

5th National Whistleblowing Symposium

Sydney 20 July 2026

- Acknowledgement of country – the Gadigal people of the Eora Nation
- My Office, together with the Inspector-General of Intelligence and Security, oversee the Commonwealth PID scheme. (I look after the public service while the IGIS looks after intelligence agencies.)
- I will start with some data on the Commonwealth PID scheme:
 - The number of PID decisions by agencies continues to grow
 - 843 in 24-25
 - 764 in 23-24
 - 297 in 22-23
 - Of those 843 decisions, 196 were decisions to allocate a disclosure for investigation (a small decrease from 212 in 23-24)
 - Those 196 PIDs allocated for investigation raised 434 instances of alleged disclosable conduct
 - Of course, allocating a PID for investigation does not require that it will be investigated (74 decisions not to investigate a PID, or not to investigate it further, in 24-25; consistent with 23-24): the PID Act provides a number of reasons why agencies may decline to investigate, including that the agency does not believe that the allegations to any extent concern serious disclosable conduct, or based upon an assessment of the risk, harm or significance of the conduct
 - 490 decisions were made not to allocate a disclosure for investigation (a small increase from 472 in 23-24)
 - A decision not to allocate may be because there is no reasonable basis on which the disclosure can be considered an internal PID (404 decisions, same as in 23-24) or because the disclosure would be more appropriately investigated under another law or power (18%, up from 9% in 23-24) – which includes because that other law or power includes the ability to directly impose disciplinary action (in particular under the Public Service Act or the Defence Force Discipline Act)
 - 121 agency PID investigations were finalised in 24-25, with 36 of those (ie 30% of investigations, up from 20% in 23-24) involving one or more findings of disclosable conduct
 - 4 of them resulted in referrals to police (up from 1 in 23-24)
 - In 60 of the 121 finalised investigations, recommendations were made for action – which reinforces that a PID can identify opportunities to improve

- agency practices and to address risks of wrongdoing, even if the PID doesn't result in a finding of disclosable conduct.
- 24% of agency PID investigations in 24-25 were finalised within 90 days (which is a reduction from 40% in 23-24 being completed within 90 days, and 49% in 22-23)
 - The number of inquiries to my Office from disclosers continues to grow
 - 107 inquiries to OCO from disclosers and potential disclosers in 22-23
 - 224 in 23-23
 - 271 in 24-25
 - My Office received 40 complaints about agency handling of PIDs (up from 35 in 23-24, consistent with 39 in 22-23)
 - Those complaints were primarily about decisions not to allocate or not to investigate a PID, or disagreement with the findings and recommendations of an investigation
 - As Ombudsman more broadly, we receive many complaints: two enduring themes are poor communication by agencies, and delay.
 - An outcome we are often able to obtain for a complainant is a better explanation of the issue, either by the agency or by my Office.
 - This can be very powerful for a complainant, helping them understand why something did or did not happen, which can assist them to move on from the complaint, as well as to be better equipped to deal with such an issue (or with that agency) in future
 - In November 2025 we released an Insights paper on investigation timeframes and extension requests under the PID Act.
 - agencies are taking too long to consider and investigate PIDs
 - which means that they may be missing the opportunity to quickly act on misconduct
 - it also makes it harder to maintain confidentiality over the PID, to minimise the risk of reprisal to a disclose, and to support discloser wellbeing
 - agency requests for an extension of time to consider a PID frequently come as a surprise to disclosers
 - this is often because agencies are not engaging well with disclosers
 - Turning to reprisal, in 24-25 the most common issues raised in PIDs about reprisal involved disadvantage to employment, and bullying/harassment
 - 12 PIDs lodged in 24-25 specifically alleged reprisal (down from 18 in 23-24, 24 in 22-23 and 52 in 21-22)

