procedures

|  |
| --- |
| Public Interest Disclosure Procedures |
| Human Resources Branch |
| Policy Number: PCY14/001 |
| Approved: May 2014 |
| Next review: January 2017 |
|  |

**Contents**

[1. Introduction 4](#_Toc387739567)

[2. Definitions 4](#_Toc387739568)

[3. Procedures 5](#_Toc387739569)

# Introduction

* 1. The National Library encourages the reporting of wrongdoing under the *Public Interest Disclosure Act*, (PID Act) and will act on disclosures where appropriate and protect Disclosers from any reprisals or threats of reprisals as a result of making a disclosure.
	2. This Procedure supersedes the whistle-blower provisions that were created under the *Public Service Act* (provisions now repealed) and earlier Library whistle-blower frameworks.
	3. The Procedure is drafted to give effect to the PID Act and all definitions and guidance will be subordinate to that legislation but be expressed in a less formal language, if possible.

# Definitions

|  |  |
| --- | --- |
| **Appropriate Person** | A line supervisor or Authorised Officer |
| **Authorised Officers** | Persons occupying roles appointed to fulfil the responsibilities of the PID Act. A list of Authorised Officers is posted to the Library’s website. Authorised Officers of the Library are also Delegates |
| **Delegates** | Persons responsible for investigating Disclosable Conduct, reporting to the Principal Officer and notifying the Authorised Officer on their findings (subject to maintaining any confidentiality or secrecy requirements) |
| **Disclosable Conduct** | Includes behaviour that contravenes a law; is corrupt; perverts the course of justice; results in wastage of public funds or property; is an abuse of public trust; unreasonably endangers health and safety or endangers the environment; scientific misconduct; or maladministration (including unjust, oppressive or negligent actions); conduct engaged in by a Public Official that involves abuse of his or her position or conduct which could, if proved, give reasonable grounds for disciplinary action |
| **Discloser** | A Public Official who reports Disclosable Conduct to an Appropriate Person (i.e. a line supervisor or Authorised Officer) |
| **Principal Officer** | The agency head and in the case of the National Library of Australia the Director-General |
| **Public Interest Disclosure (PID)** | Must be a disclosure made by a Public Official to an Appropriate Person and where the information tends to show, or the Discloser believes on reasonable grounds that the information tends to show, Disclosable Conduct |
| **Public Official** | Includes a current or former APS employee and contracted service provider for a Commonwealth contract who provides information about Disclosable Conduct. In some cases a person may be deemed to be a Public Official for the purposes of the Act. |

# Procedures

1.
2.
3. 1. **AUTHORISED OFFICERS**

The Library maintains a list of Authorised Officers for the purposes of the PID Act who have been appointed by the Director‑General. A PID can be made to an Authorised Officer of the Library if the PID relates to the Library or the Discloser belongs, or last belonged to, the Library.

The list of Authorised Officers can be accessed from the Library’s internet and intranet.

* 1. **DISCLOSURE TO A SUPERVISOR**

If a Public Official discloses information to a supervisor and the supervisor has reasonable grounds to believe that the information could concern Disclosable Conduct, the supervisor MUST give the information to an Authorised Officer of the Library as soon as reasonably practicable.

* 1. **PROTECTING CONFIDENTIALITY**

Authorised officers and the Director‑General will take all reasonable steps to protect the identity of a Public Official who has made a PID.

Only individuals directly involved in dealing with a PID (such as an Authorised Officer and the Director‑General or Delegate) may be advised of the details of the PID. These individuals must not reveal the identity of the Discloser (or information which is likely to reveal the identity of the Discloser) without the Discloser’s consent.

It is a criminal offence to disclose information that is likely to enable the identification of a person who has made a public interest disclosure other than in accordance with the PID Act. Similarly, it is an offence for a person to disclose information other than in accordance with the PID Act if the information was obtained:

* in the course of conducting a disclosure investigation; or
* in connection with the performance of a function or the exercise of a power under the PID Act.
	1. INITIAL CONSIDERATION AND ALLOCATION

**Step 1: Consider whether a disclosure meets the requirements for a PID**

When an Authorised Officer receives a disclosure of information, he or she will consider the information disclosed and determine whether it could be considered to be a PID made in accordance with the Act.

