

Public Interest Disclosure Act 2013

Procedures for facilitating and dealing with public interest disclosures relating to the Office of the Commonwealth Ombudsman

Office

I, Colin Neave, Commonwealth Ombudsman make the following procedures under section 59 of the *Public Interest Disclosure Act 2013* (the PID Act).

These procedures support the Office of the Commonwealth Ombudsman's commitment to:

- the highest standards of ethical and accountable conduct;
- encouraging and investigating public interest disclosures; and
- supporting and protecting persons who make public interest disclosures.

These procedures commence on 15 January 2014.

Colin Neave

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Ombudsman

(Principal Officer for purposes of the PID Act)

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INTRODUCTION

Public Interest Disclosure Act 2013 (PID Act)

The *Public Interest Disclosure Act 2013* (PID Act) which commences on 15 January 2014 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 take action in relation to public interest disclosures.

The purpose of the Act is to promote the integrity and accountability of the Commonwealth public sector by:

- encouraging and facilitating the disclosure of information by public officials about 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 by public officials are properly investigated and dealt with.

Section 59 of the PID Act requires the Ombudsman (as a principal officer under the PID Act) to establish procedures for facilitating and dealing with public interest disclosures relating to the Office.

The Ombudsman

The Ombudsman and the Inspector General of Intelligence and Security (IGIS) have oversight of the public interest disclosure scheme. In addition to handling public interest disclosures made about its own agency or public officials, the Ombudsman has a range of powers and functions under the PID Act:

- determining standards with which agencies must comply;
- receiving notifications of allocations by agencies;
- receiving notifications from agencies where the discretion has been exercised not to investigate or not investigate further;
- receiving, allocating and investigating disclosures about other agencies;
- making decisions about extensions of time for agency investigations;
- providing assistance, education and awareness programs; and
- preparing annual reports on the operation of the PID Act.

In addition, the Ombudsman is able to receive and investigate complaints about the handling of public interest disclosures under the *Ombudsman Act 1976*. The Ombudsman may also use own motion powers under the *Ombudsman Act 1976* to investigate public interest disclosure matters.

These procedures relate only to public interest disclosures relating to the disclosure made about the Office of the Commonwealth Ombudsman (the Office) as an agency or its own public officials.

Given the dual role of the Ombudsman in his:

- capacity as a Principal Officer under these procedures; and
- his external role, under the PID Act, as outlined above;

when referencing his role as principal officer, these procedures will refer to him as the 'Principal Officer' and when referencing his external role, these procedures will refer to him as the 'Ombudsman'.

What is a public interest disclosure?

Essentially, a public interest disclosure is a disclosure by a current or former public official of suspected wrongdoing in the Commonwealth public sector. There are four different types of public interest disclosure sanctioned by the PID Act: internal disclosure, external disclosure, emergency disclosure and legal practitioner disclosure.

An internal disclosure is made when:

- a person who is or has been a **public official**;
- the person makes the disclosure to their supervisor or manager, or an **Authorised Officer** of the Office; and
- the information tends to show, or the discloser believes on reasonable grounds the information tends to show, one or more instances of **disclosable conduct**.

Internal disclosures, made about the Office of the Commonwealth Ombudsman, are the focus of these procedures.

The elements of making a disclosure under the PID Act are summarised in the diagram at **Attachment A**.

Public Officials

A person must be a current or former 'public official' to make a disclosure. This broad term includes Australian Government public servants, statutory office holders and staff of Commonwealth contracted service providers. An Authorised Officer can also deem an individual to be a public official if they reasonably believe the individual has information about wrongdoing and proposes to make a disclosure.

Authorised Officers

For the purposes of these procedures, an Authorised Officer in the Office is:

- the Ombudsman (as a Principal Officer under the PID Act); or
- an employee of the Office appointed, in writing, by the Principal Officer as an Authorised Officer for the purposes of the PID Act.

The names and contact details for the Authorised Officers within the Office are at **Attachment B**.