- Looking at reports from completed PID investigations and also putting questions to agencies about management of reprisal risk, we think there remains:
 - a lack of understanding among agencies of the scope of reprisal
 - agencies are generally reactive not proactive, and are reliant on disclosers to identify risks
- In our 24-25 Annual Report on the PID Scheme, I repeated my view that agencies still lack understanding of the PID Scheme, and that the PID Act remains overly complex and overly prescriptive
- I said in that Report that agencies need to do more to better support their staff to speak up about perceived wrongdoing, and that a Whistleblower Protection Authority or similar body would assist to better support disclosers
- I also said that those supports would be more effective if the PID Act itself was reformed
- Following the report of the Robodebt Royal Commission, there has been an increased focus in the APS on the need to build a speak up culture and psychological safety within agencies
- but in my view, agencies continue to respond to PIDs in an overly legalistic and fragmented manner, focussing narrowly on whether each individual allegation is proven, rather than thinking about what a disclosure might suggest more broadly;
- many agencies also outsource PID investigations to external investigators – which may bring expertise, but may also mean that the deep thinking about allegations is not happening within the agency which those allegations relate to
- it's good that most agencies report to us that they provide formal internal training on the PID scheme – but there is clearly a need for more training and education. (In 24-25 we delivered 9 PID training forums to 581 staff from across the APS.)
- In April 2026 we published an Insights Paper on understanding reprisal, which points among other things to the need to be aware that:
 - reprisal can extend beyond the discloser to third parties (eg potential witnesses, friends/supporters of the discloser)
 - and it can occur before a PID is made (ie if it is thought that a PID is going to be made)
- The paper also noted that the line between reprisal, reasonable management action, and experiences potentially inherent in whistleblowing (eg stress, isolation) can be difficult to determine
- As Commonwealth Ombudsman, I continue to find issues where agencies are not complying with the law (in some instances knowingly; in others, due to thinking they know what the law requires but not seeking assurance); are not acting promptly to remediate issues; are loathe to apologise for and explain “misalignments”; are not keeping good records.

- I acknowledge that there are also positive signs
 - For example, agencies that are developing tool kits for addressing issues, so that when they next find an issue they can much more quickly remedy it;
 - that are voluntarily pausing programs where they have detected issues.
- Agencies are frequently willing to act on an issue if we draw it to their attention, without requiring us to formally investigate it first
- The APS Census was held in May and reports will be published by agencies later in 2026: it is likely that the Census will again reveal that some APS staff have concerns about bullying, harassment and impropriety, as well as a reluctance to report integrity concerns.
- The NACC has identified procurement and recruitment as fertile grounds for perceived corruption in the APS – both of which get raised in a number of PIDs.
- In this context – post-Robodebt, pro-speak up culture, more willing to admit mistakes, but with an understanding that there remain potentially significant risks to good administration - agencies should be thinking more about how to better support their staff to raise concerns, and about how to use PIDs as feedback and intelligence, not just as a species of one-off very formal complaints
- Because Parliament has legislated the PID Scheme as a devolved model, where agencies are responsible for handling PIDs from their staff about issues within their agencies, agencies need to embrace their responsibility under the PID scheme to do more than just reactively receive and investigate the PIDs themselves
- But in addition to guidance by agencies themselves, the devolved model that is the PID Act would also operate better if there was more external guidance and support for both disclosers and agencies.
- The NSW Ombudsman have 25 staff working on PID Act issues, including 5 staff dedicated to whistleblower support; they also fund and provide wellbeing supports and legal advice.
- I know there is a speaker later today from the NSW O who will talk about their set-up, so I will just say that this is a very positive model that shows what can be achieved with relatively modest overall resourcing.
- Unfortunately, it is a relatively unique model across Australian jurisdictions.
- My Office received some initial funding to prepare for the commencement of the PID Act in 2013, but that is the only funding we have received for our role under the PID Act.
- the NSW Ombudsman – an Office with fewer staff (250 FTE v my 308 FTE) and fewer functions than my Office - receives considerably more funding (NSWO was

\$58.6m [23% more funding] in 25-26 v \$47.5m for us as CO and \$4.7m for us as ACT Ombudsman).