**If the Authorised Officer is satisfied that the matter could be a PID:**

* he or she will allocate the disclosure for further handling and investigation in accordance with the processes outlined at [Step 2](#Step2) below; and
* if the disclosure is allocated to the Library itself, the Authorised Officer will not (in respect of that disclosure) exercise any of the powers or functions that have been delegated by the Director-General to him/her that he or she otherwise holds.

**If the Authorised Officer is not satisfied that the matter could be a PID:**

* the disclosure will not be allocated; and
* the Authorised Officer will inform the Discloser in writing (if it is reasonably practicable to contact the Discloser) the reasons why the disclosure will not be allocated. The written response will indicate if there are any other courses of action that might be available to the Discloser under other laws of the Commonwealth and whether the disclosure will be addressed under the Library's Fraud Policies, Managing Misconduct Policies or any other of the Library's policies or procedures.

The Authorised Officer may refer matters that are not PIDs, to be dealt with in accordance with relevant Library policies and procedures.

**Step 2: Allocate the disclosure**

The Authorised Officer will use his or her best endeavours to decide the allocation within 14 days after the disclosure is made.

In deciding to whom a disclosure will be allocated, the Authorised Officer will have regard to:

* the requirements of the PID Act, regulations and rules that apply (e.g. that agencies should generally only deal with disclosures that relate to themselves); and
* any other matters that the Authorised Officer considers relevant.

If an Authorised Officer is contemplating allocating the disclosure to the Ombudsman, the Inspector-General of Intelligence and Security (IGIS) or an investigative agency prescribed by the Public Interest Disclosure Rules, the Authorised Officer must have regard to additional matters set out in the PID Act.[[1]](#footnote-1)

An Authorised Officer of the Library will not allocate a disclosure to another agency unless an Authorised Officer of that agency has consented to the allocation.
When the Authorised Officer allocates the handling of a disclosure to an agency, the Authorised Officer will subsequently inform the principal officer of the agency of:

* the allocation to the agency;
* the information that was disclosed to the Authorised Officer;
* the suspected Disclosable Conduct; and
* if the Discloser's name and contact details are known to the Authorised Officer, and the Discloser consents to the Principal Officer being informed – the discloser's name and contact details.

The Discloser will be informed in writing (as soon as reasonably practicable) of the allocation itself and the information provided to the principal officer of the agency.

**Step 3: Informing other relevant bodies**

If an Authorised Officer allocates a disclosure other than to the Ombudsman, he or she will inform the Ombudsman in writing of the allocation and the information provided to the principal officer of the agency.

**Step 4: Make a record of the allocation decision**

The Authorised Officer must keep appropriate confidential records of the allocation decision (including the name of each agency to which the disclosure is to be allocated); the reasons for it and the consent provided by the Authorised Officer of the agency.

The Authorised Officer will also keep appropriate confidential records of whether the Discloser was informed of the allocation decision including the day and time of notification, the means by which notification occurred and the content of the notification.

The Director-General will require Authorised Officers to report on the number of disclosures at least once a year.

* 1. RISK ASSESSMENT
		1. **Conducting a risk assessment**

When the Director‑General (i.e. Principal Officer or more likely, the Delegate) receives an allocated PID it is necessary to assess the risk that reprisals will be taken against the Discloser.

