

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

I, Iain Anderson, Commonwealth Ombudsman make the following procedures under s 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
- supporting and protecting persons who make public interest disclosures.

These procedures commence on 1 October 2023.



Iain Anderson

Commonwealth Ombudsman
Principal Officer

Table of Contents

INTRODUCTION	4
Purpose of these procedures	4
An overview of the <i>Public Interest Disclosure Act 2013 (PID Act)</i>	4
What is a public interest disclosure?	4
What is an internal disclosure?	5
Who is a public official?	5
Deeming someone to be a public official	5
Who is an Authorised Officer?	5
What is disclosable conduct?	6
What is not disclosable conduct?	6
SUPPORT AND PROTECTION	7
Support	7
Training and education	7
For disclosers and those assisting with a PID investigation	7
For subjects of a disclosure	8
Protection	8
Protecting the discloser's identity	8
Immunity from liability	9
Reprisal	9
What is reprisal?	9
What is not a reprisal?	9
How will the Office mitigate and respond to reprisal action?	10
THE DISCLOSURE PROCESS	11
Making a disclosure under the PID Act	11
How do I make a disclosure and who do I make it to?	11
I think I want to make a disclosure – what else should I know?	11
What should I include in my disclosure?	12
Can I withdraw my disclosure?	13
What are my obligations when making a disclosure?	13
ANONYMOUS DISCLOSURES	13
Reasons why a discloser may consider identifying themselves	13
PROCEDURES FOR SUPERVISORS AND MANAGERS	14
PROCEDURES FOR AUTHORISED OFFICERS	15
Advising disclosers and potential disclosers about the PID Act	15

Deciding whether or not to allocate a disclosure	16
Where to allocate an internal disclosure	18
Record keeping for Authorised Officers	18
Reprisal risk assessment	19
PROCEDURES FOR INVESTIGATORS	20
Deciding whether or not to investigate a disclosure	20
Notifying the discloser of a decision not to investigate or not to further investigate	21
Investigating a disclosure	21
Notifying the discloser	21
Engaging with Witnesses	22
Conducting Interviews	22
Procedural Fairness	23
Time Limits	23
Confidentiality	24
Reports of Investigations	24
RECORD-KEEPING AND MONITORING	25
Record keeping	25
Monitoring of investigations	26
INTERACTION BETWEEN THE NATIONAL ANTI-CORRUPTION COMMISSION AND THE PID SCHEME	26
Mandatory referral obligations for PID staff	26
What is serious or systemic corrupt conduct?	26
What information to refer - secrecy obligations and confidential information	27
How to make a mandatory referral	28
How does a mandatory referral affect other obligations?	28
Stop action directions	28
How does a stop action direction affect other obligations under the PID Act?	29
ATTACHMENT A - INDICATORS OF A HIGHER RISK OF REPRISALS OR WORKPLACE CONFLICT	30

INTRODUCTION

Purpose of these procedures

The purpose of these procedures is to:

- provide information to the Office's employees (and contractors) about the *Public Interest Disclosure Act 2013*
- explain how public interest disclosures can be made about the Office (as an agency) or its own public officials, or another Commonwealth agency, and
- explain how the Office will facilitate and handle such disclosures.

These procedures explain:

- the legislative framework for public interest disclosures
- what a public interest disclosure is
- how current and former employees (and contractors) can make a public interest disclosure
- the public interest disclosure assessment, allocation and investigation processes, and
- the protections available to disclosers and those assisting with the handling of disclosures.

An overview of the *Public Interest Disclosure Act 2013* (PID Act)

The PID Act seeks to promote the integrity and accountability of the Commonwealth public sector by:

- encouraging and facilitating the disclosure of information about suspected wrongdoing in the public sector
- ensuring that people who make public interest disclosures are supported and protected from adverse consequences, and
- ensuring that agencies take action and properly investigate public interest disclosures.

What is a public interest disclosure?

A public interest disclosure is a disclosure by a current or former public official of suspected wrongdoing in the Commonwealth public sector. There are 5 types of public interest disclosures recognised by the PID Act: internal, external, emergency, National Anti-Corruption Commission disclosure (NACC disclosure) and legal practitioner disclosures.

Internal disclosures made about this Office or its officers are the focus of these procedures.

More detail about NACC, legal practitioner, external and emergency disclosures can be found in the [Agency Guide](#) to the PID Act. People contemplating making a disclosure outside of government, to someone other than an Authorised Officer or their supervisor, should consider seeking legal advice about the application of the PID Act to their circumstances.