- It may be that this reflects the value of a dedicated parliamentary oversight committee for the NSW Ombudsman, Auditor-General and ICAC.
- But Victoria has a similar parliamentary oversight framework, and there the core integrity agencies have publicly pointed out that they lack resources and powers to properly discharge their functions.
- There is a speaker from South Australia speaking later today, and there have been similar calls for dedicated resources for integrity agencies in South Australia – including for supporting a public sector whistleblowing scheme
- We will continue to put unfunded resources (currently 8 staff) into overseeing the Commonwealth PID scheme; we will continue to look to promote greater understanding of the obligations agencies have under the PID scheme; we will continue to provide assistance to people who have made or are thinking of making a disclosure.
- Because it is extremely important that people are encouraged and supported to raise concerns if they have them, about issues within their agencies.

Document 2 - Draft talking points

Whistleblowing Symposium 20 July- Putting Protections into Practice

Keynote Address

10.50am Monday 20 July 2026 (immediately after morning tea)

(Immediate prior session is 'Political Perspectives on Whistleblowing')

NSW Ombudsman Whistleblower Support Function

- NSW O established a whistleblower support function in November 2024 to provide general information and guidance to any NSW public official who has reported, or is thinking about reporting, serious wrongdoing.
- Trial of free legal and/or mental health support for disclosers, provided by third party services and funded through NSW O. Access is available before making a PID as well as afterwards. Legal support includes:
 - Advice on rights and protections under the PID Act
 - Advice on reprisal risks and how to respond
 - Assistance understanding agency investigation processes
 - Help preparing or clarifying a disclosure
 - Legal advice on employment impacts, including disciplinary processes
 - Support if a whistleblower is subject to reprisal action
 - Guidance on external disclosures (e.g., ICAC, MPs, media)
- Wellbeing support, includes:
 - counselling and psychological support
 - wellbeing case management
 - referrals to specialist mental health services.
- Total NSW O recurrent budget allocation in 2021-22 was \$48M, increasing to \$52.9M in 2023-24 and \$58.6M in 2025-26.
- NSW O advised 25 staff allocated to PID functions, with 5 allocated to Whistleblower Support Function (as noted in evidence to Commonwealth Parliament in respect of the Whistleblower Protection Authority Bill 2025).
- At April 2026, 250 contacts so far since the function commenced (as noted at the South Australia ICAC Whistleblower Project forum hosted by IPAA SA)
- NSW O Submission to Senate Whistleblower Protection Authority Bill 2025 (2) is attached (A2508076)

Issues the Office has raised about the Cth PID Scheme

- **Complexities:** The PID Act is complex, making it difficult for both potential disclosers and agencies to understand rights, obligations and procedures, particularly for smaller agencies or those where disclosures are infrequent

- 2023 reforms addressed some of these complexities, including excluding most personal work-related conduct, and putting in place more robust oversight
- The new PID Standards Determination that came into effect in April 2026 also sought to provide more detailed requirements for agencies, to help disclosers, for example by ensuring agencies provide clear contact details for authorised officers.
- **Barriers for disclosers:** Issues such as uncertainty about how to make a disclosure, delays in handling disclosures, limited feedback to disclosers, and inconsistent support and protection and lack of clarity about how or when protections may apply to disclosers. This combined with high profile cases, where public officials appear to be punished for disclosing, present challenges to the effectiveness of the PID Scheme.
- **Variable agency practice:** We have observed differences in awareness, training and PID handling across agencies and challenges for agencies where there are not many disclosures
 - Agencies can respond in an overly legalistic and fragmented manner (ie focussing on each individual allegation and whether it is proved or not, not on what a disclosure might suggest more broadly)
- **Delays in investigations.** Trend data in our PID Annual and Biannual reports which began to appear prior to the reforms show an increase in the number of PID investigations taking more than 90 days
 - In the first half of 2025-26, just 28% of agency PID investigations were completed within 90 days. In 2024-25 it was 24% and in 2023-24 it was 40%.
 - In November 2025, my Office published an Insights Paper, *Making Time: Investigating PIDs*, which provides guidance to agencies on investigation timeframes and extension requests with a focus on the importance of timely investigation of PIDs
- **Decline in references to reprisal.** Decline in the number of disclosures to agencies, complaints or enquiries to this Office, concerning reprisal, noting that the data we hold may be incomplete.
 - In the July to December 2025 Biannual PID report, Commonwealth agencies reported 11 claims of reprisal received in PIDs but none of the claims of reprisal were substantiated.
 - In our 2024-25 PID Annual Report, agencies reported that 12 PIDs included claims of reprisal, but none of the claims were substantiated.
 - This appears to show a decrease in the number of PIDs about reprisal (18 PIDs in 2023–24, 24 in 2022–23 and 52 in 2021–22) noting that the data we hold may be incomplete.
- **Most agencies require more support and guidance to better support disclosers** and to identify, assess, monitor and respond to reprisal concerns. This conclusion is based on complaints made to my Office about reprisal, our review of investigation reports (which must document claims or evidence of reprisal and an agency's response to it), and agency responses to my Office's annual survey of agencies.
 - In April this year, my Office published an Insights Paper, [*Bringing understanding to reprisal*](#), to provide guidance to agencies about how better to anticipate and protect against reprisal, and improve the experience of those involved in whistleblowing.
 - This includes some best practice examples we have identified from our agency survey:
 - Internal PID Procedures that:
 - ✓ recognise reprisal can affect people other than the discloser, such as witnesses, even when the discloser is anonymous
 - ✓ accurately describe reprisal, and clearly

