

19. 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.
20. A list of Authorised Officers can be found on REGi and the Clean Energy Regulator's website.

Managers and Supervisors

21. 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.
22. Further information for supervisors and managers can be found in [Need to know for supervisors](#).

CHAPTER 2 – MAKING A PUBLIC INTEREST DISCLOSURE

23. All officials of the Agency and former officials of the Agency are entitled to make a disclosure under the PID Act.
24. 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.
25. All public officials and former public officials are entitled to make a disclosure under the PID Act.
26. A public interest disclosure may be made anonymously or openly.
27. 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 the 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.

28. A public interest disclosure may be made orally or in writing.
29. 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.
30. 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.
31. 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. A member of the Regulator may be able to make a disclosure to the Principal Officer, or in certain circumstances, the Ombudsman.
32. 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.
33. Where possible, current officials of the Agency should make their public interest disclosure to an Authorised Officer rather than their supervisor or manager.
34. A list of Authorised Officers may be found on REGi and the Clean Energy Regulator's website.

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.

35. Officials can make a disclosure to an Authorised Officer by:
 - lodging a PID report via the [Online Reporting Tool](#)
 - calling or emailing the most appropriate Authorised Officer directly
 - writing to the Authorised Officer at GPO Box 621, Canberra ACT 2601, Australia
 - emailing PID@cleanenergyregulator.gov.au
 - Subject lines or envelopes should be marked "Confidential – CER PID – For the Attention of (insert Authorised Officer name to disclose it to), Authorised Officer"
36. 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.

37. A potential discloser should not investigate a matter themselves before making a disclosure.
38. A person who knowingly makes a false or misleading disclosure will not be protected from liability for making the disclosure.
39. 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.
40. Once a public interest disclosure has been made, it cannot be withdrawn. 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. Only the Principal Officer can decide not to investigate in particular circumstances.
41. 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.
42. 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 *Public Interest Disclosure Standard 2013* (Ombudsman's Standard) and these procedures.

CHAPTER 3 – SUPPORT, PROTECTED INFORMATION AND REPRISALS

Support for disclosers

43. The Agency will take steps to support persons who have made disclosures under the Act relating to the Agency, and to protect them from detriment or threats of detriment relating to the disclosure. This may include taking one or more of the following actions:
 - appointing a support person to assist the discloser, who is responsible for checking on the wellbeing of the discloser regularly (with the consent of the discloser)
 - providing the discloser with information about their rights and obligations under the Act
 - providing the discloser with information about the agency's investigation procedures and any other relevant matter
 - informing the discloser of the progress of the investigation
 - advising the discloser of the availability of the agency's Employee Assistance Program
 - where there are concerns about the health and wellbeing of the discloser, liaising with officers responsible for work health and safety in the agency
 - transferring the discloser to a different area within the workplace (with the consent of the discloser).

Support for person against whom a disclosure has been made

44. Support may also be provided to any employee who is subject to an allegation of disclosable conduct. This may include taking one or more of the following actions:
 - providing the employee with information about their rights and obligations under the Act,
 - providing the employee with information about the agency's investigation procedures and any other relevant matter; including informing the employee of their right to procedural fairness
 - informing the employee of the progress of any investigation

- ensuring the identity of the employee is kept confidential as far as reasonably practicable
- advising the employee of the availability of the agency's Employee Assistance Program
- where there are concerns about the health and wellbeing of the employee, liaising with officers responsible for work health and safety in the agency; and
- transferring the employee to a different area within the workplace (with the consent of the employee).

Immunity from liability

45. A person who makes a public interest disclosure is not subject to any civil, criminal, or administrative liability (including disciplinary action) for making the disclosure. However, a discloser is not protected from liability (including disciplinary action) for knowingly making a false or misleading statement, or knowingly making a disclosure that contravenes a designated publication restriction without reasonable excuse (see sections 11 and 11A of the Act).
46. Making a disclosure does not entitle a discloser to protection from the consequences of their own wrongdoing (see section 12 of the Act).