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 terms, disclosable conduct is conduct by an Agency or by a public official that:

- contravenes a law of the Commonwealth, a State or a Territory; or

- occurs in a foreign country and contravenes a law in force in that country that applies to the agency or public official and that corresponds to a law in force in the Australian Capital Territory; or
- perverts, or attempts to pervert, the course of justice or involves corruption of any other kind; or
- constitutes maladministration, including conduct that:
 - is based on improper motives
 - is unreasonable, unjust or oppressive, or
 - is negligent, or
- is an abuse of public trust; or
- is fabrication, falsification, or deception in relation to scientific research, or misconduct in relation to scientific work; or
- 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
- 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
- results in a danger to the environment or results in or increases the risk of a danger to the environment; or
- is prescribed by the PID Rules; or
- 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.

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

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.

SUPPORT, PROTECTION AND REPRISALS

The Office encourages the making of reports of disclosable conduct

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

The Office **will** take active steps to support and to protect persons who make disclosures under the PID Act.

The Office recognises it is important to have an effective system for reporting and investigating disclosable conduct. Some of the potential benefits of such a system are reducing the work health and safety risks to our workers, saving money and making our programs and processes more efficient. Another potential benefit is increasing the confidence of our workers in the way the Office is managed.

The Office also recognises that a decision by the Office not to deal with a disclosure as a disclosure under the PID Act, when as a matter of law that is how the disclosure should have been dealt with, could be seriously detrimental to the discloser and to the effective operation and the good reputation of the Office.

Protecting the discloser's identity

The PID Act provides protection for public officials, from adverse consequences of disclosing information that, in the public interest, should be disclosed.

A person will commit an offence if they disclose or use information that is likely to enable the identification of the discloser 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*.

In order to protect a discloser's identity, the Office will:

- limit the number of people who are aware of the discloser's identity or information that would tend to identify them;
- remind each person who has the information that they should keep it confidential and that unauthorised disclosure may be a criminal offence;
- assess 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
- ensure the discloser can communicate with a support person, the Authorised Officer or investigator without alerting other staff.

Immunity from liability

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.

No contractual or other remedy may be enforced, and no contractual or other right may be exercised, against a person 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.

Making a disclosure about matters that include a discloser's own wrongdoing does not protect them from liability for their wrongdoing.

Reprisal

The Office will not tolerate any reprisal action against a person who makes a public interest disclosure. A person who makes a public interest disclosure will be protected from reprisal in the following ways:

- it is a criminal offence to cause detriment to a person because it is suspected or believed that they have made or will make a public interest disclosure;
- a discloser has the right to apply for an injunction to prevent a reprisal; and
- a discloser has the right to apply for compensation for loss, damage or injury suffered from a reprisal.

Every allegation of reprisal will be taken seriously, recorded and responded to. All those involved in handling the public interest disclosure and aware of the discloser's identity – which may include the Authorised Officer, investigator, supervisor, manager and anyone else to whom the discloser has agreed to reveal their identifying information or who has that information for the purposes of the PID Act will monitor the work environment for signs of detriment and if necessary, take corrective action early.

Risk Assessment

When a public interest disclosure report is received, an assessment will be conducted to assess the risk that reprisals may be taken against the discloser, as well as strategies to deal with those risks. Further information in relation to the risk assessment is contained in the section titled *Procedures for Authorised Officers*.

If a discloser believes that detrimental action has been or is being taken against them in reprisal for making a report, they should tell their supervisor, an Authorised Officer or Principal Officer immediately.

All supervisors must report any suspicions they have that reprisal action against a staff member is occurring, or any reports of reprisal that are made to them. These reports should be made to Authorised Officer.

If the Principal Officer or an Authorised Officer receives a report of reprisal against a discloser, they will:

- take all steps possible to stop that alleged reprisal and protect the discloser;
- take action to investigate the suspected reprisal;
- establish whether reprisal has occurred; and

- if reprisal is found to have occurred, arrange for the matter to be dealt with in an appropriate manner.

What is reprisal?