What is an internal disclosure?

An internal disclosure is made when:

- a person who is or has been a public official
- makes a 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.

A disclosure is not an internal disclosure until an Authorised Officer has decided applicable requirements of the PID Act have been met. Assuming the disclosure is made by a current or former public official to their supervisor or an Authorised Officer, the assessment by an Authorised Officer will primarily involve whether the disclosure tends to show one or more instances of disclosable conduct.

Who is a public official?

A person must be a current or former public official to make a disclosure. This term includes Australian Government public servants, statutory office holders and staff of Commonwealth contracted service providers.

Deeming someone to be a public official

An Authorised Officer may decide to take a person to be a public official, if the Authorised Officer reasonably believes that the person has information that concerns disclosable conduct (see s 70 of the PID Act).

An Authorised Officer can decide to deem a person to be a public official at the request of the person or on the Authorised Officer's own initiative. If a person requests a s 70 determination, the Authorised Officer must provide the person with reasons for their decision if they decide not to deem them to be a public official.

It is anticipated that an Authorised Officer will make their decision having regard to the nature of the information reported and whether it is in the public interest to have the matter dealt with as a disclosure under the PID Act. For example, an Authorised Officer might exercise this discretion where a person appears to have 'inside information' relating to serious wrongdoing in the Office.

Who is an Authorised Officer?

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

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

The names of Authorised Officers within the Office can be found on the intranet in the location where [legal delegation instruments are published](#). Where a public official does not have access to the intranet the PID Team can be contacted for further information by email to PID@ombudsman.gov.au.

What is disclosable conduct?

The full definition of disclosable conduct is found in s 29 of the PID Act.

Disclosable conduct is conduct by an agency, a public official (in connection with his or her position as a public official) or a contracted service provider (in connection with entering into or giving effect to a Commonwealth contract) that:

- is unlawful
- in a foreign country, contravenes a foreign law applicable to the agency or public official and corresponds to a law in force in the ACT
- involves perverting the course of justice or corrupt conduct
- is maladministration, including conduct that is based on improper motives or is unreasonable, unjust, oppressive or negligent
- is an abuse of public trust
- involves fabrication, falsification, plagiarism or deception relating to scientific research, or other misconduct in relation to scientific research, analysis or advice
- results in wastage of public money or public property
- unreasonably endangers or increases risk of endangering, health and safety
- endangers, or increases risk of endangering, the environment
- involves or is engaged in for the purpose of the person abusing their position as a public official
- could, if proved, give reasonable grounds for disciplinary action resulting in the termination of the official's engagement or appointment.

What is not disclosable conduct?

The following categories of conduct are generally not disclosable conduct under the PID Act:

- personal work-related conduct (unless it constitutes reprisal or if the conduct is of such a significant nature that it would undermine public confidence in, or has other significant implications for, the Office)
- conduct related to courts, tribunals and the Parliament
- disagreement with government policy or expenditure related to those policies, and
- activities of grant recipients.

Personal work-related conduct is an action or omission in relation to a public official's engagement or appointment and/or employment (i.e. a work-related action) that has, or would tend to have, personal implications for that public official (i.e. the action personally affects that person). Personal work-related conduct is taken to include:

- Interpersonal conflict, including bullying or harassment.
- Decisions about a person's employment, engagement, transfer, or promotion – including decisions to suspend, terminate, or discipline a person, or the terms and conditions of a person's employment or engagement.
- Conduct in relation to which the public official has or had review rights under section 33 of the *Public Service Act 1999* or comparable review processes.

More detail about what is and is not disclosable conduct can be found in the [Agency Guide](#) to the PID Act.

SUPPORT AND PROTECTION

Support

The Office encourages and supports the reporting of wrongdoing by public officials. The Office will take active steps to support and protect employees from reprisals in relation to PIDs that have been, may have been, are proposed to be, or could be made to the agency.

Training and education

The Office will provide training and education to staff about the PID Act, and any training necessary to support officials to carry out their functions under the Act.

At minimum, the Office will:

- ensure e-learning training and fact sheets about the PID Act are kept accessible and up to date
- ensure these procedures are available for all current and former staff by publishing the procedures on the Office's intranet and external website
- run an annual refresher training session for Authorised Officers and provide training and support for newly appointed Authorised Officers.