Protection against reprisal action

47. The Act provides protections to a person who makes a disclosure if the disclosure meets the requirements of being a 'public interest disclosure'. A key protection is that it is an offence to take, or threaten to take, 'reprisal' action against a discloser.

What is reprisal action?

48. A reprisal occurs when someone causes by an act or omission, detriment to another person because they believe or suspect that person, or anyone else, may have made or intends to make a PID. This could include an action or omission (or threat of action or omission), or detriment that results in:
 - disadvantage to a person, including dismissal, injury in their employment, discrimination between them and other employees or alteration of their position to their disadvantage
 - a physical or psychological injury, including a stress-related injury
 - intimidation, harassment, victimisation, loss, or damage to property
 - disadvantage to a person's career (for example, denying them a reference or a promotion without appropriate reasons).
49. The agency will not tolerate any reprisal action against a person who makes a public interest disclosure.
50. Every allegation of reprisal will be taken seriously, recorded, and responded to.
51. All those involved in handling the public interest disclosure and are aware of the discloser's identity for the purposes of the Act will monitor the work environment for signs of detriment and if necessary, take corrective action early.

What is not a reprisal?

52. Reasonable administrative action taken to protect a discloser from detriment is not a reprisal.
53. In addition, managers and supervisors are not prevented from taking legitimate disciplinary or management action to address unsatisfactory performance in the workplace where that action is unrelated to the discloser having made a disclosure.

Protection of information and confidentiality

54. Confidentiality will be maintained as far as reasonably possible in the handling of disclosures by the agency. 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 handling of the disclosure (including because of the need to afford procedural fairness).
55. Under the Act, a person commits an offence if they disclose or use information that is likely to enable the identification of the discloser as a person who has made a public interest disclosure (that is, 'identifying information') unless the discloser consents, the identifying information has already been lawfully published, or the disclosure or use:
- is for the purposes of the PID Act
 - is required under another Commonwealth law or a prescribed State or Territory law, or
 - is in connection with the Ombudsman's functions under s 5A of the Ombudsman Act 1976 or the IGIS's functions under s 8A of the Inspector-General of Intelligence and Security Act 1986.
56. The steps that the agency may take to protect a discloser's identity include:
- limiting the number of people who are aware of the discloser's identity or information that would tend to identify them
 - reminding each person who has the information that they should keep it confidential and that unauthorised disclosure may be a criminal offence
 - assessing whether anyone who is aware of the discloser's identity may have a motive to take reprisals against the discloser or impede the progress of the investigation, and monitor the situation, and
 - ensuring the discloser can communicate with a support person, the Authorised Officer or investigator without alerting other staff.
57. The Authorised Officer and delegates of the Principal Officer will take all reasonable steps to protect the identity of a public official who has made a public interest disclosure from the time the disclosure is made.
58. 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.
59. Any investigation of a disclosure must be conducted in as confidential a manner as is possible. In particular, 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).
60. Any interviews conducted with the discloser should be conducted in private and should be arranged to avoid the identification of the discloser by other staff of the agency.
61. The Act also protects against the unauthorised use and/or disclosure of other information by certain people. If a person discloses information to another person or uses information otherwise than in accordance with the Act, the person commits an offence if the information was obtained by the person:
- while conducting a public interest disclosure investigation, or
 - in connection with the performance of a function or the exercise of a power by the person under the Act.

CHAPTER 4 – PROCEDURES FOR SUPERVISORS AND

MANAGERS

62. 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.
63. The supervisor or manager, 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.
64. The supervisor or manager to whom the disclosure has been made must ask the discloser to sign the record of the disclosure, where this is practicable.
65. At the time a supervisor or manager gives information to an Authorised Officer, 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.
66. Where a supervisor or manager has given information to an Authorised Officer, 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.
67. The supervisor or manager must provide all records in relation to the disclosure to the Authorised Officer.

CHAPTER 5 – PROCEDURES FOR AUTHORISED OFFICERS

Advice to disclosers and potential disclosers about the PID Act

68. Authorised Officers must advise disclosers and potential disclosers about the PID Act 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.