Reprisal occurs if someone causes, by an act or omission, any detriment to another person because they believe or suspect that person, or anyone else, may have made or intends to make a public interest disclosure.

‘Detriment’ includes any disadvantage to a person, including dismissal, injury in their employment, discrimination between them and other employees or alteration of their position to their disadvantage.

What is not a reprisal?

Administrative action that is reasonable to protect the discloser from detriment is not a reprisal. For example, where a person has made a disclosure in relation to practices in their immediate work area, it may be appropriate to transfer them to another work area to ensure they are not harassed or victimised.

Making a disclosure also does not exclude the discloser from reasonable management action for any unsatisfactory performance or wrongdoing on their part – such action is not a reprisal.

Support for disclosers

The Office will provide active support for the discloser, including:

- acknowledgement for having come forward with a report of wrongdoing;
- an offer of support and information about what options are available; and
- an assurance the agency will take all reasonable steps necessary to protect them.

A discloser who is finding the process stressful may also access the Office’s Employee Assistance Program.

Supporting and protecting a person against whom a disclosure has been made

Support will also be provided to a person who is subject to an allegation made in a public disclosure. The person will also be accorded procedural fairness. This will include one or more of the following actions:

- providing the person information about their rights and obligations under the PID Act,
- providing the person information about the agency’s investigation procedures and any other relevant matter; including informing them of the progress of any investigation;
- ensuring the identity of the person is be protected as much as reasonably practicable; and
- advising them of the availability of the Office’s Employee Assistance Program.

THE DISCLOSURE PROCESS

Making a disclosure under the PID Act

All public officials and former public officials are entitled to make a disclosure under the PID Act. This includes the following:

- All employees of the Office and former employees of the Office.
- All contracted service providers and their employees who provide, or who provided, services to the Office under a contract with the Office.

A public interest disclosure may be made anonymously or openly.

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

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.

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

Employees in the Office 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 (refer Attachment A).

Employees or former employees or officers of contracted service providers may make a disclosure of disclosable conduct to an Authorised Officer or, in certain circumstances, to the Ombudsman (refer Attachment A).

Where possible, an employee in the Office should make their public interest disclosure to an Authorised Officer rather than their supervisor or manager.

Note: Authorised Officers in the Office 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 an employee in the Office from making a disclosure to their supervisor or manager.

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.

Where possible, a person making a public interest disclosure should cover as many of the following matters as possible in their disclosure so as to help the Office to determine how to proceed:

- their name and contact details;
- the nature of the wrongdoing;
- who they think committed the wrongdoing;
- when and where the wrongdoing occurred;
- relevant events surrounding the issue;

- if they did anything in response to the wrongdoing;
- others who know about the wrongdoing and have allowed it to continue;
- whether they believe their information is a public interest disclosure under the PID Act (they do not have to describe it 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.

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

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

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.

Once a public interest disclosure has been made, it cannot be withdrawn. But a discloser may state that they do not wish the disclosure to be investigated and they may refuse to consent to their name and contact details being provided to the Principal Officer and/or delegate. If the discloser requests that a matter not be investigated, this should be a consideration that is taken into account in determining whether to exercise discretion not to investigate or not investigate further. It should be noted, however, that the Office may still investigate.

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.

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

ANONYMOUS DISCLOSURES

All persons, including public officials, persons who have been public officials and others, are able to make disclosures in an anonymous way if they wish to do so.

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

A disclosure is anonymous if the identity of the discloser is not revealed and if no contact details for the discloser are provided. It is also anonymous if the discloser does not disclose their name but does provide anonymous contact details.

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

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

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 (see s 70(1)).

It is anticipated that an Authorised Officer would make this decision having regard to whether it is in the public interest, in the Office's interest and in the discloser's interest to have the disclosure dealt with as a disclosure under the PID Act.

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.

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 Legal area on the drafting of the written notice.

The written notice must be given to the individual.