For disclosers and those assisting with a PID investigation

The Office recognises the PID process can be difficult and stressful for disclosers and those who assist in the investigation process. People may experience anxiety about the impact of any investigation on workplace relationship dynamics. Sometimes, a person might not consider they are experiencing reprisal action within the meaning of the PID Act, but may nonetheless have concerns about being treated differently in their work area. The Office encourages people to discuss any such concerns with their supervisor, if comfortable doing so, and will provide an assurance that the Office will take all reasonable steps necessary to protect them in addition to considering providing the following support where appropriate:

- the offer of a support person¹ and information about other available support options
- the offer of additional Employee Assistance Program sessions through the Office's provider
- regular updates on the progress of the investigation
- if workplace stress and reprisal risks cannot be otherwise mitigated, consideration of allowing transfer to a different work area or access to leave whilst the investigation remains ongoing

¹ A support person would be somebody who is not the Authorised Officer or the investigator, and whose role may be to check regularly on the discloser's wellbeing. They may provide general reassurance and guidance insofar as the discloser might experience heightened stress in the workplace during the investigation. While a support person may help the discloser to identify if other professional supports may be beneficial, it is important to recognise that they will not be qualified, nor expected, to provide psychological counselling.

- at the end of the disclosure process, an opportunity for debriefing and discussion of questions or concerns.

For subjects of a disclosure

A person who is subject to an allegation made in a public interest disclosure will be informed of the allegation (or allegations) if an adverse finding against them is considered likely. This is consistent with the person's entitlement to be accorded procedural fairness where their interests may be affected by an administrative decision. In view of these considerations, if the subject is aware of allegations having been made about their conduct, or is aware that a disclosure investigation is occurring, or if an adverse finding against them is considered likely, one or more of the following actions may occur:

- providing the person with information about their rights and obligations under the PID Act
- providing the person with information about the Office's investigation procedures and any other relevant matter
- ensuring the identity of the person is protected as much as reasonably practicable
- advising them of the availability of the Office's Employee Assistance Program and where appropriate, the offer of additional Employee Assistance Program sessions.

Protection

Protecting the discloser's identity

It is an offence for any person to 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 for the purposes of another Commonwealth law or a prescribed State or Territory law
- is in connection with the Ombudsman carrying out their public interest disclosure functions under the *Ombudsman Act 1976*.

To protect a discloser's identity and to guard against the potential misuse of identifying information, 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 and may result in disciplinary proceedings
- ensure the discloser can communicate with a support person, the Authorised Officer or investigator without alerting other staff
- 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 an investigation, and monitor the situation.

Immunity from liability

A person who makes a public interest disclosure or provides assistance in relation to a disclosure, such as a witness, is not subject to any civil, criminal or administrative liability (including disciplinary action) for making the disclosure or assisting.

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 a person:

- knowingly makes a statement that is false or misleading
- makes a disclosure knowing that it contravenes a designated publication restriction² and without a reasonable excuse for doing so.

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

Reprisal

What is reprisal?

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

Detriment includes dismissal, injury in a person's employment, discrimination between a person and other employees, alteration of a person's position to their disadvantage, harassment or intimidation, harm or injury to a person, and any damage to a person (including their property, reputation or business or financial position). It includes conduct that causes detriment as well as direct and indirect threats to do so.

What is not a reprisal?

Administrative action that is reasonable to protect a person from detriment is not 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 or assisting in a disclosure investigation does not exclude a person from reasonable management action for any unsatisfactory performance or wrongdoing on their part – such action is not a reprisal.

² This term generally refers to certain restrictions which protect the identity of people, by means such as a court or tribunal order that information not be published, witness protection and law enforcement mechanisms (see s 8 of the PID Act for the specific details).

How will the Office mitigate and respond to reprisal action?

The Office will not tolerate any reprisal action against a person who makes a public interest disclosure or against any other person because of a belief that a public interest disclosure may have been made or could be made. Every allegation of reprisal will be taken seriously, recorded and responded to.

At the outset, as soon as is practicable after receiving a disclosure, an assessment will be conducted by the Authorised Officer to assess the risk that reprisal action may be taken against the discloser or any other person, as well as strategies to deal with any identified risks. Further information in relation to the risk assessment process, and who might be consulted in that process, is contained in the section titled *Procedures for Authorised Officers*.

