

## 1 Introduction

This guide has been developed to assist Commonwealth agencies fulfil their obligations under the *Public Interest Disclosure Act 2013* (PID Act) and *Public Interest Disclosure Standard 2013* (PID Standard).

The PID Act was substantially amended from 1 July 2023 to implement key recommendations of the 2016 Review of the Public Interest Disclosure Act by Mr Philip Moss AM and subsequent Parliamentary committees. This guide reflects the PID Act as amended by these reforms which strengthen protections for disclosers and witnesses; focus the scheme on integrity-related wrongdoing; make the scheme easier to administer; and enhance oversight of the scheme by the Commonwealth Ombudsman (Ombudsman) and the Inspector-General of Intelligence and Security (IGIS). The guide also reflects new powers, duties and functions relating public interest disclosures, implemented as a result of the commencement of operation of the National Anti-Corruption Commission (NACC).

The guide has ten chapters:

- 1 *Introduction* – explains the guide’s structure and the relevant legislation
- 2 *How the PID scheme works* – outlines the scope and elements of the public interest disclosure scheme
  - 2.1 The purpose of the PID Act
  - 2.2 What is a public interest disclosure?
  - 2.3 Who can make a public interest disclosure?
  - 2.4 Private interest vs public interest
  - 2.5 What can be disclosed?
  - 2.6 What is not disclosable conduct?
  - 2.7 Who can a public interest disclosure be made to?
  - 2.8 What happens if information is disclosed outside these circumstances?
- 3 *Agency obligations* – sets out the need for strong agency commitment to encourage reporting of wrongdoing and take appropriate action, and identifies the responsibilities of key agency staff
  - 3.1 Why public interest disclosures are important
  - 3.2 Principal officer responsibilities
  - 3.3 Other key PID roles and responsibilities
- 4 *Receiving internal disclosures* – sets out how disclosures should be encouraged and received
  - 4.1 Receiving an internal disclosure from a public official
  - 4.2 What information should the discloser provide?
  - 4.3 Protection for the discloser
  - 4.4 The discloser’s obligations
- 5 *Allocating disclosures for handling under the PID Act* – discusses how disclosures are allocated for investigation
  - 5.1 Initial assessment - is the information an ‘internal disclosure’?
  - 5.2 Decisions not to allocate under the PID Act
  - 5.3 Decisions to allocate under the PID Act
  - 5.4 Conducting an initial risk assessment


- 6 *Assessing whether to investigate* – explains key considerations in deciding whether to investigate, and what happens if an agency decides not to investigate under the PID Act
  - 6.1 General requirement to investigate a disclosure
  - 6.2 When can an agency decide not to investigate?
  - 6.3 Does a decision not to investigate prevent other action?
  - 6.4 What records must be made of a decision not to investigate?
  - 6.5 Who must be notified of a decision not to investigate?
  
- 7 *Conducting an investigation* – discusses agency obligations regarding the conduct of investigations including procedural fairness, investigation reports and notification requirements
  - 7.1 General requirement to investigate an internal disclosure
  - 7.2 What sort of investigation is required?
  - 7.3 Investigations under the PID Act
  - 7.4 After the investigation
  - 7.5 Some administrative considerations
  
8. *Support and protection* – discusses how disclosers are protected under the PID Act and avenues for assistance
  - 8.1 Confidentiality and sharing of information under the PID Act
  - 8.2 Protection for the discloser
  - 8.3 Protection for witnesses in a PID investigation
  - 8.4 Officials exercising powers or performing functions under the PID Act
  - 8.5 Preventing and protecting from detriment and reprisal
  - 8.6 Practical support and protection strategies
  - 8.7 Access to court
  - 8.8 Reprisal is a crime
  
9. *The role of key agencies* – sets out the role of the Ombudsman, the Inspector-General of Intelligence and Security (IGIS) and prescribed investigative agencies
  - 9.1 Ombudsman
  - 9.2 Inspector General of Intelligence and Security
  - 9.3 Prescribed investigative agencies
  
10. \* *Interaction between the National Anti-Corruption Commission and the PID scheme* – sets out the role and function of the NACC and how public officials are required to exercise powers and perform duties and functions under both the PID scheme and the *National Anti-Corruption Commission Act 2022* (NACC Act).

*Appendix 1* – Other matters – provides further information

\* The interaction between the NACC and the PID scheme is addressed through the guide, this information will also be consolidated and included as a new chapter in the guide (Chapter 10). Chapter 10 will be published once finalised.

This guide refers, where relevant, to provisions of the PID Act and PID Standard (made by the Ombudsman under s 74 of the PID Act). Individuals and agencies must comply with those provisions. The guide also refers to the PID Rules, which the Minister may make under s 83 of the PID Act.

The guide also includes suggestions for agencies to follow when applying the law: these are recommended as good practice but are not a legal requirement. Agencies may wish to adapt these suggestions to suit their own purposes, depending on their size, functions and contact with external entities. The Ombudsman and IGIS may follow their own procedures when investigating public interest disclosures.



If anything in this guide is inconsistent with requirements in the PID Act or the PID Standard as made and amended from time to time, the PID Act or Standard are to be followed. Unless otherwise indicated, references to legislative provisions in this Guide are references to sections of the PID Act.

**Contact the Ombudsman's PID Team:**

Email: [pid@ombudsman.gov.au](mailto:pid@ombudsman.gov.au) (preferred contact method)

Telephone: 1300 362 072

Post: GPO Box 442 Canberra ACT 2601

Website: <https://www.ombudsman.gov.au/complaints/public-interest-disclosure-whistleblowing>