Reasons why a discloser may consider identifying themselves

Reasons why a discloser might consider identifying themselves to an Authorised Officer, or at the very least providing a means of contact include:

- The PID Act requires agencies to keep a discloser's identity confidential, subject to limited exceptions including the discloser's consent. The person's identity may nonetheless become apparent if an investigation is commenced. If the person's identity needs to be disclosed or is likely to become apparent, the agency should discuss this with them.
- It will be difficult to ensure protection from reprisal if the agency does not know the discloser's identity.

- The Authorised Officer who receives an anonymous report must have reasonable grounds to suspect the disclosable conduct has occurred in order to allocate the matter for investigation. If they cannot contact the person to seek necessary further information, the matter may not 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 the investigation.

A person who has made an anonymous disclosure may come forward at a later stage to disclose their identity and seek the protections of the PID Act.

PROCEDURES FOR SUPERVISORS AND MANAGERS

Where a public official in the Office 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 Office.

Where such a disclosure is made to a supervisor or manager, that person must make a written record of the fact of the disclosure, and if the disclosure is not in writing, they must make a written record of the substance of the disclosure and of the time and date of the disclosure.

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

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.

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 Office and advise the discloser of the name and contact details of that Authorised Officer.

PROCEDURES FOR AUTHORISED OFFICERS

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

Where:

- 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
- 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
- the Authorised Officer is aware of the contact details of the person;

the Authorised Officer must:

- inform the person that the disclosure could be treated as an internal disclosure for the PID Act, and
- explain to the person what the PID Act requires for a disclosure to be an internal disclosure; and
- advise the person of any orders or directions that may affect disclosure of the information.

Authorised Officer must decide whether or not to allocate a disclosure

Where a public official, or a person who has been a public official, makes a disclosure of disclosable conduct directly to an Authorised Officer, the Authorised Officer must make a written record of the fact of the disclosure and, if the disclosure is not in writing, they must make a written record of the substance of the disclosure and of the time and date of the disclosure.

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

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.

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.

Note: 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.

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.

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 of:

- the reasons why the disclosure is not to be allocated; and
- any other courses of action that might be available to the discloser under other laws of the Commonwealth.

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:

- 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
- wishes the disclosure to be investigated.

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

Where a discloser does not respond within **7 days** to the questions referred to above:

- 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
- the discloser is taken to wish the disclosure to be investigated.

Where Authorised Officer allocates an internal disclosure

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.

Where an Authorised Officer in the Office allocates a disclosure to an agency (including to the Office) they must inform the principal officer of that 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.

If the Authorised Officer allocated a disclosure to an agency (including the Office itself), that is not the Ombudsman, the IGIS or an intelligence agency, he or she will inform the Ombudsman of this in writing. If the disclosure is allocated to an intelligence agency, the Authorised Officer will inform the IGIS of this in writing.

Where the Authorised Officer is aware of the contact details of the discloser the Authorised Officer must inform the discloser, in writing, of the allocation and the information that has been provided to the Principal Officer of the relevant agency.

Record of allocating the handling of a disclosure

When an Authorised Officer allocates the handling of a disclosure to one or more agencies, he or she must keep an appropriate record of:

- the decision (including the name of each agency to which the disclosure is to be allocated);
- the reasons for the decision; and
- the consent provided by the Authorised Officer of the agency to which the allocation is made.

The Authorised Officer must also keep appropriate records of whether the discloser was informed of the allocation decision and, if so, of:

- the day and time the discloser was notified; and
- the means by which the discloser was notified; and
- the content of the notification.

These records should be kept confidential.

Risk assessment

Where an Authorised Officer in the Office allocates a disclosure, they must conduct a risk assessment on whether 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.

In conducting the risk assessment Authorised Officers will adopt the following framework which entails four steps:

- **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 table at **Attachment C** provides a summary of the risk factors that should be considered when assessing the risk of any reprisal against the discloser.

The Ombudsman's ['Agency Guide to the Public Interest Disclosure Act 2013'](#) provides detailed information on how to carry out a risk assessment.