- ✓ explain how the duties of principal officers, their delegates and authorized officers in an agency will be coordinated and performed.
- Reprisal risk assessments are documented and regularly reviewed throughout the handling of a PID
- Risk assessors to independently consider risks and mitigations, rather than relying on the whistleblower or other potential victim to identify specific risks
 - ✓ Disclosers should be consulted to help inform the agency's assessment of reprisal risk, but this is not a substitute for the agency's own consideration of risks to a discloser.
- Where there are concerns about reprisal having occurred, expanding the scope of an open PID investigation to include investigation of related reprisal.
- Developing a list of actions that may help to protect against reprisal such as:
 - ✓ maintaining confidentiality and de-identifying information
 - ✓ considering where reprisal risk may be arise through a particular investigative action, and if a risk cannot be mitigated, discuss this with potentially affected persons before committing to the action
 - ✓ maintaining regular contact with the discloser or other at-risk employees
 - ✓ reminding individuals and potentially the agency as a whole that reprisal is a criminal offence
 - ✓ providing a support person for those who may be at risk
 - ✓ referring a person to counselling.
- The insights paper sought to address issues my Office has observed over a number of years, including through an [OMI into compliance with the PID Act in 2022](#).

Changes since the Moss Review relevant to protections

- The 2023 amendments implemented many of the Moss Review recommendations.
- Major changes included:
 - **Improved protections** for disclosers and witnesses
 - **Mandatory notifications** to the Ombudsman/IGIS (allocations or non-allocations, non-investigation decisions, extensions, finalisations).
 - **New oversight powers** for the Ombudsman and IGIS
 - **Integration with the NACC**, including stop-action directions.
 - **New six-monthly reporting requirement.**

Other insights from our reporting

- Since 2023-24 there has been a sharp increase in PID-related enquiries from potential disclosers and enquiries from agencies seeking assistance with the operation of the PID Act
- In July to December 2025, my Office received more disclosures about other agencies than in the whole of 2024–25 (105 compared with 83)
- In the 2024-25 Annual report we noted:

- a reduction in the number of disclosures about employment and related concerns, consistent with the removal of personal work-related conduct from the scope of the PID Act from 33% of disclosures not allocated in 2023-24 to 20% in 2024-25
- some growth in the early referral of matters away from the PID scheme to other more appropriate investigative frameworks - from 9% of disclosures not allocated in 2023-24 to 18% of disclosures not allocated

Document 3 - Internal preparatory correspondence to Ombudsman

From: Carmen Miragaya
Sent: Friday, 17 July 2026 12:19 PM
To: Iain Anderson
Cc: Samantha s 47F Cathy s 47F
Subject: RE: Whistleblowing symposium [SEC=OFFICIAL]
Attachments: Whistleblowing Symposium 20 July 2026.docx; 3398_TIA_WhistleblowerSymposium_Program.pdf; Insights-paper-Bringing-understanding-to-reprisal.pdf; Insights-paper-Making-time-Investigating-Public-Interest-Disclosures.pdf; Investigation-into-compliance-with-the-PID-2013.pdf; Submission-Exposure-Draft-of-the-Public-Interest-Draft-of-the-Public-Interest-Disclosure-and-Other-Legislation-Amendment-Whistleblower-Protections-Bill-2025.pdf; Submission-Whistleblower-Protection-Authority-Bill-2025-No.2.pdf; A2508076.obr

OFFICIAL

Hi Iain

Please see attached notes following your outline (we have not covered around the traps comparison but I will see if Policy prepared something in the context of our parliamentary submissions) and a number of publications that we have drawn from in preparing the notes.

