

Supervisors and the PID scheme

Under the *Public Interest Disclosure Act 2013* an official can make an internal disclosure to their supervisor. Supervisors need to know how to recognise a public interest disclosure (PID), and what to do with it when they receive one.

How is a PID made?

A public official may make a PID by disclosing information that tends to show 'disclosable conduct' to:

- » an 'authorised officer' or
- » their current supervisor.

This information sheet explains what a supervisor must do when they receive information from one of their staff that they believe concerns disclosable conduct (defined below). The Ombudsman has published a separate information sheet (*PID - Role of authorised officers*) to explain what an authorised officer must do when they receive a disclosure.

Who is a supervisor?

Under the PID Act, a supervisor is a public official who supervises or manages the person disclosing the information to them. Most statutory officer holders and people directly employed by Commonwealth agencies are public officials. People who are contracted to provide goods or services for, or on behalf of a Commonwealth agency (contracted service providers) are also public officials. Employees and subcontractors of contracted service providers are also considered to be public officials.

Most public officials will be able to readily identify their immediate supervisor. Most public officials with supervisory and management responsibilities will be able to readily identify the staff they supervise or manage. However, when considering the PID Act, a public official could have more than one supervisor, depending on their particular work arrangements.

Broadly speaking a public official's supervisor or manager is someone in a 'chain of command' which extends beyond his or her direct supervisor. That chain of command may also spread sideways to a number of other people who supervise or manage that person in relation to a specific activity or period of time. It could include people who have a leadership role in a particular office or site, especially where there are a number of different teams or work groups located together. In some workplaces, where several different agencies work together, an official may be 'supervised' by someone employed by a different agency. Similarly, a person employed by a contracted service provider might be supervised by someone directly employed by the agency to which services are provided under that contract.

If a public official is not sure who is their supervisor under the PID scheme, or who they supervise or manage, they should clarify this with an authorised officer or consult their agency's PID procedures.

Supervisor's responsibility under the *Public Interest Disclosure Act 2013* (PID Act)

A supervisor who receives information from one of their staff that tends to show disclosable conduct has a legal obligation to ensure that information is passed on to an authorised officer in their agency for handling under the *Public Interest Disclosure Act 2013* (PID Act).

The supervisor's obligation is engaged when the public official that they supervise, discloses information to them that the supervisor has reasonable grounds to believe concerns, or could concern, 'disclosable conduct' (see *What is disclosable conduct?* below).

The public official does not have to tell their supervisor that they are making a disclosure under the PID Act, or be aware of the PID scheme. Once the supervisor receives the information, and forms the view that it concerns, or may concern, disclosable conduct, the supervisor must refer the information to an authorised officer. The supervisor must make that referral do this as soon as is reasonably practicable.

The supervisor's obligation applies even if the discloser does not want the matter to be identified as a PID, or the information to be investigated. There may be some scope for the discloser's wishes to be taken into account later by the authorised officer, or the person to whom the disclosure is allocated for handling under the PID Act.

Referring the PID to an authorised officer

The supervisor must:

- » refer the disclosed information to an authorised officer in their agency as soon as practicable
- » not name the staff member who was the source of the information unless he or she consented (the discloser can choose to remain unidentified)
- » advise the staff member after the information has been referred to an authorised officer.

Who is an authorised officer?

Under the PID Act, the principal officer of each Commonwealth agency is automatically an authorised officer for that agency. The principal officer is usually the Secretary, or Chief Executive Officer, or head of the agency, however titled.

The principal officer may also appoint other officers belonging to that agency as authorised officers. The appointments must be in writing, there must be enough authorised officers to ensure that they are accessible to the officials who belong to the agency, and their identities must be publicised so that officials can readily find out who they are. Most agencies publish the names of their authorised officers on their intranet and external websites. Try searching for "PID" or "public interest disclosure".

What is disclosable conduct?

Section 29 of the PID Act defines 'disclosable conduct' as conduct by an agency, a public official or a contracted Commonwealth service provider (in connection with entering into or giving effect to a Commonwealth contract) 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
- » is misconduct relating to scientific research, analysis or advice

- » is maladministration, including conduct that is unjust, oppressive or negligent
- » involves the public official abusing his or her position as a public official
- » would give reasonable grounds for disciplinary action against a public official if the conduct was proved.