DECIDING WHETHER OR NOT TO INVESTIGATE

Where an Authorised Officer allocates an internal disclosure to the Principal Officer or nominated delegate and the Principal Officer or delegate has been given the contact details of the discloser, the Principal Officer or delegate must, **within 14 days** after the disclosure was allocated to the Office, inform the discloser in writing that the Principal Officer or delegate may decide:

- not to investigate the disclosure; or
- not to investigate the disclosure further;

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

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

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

- 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
- the information does not to any extent concern **serious** disclosable conduct; or
- the disclosure is frivolous or vexatious; or
- the disclosure is substantially the same as a disclosure that has been investigated under the PID Act; or
- 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
- 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
- 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.

Guidance on factors that might go towards the exercise of the power in section 48 is provided in the Ombudsman's ['Agency Guide to the Public Interest Disclosure Act 2013'](#).

Decision not to investigate

Where the Principal Officer or delegate decides under section 48 of the PID Act not to investigate a disclosure, and where they have been given the name and contact details of the discloser, the Principal Officer or delegate must, as soon as reasonably practicable, 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.

Where the disclosure is to be investigated

Where a matter is required to be investigated, and where the Principal Officer or delegate has been given the name and contact details of the discloser, the Principal Officer or delegate must inform the discloser that they are required to investigate the disclosure, and inform the discloser of the estimated length of the investigation.

If the Principal Officer or delegate decides to investigate the disclosure and starts to investigate the disclosure but then decides not to investigate the disclosure further under section 48, the Principal Officer or delegate must inform:

- 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.

PROCEDURES FOR INVESTIGATORS

Where the Principal Officer or delegate has decided to commence an investigation into an internal disclosure, they may conduct the investigation as they think fit.

The Principal Officer or delegate must be independent and unbiased in investigating the matter. They must ensure that they do not have an actual or perceived conflict of interest.

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

When conducting an investigation the Principal Officer or delegate must ensure that a decision is based on evidence that is sufficient to prove a fact is made on the balance of probabilities.

The Principal Officer or delegate, in conducting an investigation under these procedures, must comply with:

- the Ombudsman's Standard, and
- to the extent they are relevant to the investigation:
 - the Commonwealth Fraud Control Guidelines; and
 - these procedures; and
 - the procedures established under s 15(3) of the *Public Service Act 1999*.

Interviewing witnesses

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:

- the identity and function of each person conducting the interview; and
- the process of conducting an investigation; and
- the authority of the investigator under the PID Act to conduct an investigation; and
- the protections provided to the person by section 57 of the PID Act; and

An investigator should also inform the person of their 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.

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.

Where the investigator is aware of the discloser's identity and considers that it is necessary to reveal the discloser's identity to a witness, the investigator must consult with the discloser, where practicable, before proceeding.

Procedural fairness

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.

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

Where the investigator in preparing the report of their investigation proposes to:

- make a finding of fact; or
- 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: The above paragraph 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.

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.

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

Note: In broad terms, evidence is relevant to an investigation if it is of consequence to the matter under investigation and makes the existence of a fact more probable or less probable than it would be without the evidence.

Time limits

The investigator has 90 days from the date the disclosure was allocated in which to complete the investigation.

It is possible to seek one or more extensions of time from the Ombudsman.

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

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.

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

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 of the agency.

REPORTS OF INVESTIGATIONS

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.

A report of an investigation under the PID Act must set out:

- the matters considered in the course of the investigation; and
- the duration of the investigation; and
- the investigator's findings (if any); and
- the action (if any) that has been, is being or is recommended to be taken; and
- any claims made about, and any evidence of, detrimental action taken against the discloser, and the Office's response to those claims and that evidence

and, where relevant, a report must:

- identify whether there have been one or more instances of disclosable conduct; and
- identify any regulations, rules, administrative requirements or similar matters to which the disclosable conduct (if any) relates; and
- explain the steps taken to gather evidence; and
- set out a summary of the evidence; and
- set out any recommendations made based on that evidence.

Where an investigator has completed a report of an investigation under the PID Act, and where they have been given the discloser's contact details, the investigator must, as soon as practicable, advise the discloser in writing:

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

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.