Kind regards

Carmen

From: Iain Anderson s 47E(d)
Sent: Friday, 17 July 2026 11:42 AM
To: Carmen Miragaya s 47E(d)
Cc: Samantha s 47F s 47E(d) >
Subject: RE: Whistleblowing symposium [SEC=OFFICIAL]

OFFICIAL

Fantastic, thanks Carmen



Iain Anderson

Commonwealth Ombudsman

s 47E(d)

EA: Samantha s 47F s 47E(d)

s 47E(d)

COMMONWEALTH
OMBUDSMAN

The Office of the Commonwealth Ombudsman acknowledges the Traditional Owners of Country throughout Australia and their continuing connection to land, culture and community. We pay our respects to Elders past and present.

Canberra ACT 2601

From: Carmen Miragaya s 47E(d)

Sent: Friday, 17 July 2026 11:38 AM

To: Iain Anderson s 47E(d)

Cc: Samantha s 47F s 47E(d)

Subject: RE: Whistleblowing symposium [SEC=OFFICIAL]

OFFICIAL

Hi Iain

Yes – Cathy sent me some materials yesterday and I’m just packaging them up s 47F

).).

Will be with you in the next 30mins

Kind regards

Carmen

From: Iain Anderson <s 47E(d)>

Sent: Friday, 17 July 2026 11:37 AM

To: Carmen Miragaya s 47E(d)

Cc: Samantha s 47F s 47E(d)

Subject: RE: Whistleblowing symposium [SEC=OFFICIAL]

OFFICIAL

Hi Carmen,

Did the PID team have any data or suggested comments for me?

Regards,

Iain



Iain Anderson

Commonwealth Ombudsman

s 47E(d)

EA: Samantha s 47F s 47E(d)

s 47E(d)

COMMONWEALTH
OMBUDSMAN

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Canberra ACT 2601

From: Iain Anderson

Sent: Monday, 13 July 2026 11:20 AM

To: Carmen Miragaya s 47E(d)

Cc: Julie O'Brien s 47E(d); Samantha s 47F s 47E(d)

Subject: Whistleblowing symposium

Carmen,

Not sure if you've seen the programme, but"

- the Assistant Treasurer is giving a keynote
- then there's a panel of Senator Scarr, Allegra Spender MP and Andrew Wilkie MP
- then me doing a 15 minute keynote plus 15 minute Q+A
- then a panel on the state of play on whistleblower protections reform, where a Deputy Commissioner of the SA ICAC is the only govt speaker
- after lunch there are roundtables on tax and corporate whistleblowing protections
- then concurrent sessions on whistleblowing support (NSW Ombudsman has a speaker); whistleblowing protections (NACC is speaking); whistleblowing trends
- then a discussion with Richard Boyle
- then a keynote from the Slovakian Office for the Protection of Whistleblowers.

I won't be staying on after my session.

I was thinking of talking about the NSW Ombudsman model – their funding and staffing, the types of supports they are trialling.

Then a brief around the traps comparison, including OCO.

Then talking about issues we have raised with the PID Scheme – eg

- overly complex
- agencies respond in an overly legalistic and fragmented manner (ie focussing on each individual allegation and whether it is proved or not, not on what a disclosure might suggest more broadly)
- too slow
- lack of clarity about when whistleblowers are protected
- the complication of workplace issues, which still form a large proportion of APS issues
- any trends worth noting from the Moss report onwards?
- Any insights from our PID 6 monthly reports?