In assessing the risk, the Delegate should use the following risk matrix:

|  |  |
| --- | --- |
|  | ***Seriousness* of reprisal** |
| ***Likelihood* of reprisal being taken against a Discloser**  |  | Minor | Moderate | Major | Extreme |
| Almost certain | Medium  | High | High | High |
| Likely | Medium | Medium  | High | High |
| Unlikely  | Low | Low | Medium | Medium  |
| Highly unlikely | Low  | Low | Low | Medium |

**Examples** of *seriousness* of reprisals

* Minor: Occasional or one-off action that is likely to have a relatively minor adverse effect on the person (e.g. occasional exclusion of the person from a social activity).
* Moderate: Repeated action which is likely to have an adverse effect on the person (e.g. routinely failing to "CC" the person on relevant work-related emails).
* Major: Sustained or one-off action which has a significant impact on the person (e.g. consistently excluding the person from team discussions or imposing a negative performance assessment on the person).
* Extreme: Action which is likely to have a very severe impact on the person (e.g. physical violence or the denial of a promotion opportunity).

When considering the *likelihood* of a reprisal being taken against a Discloser, the Delegate should take into account relevant factors, including:

* + - * the likelihood of the Discloser being identified due to the size of the work area in which the Discloser is located; and
			* the number of people who are aware of the information leading to the disclosure or who are likely to become aware during an investigation;
* the number of people implicated in the disclosure;
* the subject matter of the disclosure and if it will be difficult for the Discloser not to discuss the disclosure in the workplace;
* the culture of the workplace and whether there is history of conflict in the work area;
* whether any specific threats against the Discloser have been received;
* whether there are allegations about individuals in the disclosure; and
* whether the disclosure can be investigated while maintaining confidentiality.

When considering the likely *seriousness* of any potential reprisal against a Discloser, the Delegate should take into account relevant factors, including:

* the subject matter and significance of the issue being disclosed;
* the likely outcome if the conduct disclosed is substantiated;
* whether the Discloser is isolated or employed on a full-time, part‑time or casual basis;
* whether the alleged wrongdoing that is the subject of the disclosure was directed at the Discloser; and
* the relative positions of the Discloser and the person whose alleged wrongdoing is the subject of the disclosure (i.e. especially any vulnerability).

While undertaking the risk assessment (consistent with protecting the Discloser's confidentiality) the Delegate may ask the Discloser (and their supervisor or manager) why he/she is reporting the wrongdoing and from whom they might fear reprisal.

* + 1. **Takes steps to mitigate risks**

Where the risk level is assessed as medium or high, the Delegate will take steps to mitigate the risk of reprisals being taken against the Discloser. These steps may include some or all of the support measures set out below and could include raising the matter with employees by reminding staff that taking or threatening to take a reprisal against a Discloser is a criminal offence.

The Delegate should monitor the risks throughout the investigation process and adjust the mitigation steps if necessary.

* 1. SUPPORT FOR DISCLOSERS

Regardless of the risk assessment, the Delegate is obliged to take all reasonable steps to protect Public Officials who have made a PID from real, or threats of, detriment arising from the disclosure. This may include:

* + 1. appointing a support person to assist the discloser and/or advising of the Library’s Employee Assistance Program;
		2. informing the discloser of the progress of the investigation; and/or
		3. transferring the discloser to a different work area within the Library (with the consent of the discloser).
	1. SUPPORT FOR A PERSON AGAINST WHOM A DISCLOSURE HAS BEEN MADE

The Delegate will also take steps to support any employee who is the subject of a PID. This may include:

* + 1. advising the employee of his or her rights and obligations under the PID Act and about the Library's investigation procedures, including the employee's rights to procedural fairness;
		2. informing the Discloser of the progress of the investigation;
		3. advising the employee of the availability of the Library's Employee Assistance Program;
		4. ensuring that the identity of the employee is kept confidential as far as reasonably practicable; and/or
		5. transferring the employee to a different work area within the Library (with the consent of the employee).
	1. CONSIDERATION AND INVESTIGATION BY DELEGATE
		1. **Provide initial information to Disclosers**

Within 14 days of the Library being allocated a PID, the Delegate will provide the Discloser with the information that his or her powers extend to:

* Deciding to investigate the disclosure;
* Deciding not to investigate the disclosure further; or
* Deciding to investigate the disclosure under a separate investigative power.
	+ 1. **Consider whether to investigate the disclosure**