The investigator may delete from the copy of the report given to the discloser any material:

- that is likely to enable the identification of the discloser or another person; or
- 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.

The investigator must delete from the copy of a report given to the discloser any material which would result in the report contravening a designated publication restriction.

RECORD-KEEPING, MONITORING AND EVALUATION

Record keeping

Where an Authorised Officer is required to keep a record under these procedures, the record may be kept in hard copy or in an electronic form or in both. Access to these records must be restricted to the Authorised Officers, delegates (including investigators) or other employees in the Office 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*).

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

All records made for the purposes of the PID Act in accordance with these procedures must be marked in accordance with the Protective Security Policy Framework (PSPF) Security Classification System and stored in the appropriate storage container.

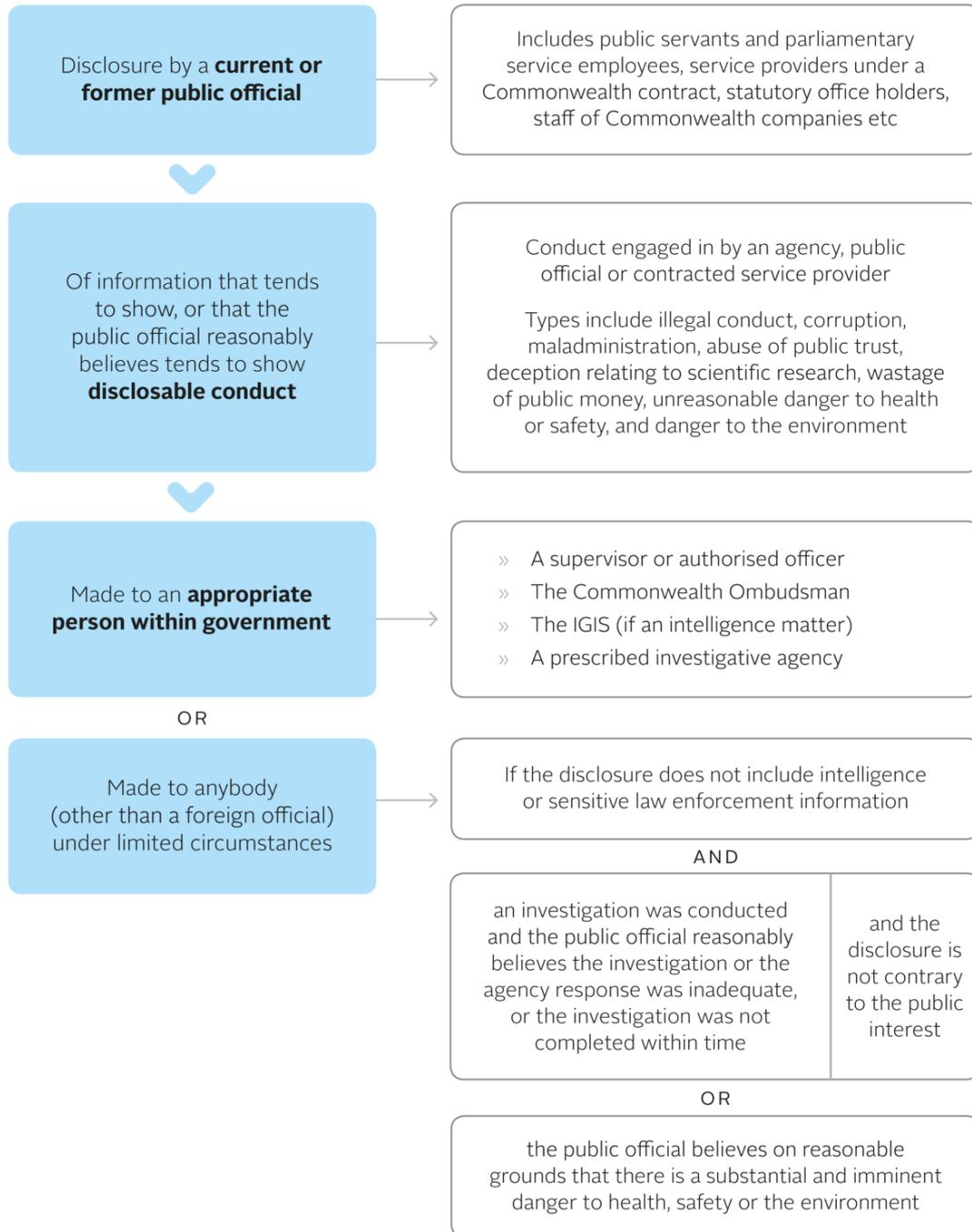
Any email messages sent by Authorised Officers or delegates that contain identifying information must be clearly marked 'to be read by named addressee only'.

