



Australian Government
Inspector-General of Taxation
Taxation Ombudsman

POLICIES, PLANS AND PROCEDURES

PUBLIC INTEREST DISCLOSURE POLICY & PROCEDURE

THE INSPECTOR-GENERAL OF TAXATION AND TAXATION OMBUDSMAN

JUNE 2020

All IGTO employees, secondees and contractors are required to review and comply with the relevant IGTO Policies, Plans and Procedures

TABLE OF CONTENTS

CONTENTS

| | |
|--|----|
| Public Interest Disclosure Policy & Procedure | 0 |
| The Inspector-General of Taxation and Taxation Ombudsman | 0 |
| Introduction | 1 |
| The Disclosure Process | 4 |
| Key Roles and Responsibilities | 7 |
| Risk Assessment | 10 |
| Allocating the Disclosure | 11 |
| Investigating the Disclosure | 12 |
| What If The Discloser Is Not Satisfied With The Agency's Action? | 15 |
| Freedom of Information Requests | 16 |
| Anonymous Disclosures | 17 |
| Monitoring and Evaluation | 18 |

INTRODUCTION

Introduction

BACKGROUND

The Commonwealth *Public Interest Disclosure Act 2013* (PID Act) was introduced with effect from 15 January 2014 to promote the integrity and accountability of the Commonwealth public sector by:

- encouraging and facilitating the disclosure of information of suspected wrongdoing in the public sector
- ensuring that public officials who make public interest disclosures are supported and protected from adverse consequences; and
- ensuring that disclosures are properly investigated and dealt with.

A public interest disclosure may be made by a former or current agency staff member or by a service provider under a Commonwealth contract. The PID Act gives each agency a central role in handling public interest disclosures.

PURPOSE

Section 59(1) of the PID Act requires the principal officer of an agency to establish procedures for facilitating and dealing with a public interest disclosure relating to the agency. This document sets out those procedures and has been established to assist in managing any occurrences in the Inspector-General of Taxation and Taxation Ombudsman agency that fall within the definition of public interest disclosures.

OVERVIEW OF LEGISLATIVE PROTECTIONS AND REQUIREMENTS

Section 10 of the *Public Interest Disclosure Act 2013* (PID Act) sets out the protection for disclosers and states that if an individual makes a public interest disclosure:

- the individual is not subject to any civil, criminal or administrative liability (including disciplinary action) for making the public interest disclosure; and
- no contractual or other remedy may be enforced and no contractual or other right may be exercised, against the individual on the basis of the public interest disclosure.

INTRODUCTION

The following procedures are established in accordance with subsection 59(1) of the PID Act to assist in managing any occurrences in the Inspector-General of Taxation and Taxation Ombudsman agency (IGTO) that fall within the definition of public interest disclosures.

All IGTO employees may report public interest disclosures to the Inspector-General of Taxation and Taxation Ombudsman/Chief Executive Officer (Inspector-General), their manager or an Authorised Officer.

Authorised Officers for the IGTO are the Principal Officer (i.e. the Inspector-General), the Deputy Inspector-General, the Director of Operations and the Risk & Compliance Manager¹.

The IGTO encourages and supports the reporting of wrongdoing by public officials in accordance with the PID Act.

The IGTO will take active steps to support and to protect staff that make disclosures under the PID Act.

What is disclosable conduct?

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.

In summary, a current or former public official can disclose information that they believe, on reasonable grounds, tends to show disclosable conduct.

Disclosable conduct is conduct by:

- an agency;
 - a public official in connection with their position; **or**
 - a contracted Commonwealth service provider in connection with entering into or giving effect to the contract;
- and** is conduct that:
- contravenes a law of the Commonwealth, a State or a Territory;

¹ Appointed under the PID Act in respect of these procedures.

INTRODUCTION

- 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 New South Wales;
- perverts, or attempts to pervert, the course of justice or involves corruption of any other kind;
- constitutes maladministration, including conduct that:
 - is based on improper motives,
 - is unreasonable, unjust or oppressive, or
 - is negligent;
- is an abuse of public trust;
- is fabrication, falsification, or deception in relation to scientific research, or misconduct in relation to scientific work;
- results in the wastage of public money or public property or of the money or property of an authority covered by the PID Act;
- 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;
- results in a danger to the environment or results in or increases the risk of a danger to the environment;
- is prescribed by the PID rules; **or**
- is engaged 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.