Regards,
Iain



Iain Anderson

Commonwealth Ombudsman

s 47E(d)

EA: Samantha s 47F s 47E(d)

s 47E(d)

COMMONWEALTH
OMBUDSMAN



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Canberra ACT 2601

Document 4 - Internal correspondence with Ombudsman

From: International
Sent: Tuesday, 14 July 2026 9:02 AM
To: Cathy s 47F
Cc: International
Subject: RE: For advice - Iain speaking at Whistleblower Forum 20/7 [SEC=OFFICIAL]
Attachments: PID Slides - Authorised Officer - Presentation.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

OFFICIAL

Morning Cathy

Carmen ran an online training session with ORI in March 2025. It was virtual and directed at a working level. There were around 30 participants from ORI, from their Inspectorate Division and Quality Management Team. I have attached her presentation.

Carmen presented then ORI was able to ask some questions. Carmen focused on the OCO PID policy and practice.

There wasn't a written briefing done for Carmen as we just had a chat at the time.

Sorry, that isn't that helpful!

Sarah

From: Cathy s 47F <s 47E(d)>
Sent: Tuesday, 14 July 2026 8:55 AM
To: International s 47E(d)
Subject: For advice - Iain speaking at Whistleblower Forum 20/7 [SEC=OFFICIAL]

OFFICIAL

Hi Melita and Sarah

Iain is doing a keynote address at a Whistleblower forum on Mon 20 July and I have been asked to do some talking points.

Has there been anything related to PID/whistleblowing in the past 12 months that it might be good to reference or be aware of – Carmen mentioned some consultation with Indonesia about PID? Do not need heaps of information but if you could share any briefing material or similar and I can come back to you if I need anything further.

I need to provide TPs by COB Wed 15 July so not much time – and if nothing, that is fine, I just wanted to cover all bases.

Kind regards
Cathy

Cathy **S 47F**
A/g Director
Public Interest Disclosures – Investigations Branch



Document 5 - Attachment to document 4 - PID training slides

PID OFFICERS FORUM

1

PUBLIC INTEREST DISCLOSURE *An introduction to the PID Act*

What is the PID Act?

A framework for:

- Encouraging and facilitating the making of public interest disclosures by public officials
- Ensuring that such disclosures are properly investigated and dealt with
- Ensuring disclosers are supported and protected

Why do we have a PID Act?

To promote Commonwealth
public sector integrity,
transparency and accountability

How does it work?

Key people

- Principal Officers
- Investigators/Principal Officer delegate
- Supervisors
- Authorised Officers
- Ombudsman / IGIS
- Support and co-ordination staff

What is a PID?

Internal

- an **Authorised Officer or Supervisor** within an agency
- an **Authorised Officer** at the Office of the Commonwealth Ombudsman

External

- discloser is **dissatisfied with investigation of an internal disclosure** or that investigation **was not within the time limit, and**
- the disclosure is **not contrary to the public interest**

Emergency

- where there is a substantial and imminent **danger to health or safety**, or to the **environment** and there are **exceptional circumstances** justifying disclosure

Legal disclosure

- to an Australian legal practitioner for the **purpose of obtaining legal advice** in relation to a disclosure or proposed disclosure

NACC disclosure

- to the NACC by a public official concerning corruption/disclosable conduct

What is an internal public interest disclosure?

When a
public official
(current or
former)

discloses
information

about
**disclosable
conduct**

to an
**authorised
internal
recipient**

they
receive
protection

2

PUBLIC INTEREST DISCLOSURE

*The role of an
Authorised Officer*

The role of an Authorised Officer

1. Receive and assess the information
2. Decide to allocate a disclosure
3. Decide not to allocate a disclosure
4. Conduct a reprisal risk assessment

Receiving and assessing the information

- AOs **must assess** the information disclosed, decide whether to allocate, and record their decision.
- AOs can **make enquiries** for the purposes of deciding where to allocate a disclosure.
- AOs should use **best endeavours** to make an allocation decision **within 14 days** of receipt
- AOs **must not**:
 - purport to exercise discretion under s48 (e.g. decide not to allocate because of a previous investigation)
 - overstep their delegation and 'investigate'

Who can make a disclosure?

a 'public official'
(current or former)

- Public servants and parliamentary service Public servants and parliamentary service officers
- Service providers under a Commonwealth contract
- Defence Force members
- Australian Federal Police appointees
- Statutory office holders
- Staff of Commonwealth companies
- Individuals taken to be public officials

Who can a disclosure be made to?

to an authorised internal recipient

- principal officer or authorised officer of own agency, agency where the public official previously belonged, or agency to which the disclosable conduct relates
- supervisor or manager
- Commonwealth Ombudsman
- IGIS (if the matter relates to an intelligence agency)

Example 1

Sue used to work for Agency A and is now employed at Agency B. In the course of her duties, Sue receives information about possible disclosable conduct at Agency C.