After the Authorised Officer has decided whether the disclosure meets the requirements to be allocated under the PID Act for investigation, everybody involved in handling a public interest disclosure, and aware of the discloser's identity, or a person providing assistance – which may include an 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 – has a responsibility to act if signs of detriment become apparent to them. In the event they observe or are told of concerning behaviour, they must escalate this information to a senior manager for consideration and rapid response.

If a person believes that reprisal action has been or is being taken against them they should immediately tell their supervisor (provided that person is not involved in the alleged wrongdoing) or a senior manager and the investigator. As detailed above, supervisors and investigators have a responsibility to promptly escalate any such concerns to a senior manager.

If a senior manager receives a report of reprisal action, they will ensure the Office:

- takes all steps reasonably possible to stop that alleged reprisal and protect the person³, having reference to the vulnerabilities and strategies identified in the reprisal risk assessment
- takes action to investigate the suspected reprisal⁴ noting that such a report may indicate disclosable conduct and will be referred by a supervisor or senior manager to an Authorised Officer for assessment
- arranges for the matter to be dealt with in an appropriate manner.

A person can also take the following actions, on their own initiative, if they have experienced reprisal action:

³ Subject to the seriousness of the reprisal concerns raised, this might include consideration of the appropriateness of remote working arrangements or a period of leave, for the discloser and/or the subject of the allegations.

⁴ Depending on the circumstances, this might include confidential discussions with any or all of the following: the discloser, the alleged perpetrator, the discloser's supervisor, the site supervisor, and the relevant Senior Assistant Ombudsman.

- report the reprisal to Police, noting that it is a criminal offence to cause detriment to a person because of a suspicion or belief that they have made, or will make, a public interest disclosure
- apply to the Federal Court or Federal Circuit and Family Court (the court) for an injunction to prevent a reprisal, and
- apply to the court for compensation for loss, damage or injury suffered from a reprisal.

The Ombudsman's [Agency Guide](#) provides additional information about the actions a discloser can take, on their own initiative, if they have experienced reprisal action.

THE DISCLOSURE PROCESS

Making a disclosure under the PID Act

How do I make a disclosure and who do I make it to?

A public official can make a disclosure to any of the following people (*authorised recipients*):

- an Authorised Officer
- their supervisor or manager, or
- the Ombudsman (Principal Officer).

Where possible, the Office encourages its employees (and those of its contracted service providers) to make disclosures directly to an Authorised Officer either via email to pid@ombudsman.gov.au or post to GPO Box 442 Canberra ACT 2601. This is because Authorised Officers have particular expertise in receiving disclosures and are also well equipped to provide information to disclosers about the PID Act protections and what they can expect from the process.

There is considerable flexibility in the ways a person might make a disclosure. This means that:

- disclosers can choose not to identify themselves if they prefer to remain anonymous or use a pseudonym (see section titled *Anonymous Disclosures*)
- disclosures may be made orally or in writing
- a report of wrongdoing to an authorised recipient can be considered to be a disclosure even if the discloser does not expressly state or intend that they are making their report under the PID Act.⁵

I think I want to make a disclosure – what else should I know?

It is important to be aware that Authorised Officers and supervisors have mandatory obligations to act on disclosures that they receive. Accordingly, employees of the Office (and its contracted service providers) are encouraged to access information on the Office's external [website](#) about

⁵ Disclosures that occur between a public official and their supervisor or the Ombudsman as a result of their day to day duties (e.g. as part of discussing an investigation or managing the Office's fraud functions) are not disclosures for the purposes of the PID Act.

the range of options and remedies available to them before committing to the PID Act process and the type of investigation this usually involves.

People considering making a disclosure and wanting to know more about the complaint options available to them are therefore encouraged to review the information published on the Office's intranet and external [website](#). Before making a report, people may also wish to find out more about the relative merits of different processes by contacting:

- Human Resources
- a Health and Safety Representative
- a Harassment Contact Officer
- the Australian Public Service Commission's Ethics Advisory Service
- our Office's PID Team (by email: pid@ombudsman.gov.au or by talking to the PID Director or a member of the PID Team).

The types of issues that can be considered as a disclosure are very broad, however an investigation under the PID Act will not always result in the outcome a person is seeking. If a person is seeking a particular personal outcome or remedy, for example, there may be other mechanisms available to address the issue (e.g. alternative dispute resolution processes), either in addition to or as an alternative to making a disclosure.

What should I include in my disclosure?