When a PID is allocated to the Library, the Delegate will consider whether to investigate the PID. A Delegate may decide not to investigate a disclosure if:

* the Discloser is not and has never been a Public Official;
* the information does not, to any extent, concern serious Disclosable Conduct;
* the disclosure is frivolous or vexatious;
* the information concerns Disclosable Conduct that is substantially the same as Disclosable Conduct that has been or is currently being investigated as part of another disclosure investigation;
* the information concerns Disclosable Conduct that is substantially the same as Disclosable Conduct that has been or is currently being investigated under a law of the Commonwealth or the executive power of the Commonwealth, and there are no further or new matters that warrant investigation or it would be inappropriate to conduct another investigation at the same time;
* the Discloser has informed the Delegate that he/she does not wish for the investigation of the disclosure to be pursued and the Delegate is satisfied that there are no matters that warrant investigation;
* it is impracticable for the disclosure to be investigated because:
	+ - * the Discloser's name and contact details have not been disclosed;
			* the Discloser fails or is unable to give such information or assistance to the investigator to undertake a valid investigation; or
			* of the age of the information.

In all other circumstances, the Delegate will conduct an investigation.

* + 1. **Notify the Discloser and Ombudsman**

If the disclosure will not be investigated

If the Delegate decides not to investigate a disclosure, he or she will:

* Make contact, if practicable, to inform the Discloser that a decision NOT to investigate has been made, identifying:
	+ - * the reasons for the decision not to investigate (other than those reasons that may be deleted in accordance with the PID Act); and
			* any courses of action that might be available under other laws of the Commonwealth; and
* inform the Ombudsman of the decision not to investigate and the reasons for that decision using the Ombudsman's [notification of decision not to investigate](http://www.ombudsman.gov.au/docs/Notification_of_decision_not_to_investigate.doc) form.

If the disclosure will be investigated

If the Delegate decides to investigate a disclosure, he or she will inform the Discloser (as soon as practicable):

* that the disclosure will be investigated; and
* the estimated length of the investigation.
	+ 1. **Step 4: Conduct an investigation**

If the Delegate decides to investigate, he/she will investigate whether there are one or more instances of Disclosable Conduct.

General principles

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

* maintaining the confidentiality of the identity of the Discloser will be paramount when conducting the investigation;
* the principles of procedural fairness will be applied during the investigation;
* a decision whether evidence is sufficient will be determined on the balance of probabilities; and
* a person who is the subject of the investigation will be provided with an opportunity to respond.

Aside from application of these principles, the Delegate is free to conduct the investigation as he or she sees fit. The way in which the investigation is conducted may vary depending on the alleged conduct which is being investigated. In particular, in circumstances where the Delegate considers that the nature of the disclosure is such that the outcome of the investigation is likely to be referral of the matter for investigation under another process or procedure, the investigation under these procedures may appropriately be conducted in a circumscribed way.

Additional procedures required in particular circumstances

If a disclosure relates to conduct that would require the Library to take steps under the Library's:

* *Fraud Control Plan*;
* *Fraud Policies*;
* *Managing Misconduct Procedure*; or
* any other of the Library's policies or procedures,

the processes set out in those procedures and policies will be complied with in the conduct of an investigation under these procedures.

If the Delegate considers that information disclosed in the course of a PID may be appropriately dealt with under another procedure or policy of the Library, he or she may recommend in the investigation report that this occur and refer the matter to the relevant officer of the Library.

Obtaining information

Instances of Disclosable Conduct may relate to information that is disclosed or information subsequently obtained in the course of the investigation rather than information only provided in the initial disclosure.

During the investigation, the Delegate may obtain information from such persons and make such inquiries as he/she sees fit for the purposes of the investigation.

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

* the identity and function of each individual conducting an interview;
* the process of conducting an investigation;
* the authority of the Delegate under the PID Act to conduct an investigation; and
* the protections provided to witnesses under section 57 of the PID Act.