Receiving a disclosure

69. 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 the time and date of the disclosure.
70. The Authorised Officer must ask the discloser to sign the written record of the disclosure, where this is practicable.

Anonymous disclosures

71. All persons, including public officials, persons who have been public officials and others, may choose to make a disclosure anonymously.
72. A disclosure is considered anonymous if the identity of the discloser is not revealed and if no contact details for the discloser are provided. A disclosure may also be considered anonymous if the discloser does not disclose their name but does provide anonymous contact details.
73. Merely because a supervisor or manager or Authorised Officer has received a disclosure anonymously that concerns disclosable conduct does not mean that it cannot be treated as a disclosure for the purposes of the PID Act.
74. An 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.
75. If an anonymous person does not provide sufficient information to determine if they are a current or former public official, the Authorised Officer may ask questions along these lines (if they have the person's contact details).
76. Where an Authorised Officer receives an anonymous disclosure and it is not clear whether the discloser is a public official, the Authorised Officer 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.
77. An anonymous discloser may reveal their identity at a later stage and seek protections under the PID Act.

Determining individuals to be taken to be public officials.

78. 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 conduct.

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)).
79. 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.
80. 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.
81. 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.
82. 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**.

Deciding whether or not to allocate a disclosure

83. 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.
84. 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 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 carried out that conduct, and
 - that the disclosure is not otherwise a public interest disclosure within the meaning of the PID Act.
85. 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.
86. 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**.
87. 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.
88. The Authorised Officer must make a written record of the discloser's responses (if any) to the questions referred to in paragraph 87.
89. Where a discloser does not respond within 7 days to the question referred to:
- a. in paragraph 87a – 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 87b – the discloser is taken to wish the disclosure to be investigated.

Allocating an internal disclosure

90. 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.

91. 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.
92. 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.
93. The Authorised Officer must copy the completed **Form 2** to the relevant contact officer in the Ombudsman's Office.
94. 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.

Managing the risk of reprisals

95. The Act provides protections to a person who makes a disclosure if the disclosure meets the requirements of being a 'public interest disclosure'. A key protection is that it is an offence to take, or threaten to take, 'reprisal' action against a discloser.
96. Every allegation of reprisal will be taken seriously, recorded, and responded to.
97. All those involved in handling the public interest disclosure and are aware of the discloser's identity for the purposes of the Act will monitor the work environment for signs of detriment and if necessary, take corrective action early.
98. Reasonable administrative action taken to protect a discloser from detriment is not a reprisal.
99. Managers and supervisors are not prevented from taking legitimate disciplinary or management action to address unsatisfactory performance in the workplace where that action is unrelated to the discloser having made a disclosure.
100. 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.
101. Section 8.5 of the Ombudsman's ['Agency Guide to the Public Interest Disclosure Act 2013'](#) provides information on how to carry out a risk assessment.

CHAPTER 6 – PROCEDURES FOR THE PRINCIPAL OFFICER

Deciding whether to investigate or not

102. Where an Authorised Officer allocates an internal disclosure to the Principal Officer and the Principal Officer has been given the contact details of the discloser, the Principal Officer must, within 14 days after the disclosure was allocated to the Agency, inform the discloser in writing using **Form 3A** that the Principal Officer may decide:
 - a. not to investigate the disclosure, or
 - b. not to investigate the disclosure further

and the Principal Officer must inform the discloser of the grounds on which that decision will be taken.

103. The Principal Officer 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.
104. In broad terms, the Principal Officer 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.
105. Section 6.2 of the Ombudsman's ['Agency Guide to the Public Interest Disclosure Act 2013'](#) provides guidance on factors that might go towards the exercise of the power in section 48.
106. Where the Principal Officer decides not to investigate a disclosure, they must inform the discloser of their decision using **Form 4**. They must also inform the Ombudsman of the decision using **Form 6**.
107. Where the Principal Officer decides to investigate a disclosure, they must inform the discloser that they are required to investigate the disclosure and of the estimated length of the investigation by using **Form 5**.
108. Where the Principal Officer decides starts to investigate a disclosure but then decides not to continue the investigation, they must inform the discloser of their decision using **Form 4A**. They must also inform the Ombudsman of the decision using **Form 6A**.