Once a person has decided to make a disclosure, they 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 (unless they wish to remain anonymous)
- the nature of the wrongdoing (be clear and factual)
- who they think committed the wrongdoing
- when and where the wrongdoing occurred⁶
- relevant events surrounding the issue
- if they did anything in response to the wrongdoing
- others who know about the wrongdoing
- the reasons why they believe the information tends to show disclosable conduct
- if they are concerned about possible reprisal as a result of making a disclosure.

When making a disclosure, the information provided should be clear and factual, and should, as far as possible, avoid speculation, personal attacks and emotive language. It should contain

⁶ There are no time limits for making a disclosure. It does not matter whether disclosable conduct occurred before or after the PID Act commenced on 15 January 2014.

supporting evidence where that is available to the discloser and should, where possible, identify any witnesses to the disclosable conduct.

However, a potential discloser should not attempt to investigate a matter themselves before making a disclosure.

Can I withdraw my disclosure?

Once a disclosure has been made, it cannot be withdrawn. 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 would be taken into account in determining whether to exercise discretion not to investigate or not investigate further. It should be noted, however, the Office may continue to investigate.

What are my obligations when making a disclosure?

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 (unless the discussion meets the criteria for an external disclosure, emergency disclosure or legal practitioner disclosure). Additionally, action taken by a discloser to investigate their disclosure will not be protected by the PID Act and may hinder any investigation undertaken.

ANONYMOUS DISCLOSURES

Anybody who is eligible to make a disclosure under the PID Act can do so anonymously or by using a pseudonym.

A disclosure is anonymous if the discloser does not provide their name or contact details. It is also anonymous if the discloser does not disclose their name but does provide de-identified contact details, such as a pseudonym email address.

The fact that a report is made anonymously does not mean that it cannot be treated as a disclosure for the purposes of the PID Act. The obligations for Authorised Officers, supervisors or managers upon receiving an anonymous disclosure apply in the same way. For supervisors or managers in particular, this means they must refer the disclosure to an Authorised Officer as soon as is reasonably practicable.

Reasons why a discloser may consider identifying themselves

Below are some reasons why a discloser might consider identifying themselves to an Authorised Officer, or at the very least providing a means of contact:

- 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 Office should discuss the implications with (or provide information to) the discloser.
- It can be difficult to ensure protection from reprisal if the Office 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 or be satisfied there is a reasonable basis for the discloser's belief that disclosable conduct has occurred. 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 – however the Authorised Officer or investigator will need to be satisfied they are the person who made the disclosure.

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.

However, supervisors should note that disclosures made in the course of performing one's ordinary functions as a public official are not disclosures under the PID Act. This means that routine discussions within the Office where everyday functions involve investigation of wrongdoing do not constitute an internal disclosure and do not require referral to an Authorised Officer. The exclusion does not prevent such an official from making a disclosure, however they would need to make their intention clear when communicating to their supervisor, an Authorised Officer, or the Ombudsman.

At the outset, where the discloser's identity is known, the supervisor or manager must also:

- explain to the discloser that their disclosure could be treated as an internal disclosure and their obligation to give information to an Authorised Officer if they have reasonable grounds to believe that the information concerns, or could concern disclosable conduct.
- explain the next steps in the process – namely referring the disclosure to an Authorised Officer, the potential allocation of the disclosure to the Office (or another agency if appropriate) for investigation, and investigation of the disclosure
- explain the circumstances in which a disclosure must be referred to an agency, or other person or body, under another law of the Commonwealth – namely referral to the NACC if the disclosure involves suspected serious or systemic corruption
- explain the civil and criminal protections the PID Act provides to disclosers, and those assisting with the handling of a disclosure
- check the discloser's views on whether there is any reason why a particular Authorised Officer should, or should not, be provided the information (for example if the Authorised Officer was involved in the conduct)

- seek the discloser's consent to identify them as the source of the information.

The PID Act defines a supervisor as a public official who supervises or manages the person making the disclosure. This means that a public official may have more than one supervisor. Broadly speaking, a public official's supervisor or manager is someone in their 'chain of command', and this may extend beyond a daily and direct form of supervision.