The Delegate will ensure:

* an audio or visual recording of the interview is not made without the interviewee's knowledge;
* when the interview ends, the interviewee is given an opportunity to make a final statement or comment or express a position; and
* any final statement, comment or position by the interviewee is included in the record of the interview.

In conducting an investigation, the Delegate may adopt findings set out in reports of investigations or inquiries under other Commonwealth laws or executive powers, or other investigations under the PID Act.

Referral of information to police and others

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

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

* + 1. **Step 4: Prepare investigation report**

A Delegate will prepare a report when he or she has completed the investigation within 90 days after the disclosure was allocated, unless this period is extended by the Ombudsman. Any request for an extension of time should be made using the Ombudsman's [request for extension of time](http://www.ombudsman.gov.au/docs/Request_extension_of_time.doc) form. If the period is extended, the Delegate will inform the Discloser of the progress of the investigation.

Content of report

The investigation report must set out:

* the matters considered in the course of the investigation;
* the duration of the investigation;
* the Delegate's findings (if any);
* any regulations, rules, administrative requirements or similar matters to which the Disclosable Conduct relates;
* the action (if any) that has been recommended or taken; and

to the extent relevant:

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

Provision of report to Director-General

A Delegate who has conducted the investigation should provide a copy of the report to the Director-General prior to proceeding to [Step 5](#Step5).

**Step 5: Provide report to Discloser**

If it is reasonably practicable to contact the Discloser, the Director‑General or Delegate will provide the Discloser with a copy of the report within a reasonable time after preparing the report. However, the copy of the report given to the Discloser may be deleted of any material:

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

**ATTACHMENT A – EXTRACTS FROM THE COMMONWEALTH OMBUDSMAN'S *AGENCY GUIDE TO THE PUBLIC INTEREST DISCLOSURE ACT 2013***

**Who can make a public interest disclosure?**

A person must be a current or former ‘public official’, as defined in s 69 of the PID Act, to make a public interest disclosure. This is a broad term which includes a Commonwealth public servant, member of the Defence Force, appointee of the Australian Federal Police, Parliamentary Service employee, director or staff member of a Commonwealth company, statutory office holder or other person who exercises powers under a Commonwealth law. Individuals and organisations that provide goods or services under a Commonwealth contract (defined in s 30(3)) and their officers or employees are also included. This includes subcontractors who are responsible for providing goods or services for the purposes of the Commonwealth contract (s 30(2)).

**What can be disclosed?**

A 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
			* a contracted Commonwealth service provider in connection with entering into or giving effect to the contract

if that conduct:

* + - * contravenes a Commonwealth, State or Territory law
			* in a foreign country, contravenes a foreign law that applies to the agency, official or service provider
			* perverts the course of justice
			* is corrupt
			* constitutes maladministration, including conduct that is based on improper motives or is unreasonable, unjust, oppressive or negligent
			* is an abuse of public trust
			* involves fabrication, falsification, plagiarism or deception relating to scientific research, or other misconduct in relation to scientific research, analysis or advice
			* results in wastage of public money or public property
			* unreasonably endangers health and safety
			* endangers the environment
			* is prescribed by the PID rules (s 29(1)).

Without limiting any of those grounds, disclosable conduct also includes conduct by a public official that involves or is engaged in for the purposes of abusing their position as a public official, and conduct that could give reasonable grounds for disciplinary action against the public official (s 29(2)).

**What is not disclosable conduct?**

It is not disclosable conduct just because a person disagrees with:

* + - * a government policy or proposed policy
			* action or proposed action by a minister, the Speaker of the House of Representatives or the President of the Senate
			* expenditure or proposed expenditure related to such policy or action (s 31).

Disclosable conduct also does not include judicial conduct, that is, the conduct of judicial officers, the judicial functions of court staff, tribunal staff or tribunal members, or any other conduct related to a court or tribunal unless it is of an administrative nature and does not relate to matters before the court or tribunal (s 32).

The conduct of members of Parliament is not covered by the PID Act. However, the departments of the Parliament and their employees are covered.