THE DISCLOSURE PROCESS

The Disclosure Process

MAKING A DISCLOSURE UNDER THE PID ACT

A person must be a current or former public official to make a public interest disclosure. This includes:

- Australian Public Service (APS) employees;
- members of the Defence Force;
- appointees of the Australian Federal Police;
- Parliamentary Service employees;
- directors or staff members of a Commonwealth company;
- statutory office holders; or
- other persons who exercise powers under a Commonwealth law.

Individuals and organisations that provide goods or services under a Commonwealth contract are also included. This includes subcontractors who provide goods or services for the purposes of the Commonwealth contract.

An Authorised Officer can deem an individual to be a public official if they reasonably believe that the individual has information about wrongdoing and proposes to make a disclosure.

THE DISCLOSURE PROCESS

HOW TO MAKE A DISCLOSURE UNDER THE PID ACT

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

IGTO staff are encouraged to make a disclosure internally to their current manager or to one of the Authorised Officers. Making a disclosure internally allows the IGTO the opportunity to investigate the matter and remove any danger or correct any wrong practices as quickly as possible.

If a staff member has information about suspected wrongdoing in another agency they may choose to make a disclosure directly to an Authorised Officer in that agency.

A public interest disclosure may be made anonymously or openly and may be made orally or in writing.

The discloser does not need to state or intend that they are doing so under the PID Act and for the requirements of the PID Act to apply.

IGTO staff should note that making a public interest disclosure does not entitle them to protection from the consequences of their own wrongdoing.

Additionally, a person who knowingly makes a false or misleading disclosure will not have any protections under the PID Act.

A disclosure can also be made to Authorised Officers of the Commonwealth Ombudsman (Ombudsman) if the discloser believes on reasonable grounds that it would be appropriate for the Ombudsman to investigate.

WHAT INFORMATION SHOULD BE PROVIDED WHEN MAKING A PUBLIC INTEREST DISCLOSURE?

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.

Depending on the circumstances, a discloser should consider providing as many of the following matters as possible:

- their name and contact details;
- the nature of the suspected wrongdoing;

THE DISCLOSURE PROCESS

- who they think committed the suspected wrongdoing;
- when and where the suspected wrongdoing occurred;
- any relevant events surrounding the issue;
- if they did anything in response to the suspected wrongdoing;
- others who know about the suspected wrongdoing and have allowed it to continue;
- whether they believe their information is a public interest disclosure under the PID Act (it does not need to be described that way for it to be treated as a public interest disclosure); and
- if they are concerned about possible reprisal as a result of making a disclosure.

IMMUNITY FROM LIABILITY

Anyone who makes a public interest disclosure is not subject to any civil, criminal or administrative liability (including disciplinary action) for making the disclosure. This means that the discloser would not be committing an offence against the secrecy provisions of the *Crimes Act 1914* for making a disclosure in accordance with the PID Act.

The discloser also has absolute privilege in proceedings for defamation in respect of the public interest disclosure.

No contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the discloser on the basis of the public interest disclosure. A contract to which the discloser is a party cannot be terminated because of the public interest disclosure.

However, these immunities do not apply if the discloser:

- knowingly makes a statement that is false or misleading; or
- makes a disclosure knowing that it contravenes a designated publication restriction and without a reasonable excuse for doing so.

KEY ROLES AND RESPONSIBILITIES

Key Roles and Responsibilities

MANAGERS

A public official may make a disclosure to their manager. If the manager believes that the information given to them concerns, or could concern, disclosable conduct, they must give that information to one of the IGTO's Authorised Officers as soon as reasonably practicable.

Managers also have a key role in ensuring that the workplace culture supports the making of public interest disclosures. They can help to do so by:

- being knowledgeable about the PID Act and agency procedures, particularly in relation to confidentiality requirements;
- being approachable to staff who wish to raise concerns;
- supporting a staff member who they know has made a public interest disclosure and ensuring they are protected from reprisal;
- providing a written assessment of any risks that reprisal action might be taken against the discloser when reporting a disclosure to an Authorised Officer;
- increasing management supervision of the workplace if necessary (for example, if workplace conflict occurs because a disclosure has been made or an investigation is under way);
- ensuring identified problems in the workplace are corrected; and
- setting an example for staff.