Where a verbal disclosure is made to a supervisor or manager (irrespective of whether the person intended to make a disclosure under the PID Act), the supervisor or manager must make a written record of the substance of the disclosure and of the date and time it was made. They must then ask the discloser to endorse the written record of the disclosure⁷, where this is practicable.⁸

Upon providing the information to an Authorised Officer, the supervisor or manager:

- 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 (if the discloser can be contacted)
- must not name the source of the information if the discloser has not consented to their identity being made known to an Authorised Officer
- must give the Authorised Officer their assessment of any risks that reprisal action might be taken against the person who disclosed the information
- must remove any electronic records of the disclosure from their personal office email account and appropriately dispose of any hardcopy documents (once certain all necessary information has been given to the Authorised Officer).

In circumstances where a supervisor or manager receives allegations about wrongdoing which are, *prima facie*, insufficient to establish reasonable grounds for a belief that the information concerns disclosable conduct, it may nevertheless be appropriate for them to encourage the discloser to raise their concerns directly with an Authorised Officer in the Office, and to provide them with the relevant contact details to do this.

Additionally, Agency Heads, including the Ombudsman, have mandatory obligations to refer suspected serious or systemic corrupt conduct of agency staff to the NACC for possible investigation. Please see the Office's public website for information about mandatory referrals to the NACC.

PROCEDURES FOR AUTHORISED OFFICERS

Advising disclosers and potential disclosers about the PID Act

Where:

⁷ For example, by signing the written record or providing an email to confirm the written record is an accurate account of their disclosure.

⁸ For example this may not be practicable where it is an anonymous disclosure and the supervisor or manager cannot contact the discloser.

- 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 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
- explain to the person what the PID Act requires for a disclosure to be an internal disclosure
- when explaining the requirements of the PID Act to disclosers, explain the circumstances in which a disclosure must be referred to another agency, person, or body, under another law (i.e. referral to the NACC if the disclosure could involve serious or systemic corrupt conduct)
- advise the person of any orders or directions relating to designated publication restrictions that may affect disclosure of the information⁹.

Authorised officers must also:

- take reasonable steps to protect public officials who belong to the agency from reprisal if the Authorised Officer suspects a relevant PID has been, may have been, is proposed to be, or could be made or given to the Authorised Officer
- refer suspected systemic or serious corrupt conduct to the NACC (see Interaction between the National Anti-Corruption Commission and the PID Scheme below).

As detailed in the previous section relating to supervisors and managers, where the disclosure is made verbally to an Authorised Officer, they must make a written record of the substance of the disclosure and of the date and time it was made. They must then ask the discloser to endorse the written record of the disclosure¹⁰, where this is practicable.

Deciding whether or not to allocate a disclosure

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 calendar days** of receiving the disclosure. The 14 days commence the day after the disclosure is received by the Authorised Officer.

⁹ This term generally refers to certain restrictions which protect the identity of people, by means such as a court or tribunal order that information not be published, witness protection and law enforcement mechanisms (see s 8 of the PID Act for the specific details).

¹⁰ For example, by signing the written record or providing an email to confirm the written record is an accurate account of their disclosure.

An Authorised Officer who receives a disclosure must allocate it for handling unless they are satisfied, on reasonable grounds, that there is no reasonable basis on which the disclosure could be considered to be an internal disclosure.

Authorised Officers may allocate a disclosure for investigation to an agency within the same portfolio as this Office (or another agency) if it would be better able to handle the disclosure.

Authorised Officers may decide not to allocate a disclosure for investigation if satisfied on reasonable grounds that there is no reasonable basis on which the disclosure could be considered an internal disclosure.

Authorised Officers may decide not to allocate a disclosure if satisfied on reasonable grounds that the conduct disclosed would be more appropriately investigated under another law or power such as a Code of Conduct investigation under the *Public Service Act 1999*.

To decide whether the information could reasonably be considered an internal disclosure, an Authorised Officer must be satisfied of 3 basic requirements:

- (i) that the discloser is, or was, a public official (note: a person can be deemed to be a public official, see below)
- (ii) that the person made the disclosure to an authorised recipient, either an Authorised Officer, their supervisor or manager, or the Ombudsman¹¹
- (iii) that 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 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 a disclosure is not to be allocated, they must, where the discloser's contact details are known to the Authorised Officer, advise the discloser and the PID team in writing of:

- the reasons why the disclosure is not to be allocated
- if the disclosure does not meet the requirements of an internal disclosure, any other courses of action that might be available to the discloser under other laws of the Commonwealth
- if the disclosure would be better investigated under another law or power, take steps to refer, or facilitate the referral of, the disclosure to that other investigation process.