Disclosable conduct also does not include the proper performance of the functions and proper exercise of the powers of an intelligence agency or its officials (s 33).

A disclosure must be made to an appropriate person in order to gain the protections available under the PID Act (s 26). The PID Act focuses on the reporting and investigating of wrongdoing within government, but allows for reporting outside government in specified circumstances.

**Making an internal disclosure**

Public officials can report suspected wrongdoing either to their current supervisor (defined in s. 8 to mean someone who supervises or manages them) in an agency, or to an Authorised Officer of their agency or the agency to which they previously belonged. Authorised officers are the principal officer (i.e. the agency head) and officers that the principal officer appoints under the PID Act (s 36).

Making a disclosure internally gives the agency the chance to investigate the matter and remove any danger or correct any wrong practices as quickly as possible.

A public official must use one of the proper avenues to gain the protections available under the PID Act. This means that a public official will not receive these protections if they give the information to someone outside government like a journalist or union representative, unless the conditions for an external or emergency disclosure are met. They may be in breach of their duty to maintain appropriate confidentiality in relation to official information they have gained in the course of their work, or be subject to other civil, criminal or disciplinary action.

**Attachment B - Rights and responsibilities of Disclosers**

Rights

A Discloser has a right to the protections set out in the PID Act, including protection from reprisals, from civil and criminal liability, and from the disclosure of his or her identity where the disclosure is made anonymously. However, a disclosure does not protect the Discloser from the consequences of their own wrongdoing, including where they have been involved in the misconduct that they are reporting.

During the PID Act process, a Discloser will be:

* advised of the following:
	+ any decision that a disclosure is not a disclosure within the meaning of the PID Act;
	+ the allocation of their disclosure;
	+ the decision of the Library to investigate their disclosure;
	+ the estimated duration of the investigation into their disclosure;
	+ if the Library decides not to investigate their disclosure, the reasons for that decision and any action that may be available to the Discloser under other Commonwealth laws;
	+ if an investigation is conducted under the PID Act and an extension of time is granted by the Ombudsman or IGIS, the progress of the investigation; and
	+ the outcome of the investigation (including provision of a copy of the investigation report except to the extent that it would be exempt for the purposes of Part IV of the *Freedom of Information Act 1982*, would require a national security or other protective security clearance, contains intelligence information or contravenes a designated publication restriction as defined in the PID Act).
* given support in accordance with the procedures.
* able to seek assistance from the Ombudsman in relation to the operation of the PID Act.

Responsibilities

A Discloser must:

* comply with the PID Act requirements and the procedures set out in this document when making a PID;
* use his or her best endeavours to assist the principal officer of any agency in the conduct of an investigation;
* use his or her best endeavours to assist the Ombudsman in the performance of the Ombudsman's functions under the PID Act; and
* use his or her best endeavours to assist the IGIS in the performance of the IGIS's functions under the PID Act; and
* report to the Director‑General any detriment the Discloser believes he or she has been subjected to as a result of making the disclosure.

**Attachment C – Rights and responsibilities of persons who are the subject of a PID**

Rights

A Library employee who is the subject of a disclosure will be:

* given support in accordance with the procedures; and
* able to seek assistance from the Ombudsman in relation to the operation of the PID Act.

Responsibilities

A Library employee who is the subject of a disclosure must:

* use his or her best endeavours to assist the Principal Officer of any agency in the conduct of an investigation;
* use his or her best endeavours to assist the Ombudsman in the performance of the Ombudsman's functions under the PID Act;
* use his or her best endeavours to assist the IGIS in the performance of the IGIS's functions under the PID Act;
* comply with action taken by the Library to address risks or concerns in relation to the PID.

An employee who is the subject of a disclosure should also be aware that the outcome of an investigation under the Procedures set out in this document may result in another, different investigation (for example, a Code of Conduct investigation) taking place.

1. See section 43(3)(a)(ii)-(iv) of the [PID Act](http://www.comlaw.gov.au/Details/C2013A00133). [↑](#footnote-ref-1)