KEY ROLES AND RESPONSIBILITIES

AUTHORISED OFFICERS

The IGT's Authorised Officers are the Inspector-General, the Deputy Inspector-General, the Director of Operations and the Risk & Compliance Manager.

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

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

KEY ROLES AND RESPONSIBILITIES

ALL STAFF

If requested, staff must assist the Inspector-General in the conduct of an investigation. Staff must also use their best endeavours to assist the Ombudsman in their functions under the PID Act.

Beyond those specific responsibilities, all staff share the responsibility of ensuring the PID Act works effectively, this includes:

- reporting matters where there is evidence that shows or tends to show disclosable conduct;
- identifying areas where there may be opportunities for wrongdoing to occur because of inadequate systems or procedures, and proactively raising those with management;
- supporting staff who they know have made public interest disclosures; and
- keeping confidential the identity of a discloser and anyone against whom an allegation has been made, if they become aware of those matters.

RISK ASSESSMENT

Risk Assessment

It is important to assess the risk of reprisals being taken against a person making a disclosure. A risk assessment should involve assessing the specific behaviour and circumstances that may result in reprisals, and then putting in place appropriate strategies to prevent or contain them.

Inappropriate workplace behaviour, including harassment, intimidation, undermining of authority, ostracism, humiliation, questioning of motives and heavier scrutiny of work, can greatly increase stress and can result in serious injury to someone who has made a disclosure.

The risk assessment can include the risk of direct reprisal against the discloser and the risk of related workplace conflict or difficulties.

The following framework may be used in assessing the risk of reprisals being taken against a discloser:

- Identifying – are reprisals or related workplace conflict problems in the workplace, or do they have the potential to be problems?
- Assessing – what is the likelihood and consequence of reprisals or related workplace conflict?
- Controlling – what strategies should be put in place to prevent or contain reprisals or related workplace conflict?
- Monitoring and reviewing – have the strategies been implemented and were they effective?

The Authorised Officer should conduct an assessment. If the disclosure is first made to a manager or supervisor and the person wishes their identity to remain anonymous, the manager should conduct a risk assessment.

ALLOCATING THE DISCLOSURE

Allocating the Disclosure

Authorised Officers must decide whether or not to allocate a disclosure

Authorised Officers will examine the information that has been supplied and decide within 14 days:

- whether it is an internal disclosure under the PID Act; and
- the Principal Officer (of the IGT or of another agency) that the disclosure should be allocated to.

Authorised Officers may obtain further 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.

If a staff member has disclosed information to their manager and that manager reasonably believes the information could concern disclosable conduct, they must pass the information to an Authorised Officer as soon as reasonably practicable. Because of the confidentiality requirements, the manager should get the person's consent before passing on their identifying information.

Authorised Officers must allocate the matter for investigation, unless they are reasonably satisfied that there is no reasonable basis for considering the matter to be an internal disclosure.

INVESTIGATING THE DISCLOSURE

Investigating the Disclosure

After receiving an allocation of a disclosure from an Authorised Officer, the Inspector-General will consider whether or not the disclosure will be investigated under the PID Act.

The Inspector-General 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 Act²); 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 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 further matters concerning the disclosure that warrant investigation; or

² Section 70 allows an Authorised Officer to determine persons to be public officials for the purposes of the PID Act. The purpose of this section 70 is to enable those with knowledge of unacceptable conduct who are not public officials according to the definition in section 69 of the PID Act to make disclosures and receive the protection provided by the Act.

INVESTIGATING THE DISCLOSURE

- 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.

DECISION NOT TO INVESTIGATE

Where the Inspector-General decides not to investigate a disclosure, the Inspector-General will inform the Ombudsman of that decision, and of the reasons for that decision. If the Inspector-General has been given the name and contact details of the discloser, the Inspector-General will also inform the discloser of that decision, of the reasons for that decision and of other courses of action that may be available to the discloser under other laws of the Commonwealth.

DECISION TO INVESTIGATE

Where the Inspector-General has decided that they are required to investigate the disclosure, and where the Inspector-General has been given the name and contact details of the discloser, the Inspector-General will inform the discloser that they are required to investigate the disclosure, the investigator's name and contact details and inform the discloser of the estimated length of the investigation.