Where a person will cease being an Authorised Officer in the Office (including because of resignation or movement to another agency), their PID records must be transferred to another Authorised Officer in the Office.

Monitoring and Evaluation

Each Authorised Officer must provide a monthly report to the Principal Officer specifying the number of public interest disclosures received by the Authorised Officer and the nature of the disclosable conduct for each disclosure (by reference to the relevant item or paragraph in the definition). The report must also include any disclosures that have been allocated to the agency by another agency's Authorised Officer.

What is a public interest disclosure



Authorised Officers for the Office of the Commonwealth Ombudsman

The names and contact details for the Authorised Officers within the Office are as follows:

- Richard Glenn, Deputy Ombudsman
- George Masri, Senior Assistant Ombudsman
- Prem Aleema, Director, Public Interest Disclosure Team
- Matthew Lemm, Public Interest Disclosure Team
- Sally Bird, Public Interest Disclosure Team
- Kristy Dodd, Public Interest Disclosure Team

The Authorised Officers may also be contacted by:

- Emailing the Ombudsman at PID@Ombudsman.gov.au. In the subject line you should indicate that your PID is about the Commonwealth Ombudsman.
- Writing to the Authorised Officer at GPO Box 442, Canberra ACT 2601. You should mark any envelopes or external covers 'Confidential—Ombudsman PID'.
- Phoning the Ombudsman's office on 1300 362 072 and following the relevant prompts.

Indicators of a higher risk of reprisals or workplace conflict

Threats or past experience	Has a specific threat against the discloser been received? Is there a history of conflict between the discloser and the subjects of the disclosure, management, supervisors or colleagues? Is there a history of reprisals or other conflict in the workplace? Is it likely that the disclosure will exacerbate this?
Confidentiality unlikely to be maintained	Who knows that the disclosure has been made or was going to be made? Has the discloser already raised the substance of the disclosure or revealed their identity in the workplace? Who in the workplace knows the discloser's identity? Is the discloser's immediate work unit small? Are there circumstances, such as the discloser's stress level, that will make it difficult for them to not discuss the matter with people in their workplace? Will the discloser become identified or suspected when the existence or substance of the disclosure is made known or investigated? Can the disclosure be investigated while maintaining confidentiality?
Significant reported wrongdoing	Are there allegations about individuals in the disclosure? Who are their close professional and social associates within the workplace? Is there more than one wrongdoer involved in the matter? Is the reported wrongdoing serious? Is or was the reported wrongdoing occurring frequently? Is the disclosure particularly sensitive or embarrassing for any subjects of the disclosure, senior management, the agency or government? Do these people have the intent to take reprisals – for example, because they have a lot to lose? Do these people have the opportunity to take reprisals – for example, because they have power over the discloser?
Vulnerable discloser	Is or was the reported wrongdoing directed at the discloser? Are there multiple subjects of the disclosure? Is the disclosure about a more senior officer? Is the discloser employed part-time or on a casual basis? Is the discloser isolated – for example, geographically or because of shift work? Are the allegations unlikely to be substantiated – for example, because there is a lack of evidence? Is the disclosure being investigated outside your organisation?*

Extract from the Ombudsman's '[Agency Guide to the Public Interest Disclosure Act 2013](#)'.