A practical approach for supervisors

The supervisor's obligation to refer information to an authorised officer is only engaged once the staff member has disclosed information that the supervisor believes concerns, or could concern disclosable conduct. If the staff member has not provided any specific information about the conduct in question, the supervisor may encourage the discloser to directly raise their concerns about wrongdoing with an authorised officer and identify who the authorised officers are in the agency, and how to contact them.

If a supervisor believes they have received information from one of their staff that tends to show disclosable conduct, they should not conduct any investigation to find out whether the disclosed information is true. It is recommended that the supervisor take the following steps:

- » provide the staff member with information about the PID scheme including the agency's PID procedures and information about protections for disclosers
- » explain that as a supervisor they are obliged to pass the information to an authorised officer of the agency, even if the discloser does not wish to do so
- » seek the public official's views about which authorised officer should or should not be provided with the information disclosed
- » confirm their understanding of the information disclosed
- » seek the discloser's consent to identify them as the source of the PID when providing information to an authorised officer within the agency
- » explain to the discloser that even if they do not consent to being identified that their identity may be ascertained from the nature of the information or the circumstances of the disclosure.

Confidentiality requirements

It is a criminal offence for anyone who receives or otherwise deals with a PID to disclose information to anyone else that might identify the person who was the source of the information without that person's consent unless:

- » the identifying information is disclosed for the purposes of the PID Act, or another Commonwealth law,
- » to assist the Ombudsman or the IGIS perform their PID functions, or
- » the identifying information has already been lawfully published.

It is also a criminal offence for anyone to disclose information to anyone else that they obtained through receiving or otherwise dealing with that PID unless the information is disclosed:

- » for the purposes of the PID Act or
- » in connection with performing a function or exercising a power under the PID Act
- » to assist the Ombudsman or the IGIS perform their PID functions.

A supervisor who receives a disclosure from a staff member should therefore not discuss or reveal the information that was disclosed to them, or discuss or reveal any information that might identify the discloser, except for the purposes of:

- » passing the information to the authorised officer
- » advising the discloser when the information has been referred to an authorised officer, or

- » subsequently assisting someone performing a function under the PID Act in relation to that disclosure, for example, a person delegated to conduct an investigation, or an official who is conducting a risk assessment (see below “reprisal and protections”).

Discussing the disclosure with anyone else, or revealing the discloser’s identity to anyone else, directly or indirectly, may be a criminal offence under the PID Act.

What if the supervisor is also subject to mandatory integrity reporting obligations?

The supervisor’s obligation under the PID Act to refer information to an authorised officer does not displace or alter any other employment conditions that require officials to report misconduct or wrong doing if they become aware of it. If a supervisor is subject to mandatory reporting arrangements they will need to comply with both sets of obligations. Ideally, any agency with mandatory integrity reporting arrangements should ensure that those arrangements are integrated and consistent with its procedures for receiving and dealing with PIDs.

If a supervisor has concerns that their secrecy obligations under the PID Act conflict with their integrity reporting obligations they should discuss this with an authorised officer at the time they refer their disclosure to them.

Reprisal and protections


An official who makes a disclosure in accordance with the PID Act has immunity from any civil, criminal or administrative liability that would otherwise apply in relation to disclosing that information. For example, a breach of official secrecy laws, or an action for defamation. This immunity applies whether the official made their disclosure direct to an authorised officer, or via their supervisor.

A supervisor who has acted in good faith by referring disclosed information to an authorised officer, is not liable to any criminal or civil proceedings, or any disciplinary action in relation to that action.

The PID Act makes it an offence for any person to take or threaten reprisal action because a PID has been made, is suspected to have been made, or might be made in future. It does not matter whether the threatened or actual reprisal action is against the discloser, their supervisor or any other person, such as a witness. Reprisal includes dismissal, injury of an employee in his or her employment, alteration of their position or discrimination between that employee and other people working for the same employer. (Administrative action that is reasonable to protect a person from detriment is not reprisal action).

After an agency receives a disclosure it is required to conduct a reprisal risk assessment. When a supervisor refers a disclosure to an authorised officer they should also provide information about any reprisal risk for the discloser, themselves or any other public official. This would include information about any workplace conflict that might be relevant to the agency’s reprisal risk assessment.

For further information see
www.pid.ombudsman.gov.au.

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