

Public Interest Disclosure Scheme REFERENCE GUIDE

The Public Interest Disclosure (PID) scheme enables public officials to disclose suspected wrongdoing by another public official or by an Australian government agency.

If the matter is disclosed in accordance with the *Public Interest Disclosure Act 2013* (PID Act) the person who made that PID receives certain protections and some immunities from liability.

Generally PIDs should be received and handled by the relevant Australian government agency (these are called internal PIDs). The PID Act sets out that agencies must handle internal PIDs, in accordance with certain timeframes and requires disclosers to be notified of certain matters. At the end of an investigation, the agency must take appropriate action to rectify any problems identified.

The identity of the public official who has made an internal PID, and the information that is collected as a result, must be managed confidentially. Persons who reveal this information outside of the PID process may be subject to penalties.¹

WHAT IS AN INTERNAL PID?

To make an internal PID, and receive the protections and immunities under the PID Act, the person disclosing suspected wrongdoing must:

1. be a current or former public official (or deemed to be a public official)
2. make their disclosure to the correct person within an Australian Government agency (their supervisor or an authorised internal recipient)
3. provide information that they believe tends to show, on reasonable grounds, disclosable conduct within an Australian Government agency or by a public official

For more information about the PID scheme, including information on the other types of disclosures permitted under the PID Act (an external, emergency or legal disclosure), visit our website. If you have any of following roles in the PID scheme you should also consult and follow your agency's internal PID procedures.

WHAT ARE MY RESPONSIBILITIES?

As a public official making an internal PID (the discloser)

- » **Be clear and accurate** in disclosing suspected wrongdoing and provide any supporting evidence (don't knowingly or recklessly make false or misleading statements)
- » **Be discreet** about your internal PID
- » **Provide reasonable assistance** as required during the investigation
- » **Seek advice** about the process and your rights and responsibilities
- » **Alert** your supervisor or the authorised officer to any problems that you may be facing or possible reprisal action in relation to your internal PID

As the principal officer (the head of the agency or their delegate)

- » **Appoint a sufficient number of authorised officers** to receive internal PIDs in your agency
- » **Ensure the authorised officers are accessible** to current and former public officials of your agency
- » **Establish written PID procedures** for your agency and ensure these are accessible
- » **Broadly promote the PID scheme** to public officials as an effective way to speak up about wrongdoing
- » **Promptly act** to investigate and address allegations of wrongdoing
- » **Delegate** powers and responsibilities as are necessary for the effective operation of the PID scheme
- » **Influence** an organisational culture that supports public officials who speak up about wrongdoing and does not tolerate reprisal against them
- » **Drive change** to address problems uncovered through the investigation of internal PIDs

¹ Sections 20 and 65 list the exceptions that apply to the release of information about the discloser's identity, and information obtained in the course of the PID process.

As an authorised officer

- » **Provide advice** to public officials about the PID process, including how to make an internal PID, how the protections and immunities apply, and the reprisal risk assessment process
- » **Decide if you are an** authorised internal recipient each time you receive a disclosure that is a potential internal PID
- » **Assess** all allegations of wrongdoing under the PID Act and decide if they constitute an internal PID
- » **Arrange a risk assessment** by a reprisal officer
- » **Seek consent** to disclose the public official's name and contact details for the purpose of handling the internal PID and adhere to the PID Act confidentiality and secrecy requirements
- » **Identify and address any possible conflict of interests** that may affect the handling of the internal PID
- » **Allocate** the internal PID to the principal officer or an appropriately delegated PID investigator
- » **Notify** the discloser, the Commonwealth Ombudsman and the principal officer of the allocation decision
- » **Make appropriate records** of your decision making

As a supervisor receiving an internal PID

- » **Clarify the claims or allegations** being made by your staff member (consider putting them into writing and agreeing them with your staff member)
- » **Direct the staff member** where to get information about the PID process within their agency, or from the Commonwealth Ombudsman, and explain your obligation as a supervisor to pass the information to an authorised officer
- » **Seek consent** to disclose the staff member's name and contact details to an authorised officer
- » **Pass the claims/allegations** to an authorised officer in a timely and confidential manner (avoiding any authorised officer who may have a conflict of interest)
- » **Support the staff member** and monitor the situation for any possible reprisal or workplace conflict (taking action or escalating the matter as appropriate)