If the Inspector-General decides to investigate the disclosure and starts to investigate the disclosure but then decides not to investigate the disclosure further, the Inspector-General will inform:

- a) the discloser of that decision, or the reasons for the decision and of other courses of action that might be available to the discloser under other laws of the Commonwealth; and
- b) the Ombudsman of that decision and the reasons.

INVESTIGATING THE DISCLOSURE

CONDUCTING THE INVESTIGATION

An internal disclosure may be investigated in one of two ways:

- under the PID Act; or
- under other legislation applying to the Ombudsman and prescribed investigative agencies³.

Investigations under the PID Act must be completed (that is, an investigation report must be completed) within 90 days of the date the matter was allocated for investigation. While a straightforward matter may be completed quickly, more complex issues, where significant evidence needs to be gathered, may take much longer.

The Ombudsman may grant one or more extensions of time. If an extension is granted, the Ombudsman will inform the discloser and give reasons for the extension. This does not apply if contacting the discloser is not reasonably practicable. In cases where the Ombudsman does not have the discloser's identity or contact details, the agency handling the disclosure will be asked to notify the discloser.

If an extension is granted, the Principal Officer of the handling agency will also let the discloser know about the progress of the investigation.

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

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 will advise the discloser in writing:

- a) that the report has been completed; and
- b) whether the report was completed within the time limit provided for by the PID Act.

The investigator will also give a copy of the report to the discloser.

³ Under section 83 of the PID Act, an agency is 'prescribed' when the Minister makes a rule via legislative instrument.

INVESTIGATING THE DISCLOSURE

WHAT IF THE DISCLOSER IS NOT SATISFIED WITH THE AGENCY'S ACTION?

A person who has made an internal disclosure may be unhappy with the agency's decision not to investigate a matter. If the disclosure is investigated, they may believe that the investigation or the agency's response to the investigation was inadequate. A reasonable belief that an investigation under the PID Act was inadequate or that the agency's response was inadequate is one of the conditions for making an external disclosure.

A discloser who is unhappy with the process or how they have been treated may also speak to the Ombudsman.

For more information regarding external disclosers, please visit the [Ombudsman's internet page](#).

CONFIDENTIALITY

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 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).

Any interviews conducted by an Authorised Officer or delegates (including investigators) should be conducted in private. Any interviews with the discloser should be arranged so as to avoid the identification of the discloser by other staff.

RECORD KEEPING

Details about how and when a public interest disclosure was made should be recorded and kept in a secure place. If the disclosure was given verbally, consideration should be given to asking the discloser to sign a record of the disclosure. Subsequent conversations where the disclosure is discussed should also be documented.

FREEDOM OF INFORMATION REQUESTS

Freedom of Information Requests

Documents associated with a public interest disclosure are not exempt from the operation of the *Freedom of Information Act 1982* (FOI Act). Requests for access to documents under the FOI Act must be considered on a case by case basis.

A range of exemptions may apply to individual documents or parts of documents, particularly in relation to material received in confidence, personal information, operations of agencies, and law enforcement.

For more information please refer to the Treasury's Freedom of Information intranet page at <http://intra/corporate/foi>

ANONYMOUS DISCLOSURES

Anonymous Disclosures

Disclosers may wish to make anonymous disclosures. 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 provides anonymous contact details. Receiving an anonymous disclosure does not mean that it cannot be treated as a disclosure for the purposes of the PID Act. Where a manager receives a disclosure of one of these kinds they must refer it to an Authorised Officer as soon as is reasonably practicable.

Where an Authorised Officer receives a disclosure of one of these kinds they must consider whether to exercise the power in section 70 of the PID Act to determine on their own initiative that a person who has disclosed information to them is a public official in relation to the making of the disclosure. However, if the Authorised Officer cannot contact the discloser, no determination can be made because the Authorised Officer must be able to give written notice of the determination to the individual.

MONITORING AND EVALUATION

Monitoring and Evaluation

The Deputy Inspector-General, the Director of Operations and the Risk & Compliance Manager will report to the Inspector-General on public interest disclosures received and the nature of the disclosable conduct for each disclosure.

Disclosures made during the financial year will be reported to the Ombudsman.