Question: Is Sue a public official?

Question: If so, who can Sue disclose to? Agency A, B or C?

Example 2

Rod tells a colleague at work about suspected disclosable conduct by procurement staff in his agency. His colleague is really concerned by what she hears and speaks with her manager, who says she will look into it.

Question: Has Rod made a disclosure to an authorised recipient?

What is disclosable conduct?

Disclosable conduct is conduct engaged in by:

- an agency
- a public official in connection with their position
- a contracted Commonwealth service provider, or an employee of a contracted service provider, if the conduct is in connection with the entering into or giving effect to the Commonwealth contract
 - In other words - there needs to be a link between the conduct in question and the function provided under the contract

Types of disclosable conduct

- Breach of a law of the Commonwealth, State or Territory
- Corruption / perverting the course of justice
- Maladministration
- Abuse of public trust
- Wastage of public money or property
- Fabrication, falsification or deception in relation to scientific research
- Wastage of money or property
- Unreasonable danger to public health or safety
- Unreasonable danger to the environment
- Conduct engaged in by a public official that could, if proved, give reasonable grounds for disciplinary action resulting in the termination of the official's engagement

What is not disclosable conduct

- Disagreements with Government policy or proposed policy
- Conduct connected with courts or Commonwealth tribunals
- Conduct undertaken by an intelligence agency in the proper performance of its functions
- Action taken by a government minister, member of parliament, Speaker of the House of Representatives or President of the Senate

What is not disclosable conduct cont.

Personal work-related conduct meaning

conduct (by act or omission) engaged in by a public official (the **first official**) in relation to another public official (the **second official**) that:

- (a) occurs in relation to, or in the course of, either or both of the following:
 - (i) the second official's engagement or appointment as a public official;
 - (ii) the second official's employment, or exercise of functions and powers, as a public official; and
- (b) has, or would tend to have, personal implications for the second official.

What is personal work-related conduct?

- interpersonal conflict (including bullying or harassment)
- transfer or promotion
- terms and conditions of engagement or appointment
- disciplinary action
- suspension or termination of employment or appointment
- conduct which can be reviewed under s 33 of the *Public Service Act 1999* (review of action) or any other comparable review process that forms, or formed, part of a person's engagement or appointment.

But it will be disclosable conduct if:

- Personal work-related conduct that would constitute taking a reprisal against another person
- Personal work-related conduct that would undermine public confidence or has significant implications for an agency (or agencies)

Assessing disclosable conduct

The information tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of disclosable conduct.

Belief on reasonable grounds

- must be more than a suspicion or assertion
- should have some tangible support for the belief such as evidence, corroboration of others

Tends to show

- must have sufficient information to support the allegation (who, what, when, where, how)

Needs to be more than a mere assertion, but no need for a smoking gun.

Remember – this is a threshold assessment, not an investigation

Example

The AO receives a disclosure which provides only the following information:

“I want to make a public interest disclosure because I am concerned about reprisal action. There is a culture of bullying anyone who raises concerns which has been going on for years. I have raised concerns about being bullied many times and nothing has happened as a result. Someone needs to be held accountable.”

Question: would this meet the PID criteria?

Example

The AO receives a disclosure which provides the following information:

Payments are being made to contracted service providers without proper procedures being followed.

Question: would this meet the PID criteria?