The Authorised Officer should also advise the discloser that they may seek an internal review where a disclosure is not allocated, within 7 calendar days of being notified of the decision. If the discloser seeks review, they should do so in writing, giving the reasons why they believe the

¹¹ Disclosers should be aware that ordinarily, disclosures made to the Ombudsman will be referred by the Ombudsman to another Authorised Officer for action, unless there are circumstances which indicate only the Ombudsman should conduct an initial assessment. In these circumstances, it would nevertheless remain open to the Ombudsman to seek such assistance as they require from a delegate under the PID Act.

decision is incorrect and providing any further relevant supporting information. A discloser has one opportunity for internal review, which will be undertaken by a different Authorised Officer to the first Authorised Officer who assessed the disclosure.

Alternatively, where the Authorised Officer decides to allocate a disclosure, and where they are aware of the discloser's contact details, they must, as soon as practicable after reaching a decision, ask the discloser whether they consent to the Authorised Officer giving their name and contact details to the Ombudsman (and delegates). It is preferable for the discloser to provide their response in writing if practicable.

Where no response is received within 7 calendar days the discloser is taken not to have consented to the disclosure of their name and contact details to the Principal Officer and their delegates.

Where to allocate an internal disclosure

In most cases, a disclosure should be allocated to the agency to which the disclosure relates. This means that, generally, where a disclosure relates to the Office it would be appropriate for an Authorised Officer to allocate it to the Office.

Where an Authorised Officer decides that allocation to another agency is more appropriate, they must consult with an Authorised Officer in that agency before they can allocate an internal disclosure to the other agency.¹²

In either case, where an Authorised Officer in the Office allocates a disclosure to an agency (including to the Office) they must inform the Principal Officer of the applicable agency of:

- the allocation
- the information that was disclosed
- the suspected disclosable conduct
- 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.

Where the Authorised Officer is aware of the discloser's contact details, the Authorised Officer must also inform the discloser, in writing, of the allocation to the relevant agency.

If an Authorised Officer decides to allocate a disclosure to another agency, i.e. not to the Office, written notice must also be provided to the PID Team. This notice can be provided via the appropriate notification form found on our public website.

Record keeping for Authorised Officers

There are requirements under the PID Act for Authorised Officers to maintain written records, such as of:

¹² While the Authorised Officer is required to consult with an Authorised Officer of the agency the PID will be allocated to, the Ombudsman's Office does not need consent from the Authorised Officer of the other agency to allocate a PID to another agency.

- Allocation decisions—including allocation, reallocation, or a decision not to allocate. Such records must include:
 - reasons for the decision
 - if allocating to a different agency, records of consultation
 - a notice to the discloser, or if no notice was provided the reasons why
- Stop action directions issued by the NACC (see information on stop action directions below). Such records must include:
 - the details of the stop action direction, including when the direction was made and when it ends
 - notice to the discloser, or if no notice was provided the reasons why
 - whether the principal officer of the relevant agency considered notice to the discloser of the stop action direction reasonably practicable or appropriate.

These records should be kept confidential and should only be disclosed on a need to know basis.

Reprisal risk assessment

Where an Authorised Officer in the Office undertakes an assessment of a disclosure and is considering allocating a disclosure relating to the Office, they must conduct an initial risk assessment on whether reprisals may be taken against the discloser or any other person, based on a checklist of risk factors (see Attachment A), and having regard to any information or observations about potential or actual risks of reprisal provided under these procedures by the discloser's supervisor or manager.

Where a disclosure is allocated to the Office, the investigator (delegate) who takes carriage of the matter should thereafter regularly review the risk assessment, noting the risk of reprisal may increase or change as the investigation progresses once more people become aware of the disclosure.

To ensure optimal safeguards and coordination within the Office, it may also be necessary for others to be consulted on, and to have a copy of, the risk assessment. These individuals might include the discloser's supervisor, a senior HR manager, or other appropriately senior managers in the Office – provided these people were not involved in the alleged wrongdoing – given their capacity to monitor the workplace and implement strategies to guard against reprisal. If this happens, the investigator will advise the discloser who has received a copy and the reasons why.

In conducting (or reviewing) the risk assessment Authorised Officers (or Investigations Officers) will adopt the following framework which entails four steps:

- **Identifying** –The table at Attachment A provides a summary of the risk factors that should be considered when identifying and assessing the risk of any reprisal against the discloser.
- **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 Ombudsman's [Agency Guide](#) provides detailed information on how to carry out a risk assessment. We have also published a guide to managing the risks of reprisal, which is available on our [public website](#).