As a PID investigator

- » Understand your agency's internal PID procedures and your delegation to investigate
- » **Promptly inform** the discloser that their internal PID is being investigated and the estimated length of the investigation
- » **Explain the investigation powers** and discretions to not investigate in the PID Act
- » **Identify and address** any possible conflicts of interest as they arise
- » **Obtain information and make inquiries** in relation to the disclosable conduct
- » **Comply with the PID Act (Part 3) and the PID Standard (Part 3)** requirements in relation to the conduct of PID investigations
- » **For alleged breaches of the APS code of conduct**, understand when procedures under s 15(3) of the *Public Service Act 1999* or s 15(3) of the *Parliamentary Service Act 1999* must be applied
- » **For allegations of fraud** understand when the Commonwealth Fraud Control Policy and Australian Government Investigation Standards must be applied
- » **Ensure procedural fairness** is observed
- » **Alert the reprisal officer** when you become aware of any reprisal risks
- » **Communicate with the discloser** about the investigation's progress, particularly if there are delays
- » **Finalise the investigation** within 90 days or seek an extension from the Ombudsman if the investigation is likely to take longer
- » **Produce a written report** on the outcome of the investigation
- » **Prepare a copy of the report for the discloser** consider whether redactions are appropriate
- » **Provide a report to the discloser** within a reasonable time after the investigation was finalised
- » **Ensure appropriate records** are made throughout the investigation process

As a reprisal officer

- » **Act promptly and confidentially** to conduct the reprisal risk assessment
- » **Inform yourself of the risk of reprisal or workplace conflict** by making appropriate inquiries including by talking to the public official and keeping touch with the PID investigator
- » **Broaden your assessment** to look at others who may be at risk, including supervisors and colleagues
- » **Communicate** with the public official to monitor their wellbeing
- » **Mitigate harm** and nominate a support person if appropriate
- » **Take proactive action** to prevent or address reprisal or workplace conflict
- » **Reassess the risk** throughout the PID process and apply further support and mitigations as necessary

Receiving a potential internal PID

(referred to below as a PID)

Upon receipt of a potential PID, the **authorised officer** should:

- » advise the person making the disclosure of the process and available support (s 7 PID Standard)
- » seek their consent to identify them to the principal officer (PID Act s 44(1)(d))
- » make preliminary inquiries, where necessary (PID Act s 43(4))
- » if verbal, make a written record of the disclosed information

Assessing the potential PID

The **authorised officer** assesses the potential PID to establish:

- » is the person making the disclosure a current or former public official (PID Act s 26(1)(a) & s 69) (if not is it appropriate to deem them a public official (PID Act s 70))
- » was the information received by an authorised internal recipient (PID Act s 26 (Item 1, Column 2) & s 34)
- » does the disclosed information (PID Act s 26 (Item 1, Column 3) & s 29):
 - reasonably tend to show disclosable conduct, or
 - does the person making the disclosure reasonably believe that it tends to show disclosable conduct

Yes, it is a PID

The **authorised officer** must:

- » consider where to allocate the internal PID (PID Act s 43(3) & s 43(6))
- » allocate the PID (PID Act s 43(1))
- » where practicable, notify the discloser (PID Act s 44(2) & s 44(4))
- » notify the principal officer (PID Act s 44(1))
- » notify the Ombudsman (PID Act s 44(1A))
- » make a record (s 6 PID Standard)
- » refer to reprisal officer for a risk assessment

No, it is not a PID

The **authorised officer** must:

- » where practicable, notify the person who made the disclosure and refer to other relevant processes (PID Act s 44(3), s 44(4) & s 43(2))
- » make a record (s 6 PID Standard)

Conducting a risk assessment

The **reprisal officer** should:

- » conduct a risk assessment following the agency's reprisal risk management procedures (PID Act s 59(1)(a))
- » assess the risk of reprisal and workplace conflict and identify mitigation strategies (PID Act ss 13, 19)
- » take action to prevent or address harm (PID Act s 59(3)(a))
- » monitor and review the assessment and actions, keeping appropriate records

Investigating a PID

The **principal officer (or their delegate)** should:

- » consider how to investigate and whether there are grounds to not investigate (PID Act ss 47(3) & 48)

Yes, investigate

The **principal officer (or their delegate)** must:

- » notify the discloser (PID Act s 50(1)(a), s 50(1A), s 50(5) & s 9 PID Standard)
- » conduct the investigation (PID Act s 47(2), s 47(3), s 52, s 53, s 54, Part 3, PID Standard)
- » seek an extension of time if required (PID Act s 52(3))
- » consider whether there are grounds to cease investigating (PID Act s 48)

No, do not investigate under the PID Act

The **principal officer (or their delegate)** must:

- » consider whether other action is appropriate to investigate or respond to the disclosed information (PID Act s 48(2))
- » notify the discloser (PID Act ss 50(1)(b), 50(2) & s 50(5))
- » notify the Ombudsman (PID Act s 50A(1))

Finalising the investigation and taking action

The **principal officer (or their delegate)** must:

- » finalise a report of the investigation (PID Act s 51, s 13 PID Standard)
- » make redactions if appropriate (PID Act s 51(5))
- » provide a copy to the discloser (PID Act s 51(4), s 51(6))
- » take action in relation to any recommendations

REMEMBER!

A person who has made a disclosure can complain to the Ombudsman if they are unhappy with the agency's handling of the PID.

A public official who has already made an internal PID may be able to make an external disclosure about the same matter if that is not on balance contrary to the public interest and (PID Act s 26 Item 2):

- » the PID investigation is not completed within the allowed time under the PID Act, or
- » the discloser reasonably believes that:
 - the PID investigation was inadequate, or
 - the response to the PID investigation was inadequate.

14 DAYS

90 DAYS

Glossary

TERM	DEFINITION	PID ACT REFERENCE
Authorised internal recipient	<ul style="list-style-type: none"> » An authorised officer (see below) of the agency to which the conduct in the disclosure relates » An authorised officer (see below) of the agency to which the discloser belongs or last belonged » An authorised officer in the Commonwealth Ombudsman's office (or IGIS if it relates to an intelligence agency) if the discloser believes on reasonable grounds that it would be appropriate for the disclosure be investigated by the Ombudsman (or IGIS if it relates to an intelligence agency) 	34
Authorised officer	a public official appointed by the head of an agency to receive, assess and allocate internal PIDs; or the principal officer of an agency	36
Contracted service provider	a person or entity that provides goods or services to or on behalf of an Australian government agency under a Commonwealth contract	30
Delegate of the principal officer	a public official with written authority to exercise any or all of the principal officer's functions and powers under the PID Act	77
Discloser	a public official (see below) who has made a PID	26
Disclosable conduct	<p>Conduct engaged in by an agency, public official (in connection with their position), or a contracted service provider (or their staff) in connection with the contract, that:</p> <ul style="list-style-type: none"> » contravenes a law » is corruption » perverts the course of justice » is an abuse of public trust » unreasonably endangers health and safety or the environment » is misconduct relating to scientific research, analysis or advice » results in wastage of public money or property » is maladministration, including conduct that is unjust, oppressive or negligent » is an abuse of a public official's position » if proved, would result in disciplinary action against a public official. <p>Excluded:</p> <ul style="list-style-type: none"> » proper activities of intelligence agencies, » conduct connected to court or tribunals, » disagreements that relate only to government policy (and related expenditure), » actions of parliamentarians. 	29, 31, 32, 33
Public official	<p>a person who is one of the following:</p> <ul style="list-style-type: none"> » a public servant or parliamentary service officer » a contracted service provider (see above), or its employee or subcontractor » a Defence force member » an Australian Federal Police appointee » a statutory office holder » an employee of a Commonwealth company » an individual that an authorised officer deems to be a public official 	69 & 70
PID investigator	a public official with written authority to exercise any or all of the principal officer's functions and powers in connection with investigating a PID	8
Principal officer	a person who is a Departmental Secretary, Chief Executive Officer or other head of an Australian government agency or Commonwealth company and has specific obligations under the PID Act	73
Reprisal officer	a person who has been given responsibility for assessing and managing the risk of reprisal or workplace conflict, either generally in an agency's procedures, or in the case of a particular PID	59
Supervisor	a person who supervises or manages a public official	8