Decision to allocate

- The AO may decide to **allocate it to their agency** or they may **allocate the disclosure to another agency**.
- The AO must notify the Principal Officer of:
 - the allocation to the agency
 - the information disclosed
 - the conduct disclosed, and
 - **if the discloser consents**, the discloser's name and contact details
- The AO **must** also notify the Office of the Commonwealth Ombudsman of their decision to allocate a disclosure, and can do this by completing a **Form 1 – s441A - Notification of allocation form**
- The AO should conduct a **risk assessment of possible reprisal** against the discloser

Decision not to allocate

Reasons for deciding not to allocate a disclosure

- The disclosure **did not** satisfy the requirements for an internal disclosure
- The disclosure **did** satisfy the requirements of an internal disclosure, but the conduct would be more appropriately investigated under another law or power
 - AO's must identify the action taken or proposed
 - AO's must identify the law or power referred under and facilitate the referral
 - AO's must notify the discloser of the reasons and actions taken to refer the matter
- Authorised Officers **must** also notify the Office of the Commonwealth Ombudsman of their decision not to allocate a disclosure, and can do this by completing a **Form 4 – s44A - Notification of decision not to allocate a disclosure**

AO assessment – further considerations

NACC referral

- AO's **must** refer the disclosure to the NACC if they suspect the disclosure identifies:
 - Serious corrupt conduct
 - Systemic corrupt conduct
- AO's may make a referral to the NACC prior to or following the allocation of a disclosure
- Agency's must notify the Ombudsman when a stop action direction from the NACC prevents allocation of all or part of a disclosure.

Following allocation...

- Once a PID is allocated a decision will be made **whether to investigate**
- Agencies may decide **not to investigate** PIDs in certain circumstances. If so, reasons for the decision are given to the discloser.
- If the PID is investigated the discloser is notified of that decision and informed **how long** the investigation is estimated to take.
- The investigation will be conducted in accordance with the requirements of the **PID Act and PID Standard**
- Once the investigation is complete, the discloser **receives a report** explaining the matters considered in the investigation, its duration, findings, recommendations any evidence of reprisal action and how this was handled

Reprisal Risk Assessment

- When allocating a disclosure, a reprisal risk assessment must be conducted
- The risk assessment is based on whether reprisals may be taken against a discloser
- Indicators of risk include:
 - Threats or past experience
 - The likelihood of confidentiality being maintained
 - The significance of the wrongdoing reported
 - The vulnerability of the discloser
- AO should be mindful of providing options for support to disclosers

Risk Mitigation approach

- **Identify** – are reprisals or related workplace conflict problems in the workplace, or do they have the potential to be problems?
- **Assess** – what is the likelihood and consequence of reprisals or related workplace conflict?
- **Control** – what strategies should be put in place to prevent or contain reprisals or related workplace conflict?
- **Monitor and review** – have the strategies been implemented and were they effective?

Support/ Communication

- Acknowledge disclosures promptly
- Keep accurate records
- Keep disclosers updated and manage expectations
- Have a plan/policy in advance for unreasonable behaviour

Engaging with our Office about PIDs

Three key types of engagement:

1. Notifying us of decisions to allocate or not allocate, or reallocate
2. Allocations by our Office to your agency
3. Complaints about or review of an agency's handling of a PID

PID allocations by our Office

How do we assess and allocate disclosures?

- Our authorised officers (AOs) consider the **same three basic questions** as your AOs.
- *BUT* our AOs need to look at different factors when deciding if they are an '**authorised internal recipient**' for the purposes of section 34 of the PID Act.

PID complaint or review

- The role of our Office in assessing a PID handling complaint is to consider whether:
 - the agency's handling of the disclosure was consistent with its obligations under the PID Act
 - the agency appropriately considered relevant information in making a decision
 - the agency's actions and decisions were reasonably open to it.
- The Office can investigate the handling of a disclosure on the basis of a notification from an agency, without a complaint having been made.
- Our Office can make recommendations to the agency under the Ombudsman Act to improve its administration of the PID scheme or revisit the assessment/investigation of the disclosure.

Resources available

- The PID team at the OCO is available to provide advice and support in managing your responsibilities
Contact us : PID@Ombudsman.gov.au
- Our website: www.ombudsman.gov.au has a range of resources for agencies, authorised officers and disclosers.
- The Agency Guide to the PID Act is an excellent resource which steps you through all the processes associated with handling PIDs
- The PID Act and the PID Standard

Questions?