Conducting the investigation

109. Where the Principal Officer has decided to commence an investigation into an internal disclosure, they may conduct the investigation as they think fit. This may include appointing an investigator to assist them to conduct the investigation.
110. The investigator must be independent and unbiased in the matter. They must ensure that they do not have an actual or reasonably perceived conflict of interest.
111. The investigator may, for the purposes of the investigation, obtain information from such persons, and make such inquiries, as they think fit.
112. When conducting an investigation the investigator must ensure that a decision whether evidence is sufficient to prove a fact is made on the balance of probabilities.
113. The investigator, in conducting an investigation under these procedures, must comply with:

- a. these procedures
- b. the Ombudsman's Standard, and
- c. to the extent they are relevant to the investigation:
 - any rules relating to fraud that are made for the purposes of the *Public Governance, Performance and Accountability Act 2013* and the Australian Government Investigation Standards (AGIS), and
 - the agency's procedures for determining breaches of the APS Code of Conduct, established under s 15(3) of the *Public Service Act 1999*.

Interviewing witnesses

114. 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, and
 - subject to the PID Act, not to disclose the identity of the person who made the disclosure.
115. The investigator must also ensure that an audio or visual recording of the interview is not made without the interviewee's knowledge.
116. 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.
117. Where the Principal Officer or 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

118. 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.
119. Procedural fairness may require that the discloser's identity be revealed to the person who is the subject of the disclosure.
120. 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: This 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.

121. 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.

122. 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.

Reports of investigations

123. 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.

124. 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.

125. Where the 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.

126. 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.

127. 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.
128. 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'. This term is defined in s 8 of the PID Act.

Time limits

129. The investigator has 90 days from the date the disclosure was allocated in which to complete the investigation.
130. The investigation is completed when the investigator has prepared the report of the investigation (see section 52 of the PID Act).
131. It is possible to seek one or more extensions of time from the Ombudsman.
132. A request to the Ombudsman for an extension of time should generally be made where an investigation has not been completed within 70 days of the date the disclosure was allocated. Extensions will not be granted once the 90 day period has passed.
133. 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 investigator must, as soon as reasonably practicable after the extension or further extension, inform the discloser of the progress of the investigation.
134. An investigation that is not completed within time does not become invalid.

CHAPTER 7 – RECORDS MANAGEMENT, MONITORING AND EVALUATION

Records management

135. 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.
136. 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*).
137. Where a form is required to be sent under these procedures, a copy of the form must be kept.
138. 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.
139. 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.

Monitoring and evaluation

140. A delegate will collate the Agency's report to the Ombudsman on disclosures made during the financial year (the monitoring delegate).
141. Each investigator must advise the monitoring delegate of every decision made by the investigator to investigate a disclosure during the financial year.
142. 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.
143. The monitoring delegate must prepare the agency's report for the Principal Officer's consideration within the time specified by the Principal Officer.
144. 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 8 – MISCELLANEOUS

Public Interest Disclosure Forms

145. Forms prescribed for use in these Procedures are available to agency Authorised Officers, Principal Officer and PID investigators.
146. 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.

Key Legislation and Policy

147. The following documents directly relate to these procedures and should be reviewed in context to this document:
 - [Commonwealth Ombudsman's Agency Guide to the Act](#)
 - [Public Interest Disclosure Act 2013](#)
 - [Public Interest Disclosure Standard 2013](#)
 - [Public Governance, Performance and Accountability Act 2013](#)
 - [Public Governance, Performance and Accountability Act Rule 2014](#)
 - [Commonwealth Fraud Control Framework 2017](#)
 - [Australian Government Investigation Standards 2011](#)
 - [Public Service Act 1999](#)

ATTACHMENT A – Handling Internal Public Interest Disclosures Overview

Handling internal public interest disclosures overview