PROCEDURES FOR INVESTIGATORS

Deciding whether or not to investigate a disclosure

Once a disclosure is allocated to the Office by an Authorised Officer, the Ombudsman or their nominated delegate (the investigator) must investigate. However, in particular circumstances the investigator may decide not to investigate or not further investigate the disclosure (see s 48 of the PID Act).

The investigator may exercise the discretion in s 48 at any appropriate time during an investigation.

In broad terms, the investigator may decide not to investigate or not further investigate if:

- the discloser is not, and has not been a public official (and a determination has not been made under s 70 of the PID Act to deem them to be a public official)
- the information does not to any extent concern serious disclosable conduct
- the disclosure is frivolous or vexatious
- the information is the same, or substantially the same, as information previously disclosed under the PID Act and a decision was made not to investigate the earlier disclosure, or the earlier disclosure has been, or is being investigated under the PID Act
- the conduct disclosed is being investigated under another law or power and the principal officer is satisfied, on reasonable grounds, that it would be inappropriate to conduct an investigation under this Act at the same time
- the conduct disclosed has been investigated under another law or power and the principal officer is satisfied, on reasonable grounds, that there are no further matters concerning the conduct that warrant investigation
- the conduct disclosed would be more appropriately investigated under another law or power (unless this is only because the conduct disclosed raises a corruption issue)
- the discloser has informed the Ombudsman or delegate that they do not wish the disclosure to be pursued and the Ombudsman or delegate is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation
- it is impracticable to investigate the disclosure because:
 - the discloser has not provided their name and contact details
 - the discloser has refused or has failed or is unable to give the investigator the information they requested
 - of the age of the information.

Guidance on factors that might go towards the exercise of the power in s 48 is provided in the Ombudsman's [Agency Guide](#).

Notifying the discloser of a decision not to investigate or not to further investigate

Where an investigator decides to exercise their discretion under s 48 of the PID Act, and where they have been given the discloser's name and contact details, they 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
- if a decision is made to refer a matter for investigation under another law, details about that referral must also be provided to the discloser
- inform the Ombudsman PID Team of the decision via the appropriate notification form.

Investigating a disclosure

In broad terms, an investigator may investigate an internal disclosure as they see fit. This includes obtaining information from relevant people and making appropriate inquiries.

The investigator must be independent and unbiased. They must ensure that they do not have an actual or perceived conflict of interest.

The investigator must also ensure that:

- any finding of fact is based on logically-probative evidence
- the evidence that is relied on in an investigation is relevant¹³
- any decision is based on evidence that is sufficient to prove a fact on the balance of probabilities.

The investigator must comply with:

- the [Ombudsman's Standard](#)
- to the extent they are relevant to the investigation:
 - the [Commonwealth Fraud Control Guidelines](#)
 - these procedures.

Notifying the discloser

If the investigator has decided not to exercise a discretion in s 48 at the outset, and where they have been given the discloser's name and contact details, they must advise the discloser that they are required to investigate the disclosure and note the estimated length of the investigation. See 'Time Limits' below.

¹³ 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.

Engaging with Witnesses

When engaging with witnesses as a part of an investigation, the investigator must assess at the outset, for each witness they intend to approach for assistance, the risk of reprisal for that witness as a result of participation in the investigation. The investigator should consider the same risk factors and framework as outlined with respect to disclosers (see section titled *Reprisal Risk Assessment*).

The Office recognises that being a witness in an investigation can be difficult and witnesses may access the Office's Employee Assistance Program if they find the process stressful. The investigator should also provide assurance to all witnesses who belong to the Office that the Office will take all steps reasonably necessary to protect them from reprisal.

If a witness believes that detrimental action has been or is being taken against them as a reprisal for providing assistance to the investigator, they should immediately tell their supervisor (provided that person is not involved in the alleged wrongdoing) or a senior manager and the investigator. As detailed above¹⁴, supervisors and investigators have a responsibility to promptly escalate any such concerns to a senior manager.

If a senior manager receives a report of reprisal action against a witness, they will ensure that the Office:

- takes all steps possible to stop that alleged reprisal and protect the witness, having reference to the vulnerabilities and strategies identified in the investigator's risk assessment
- takes action to investigate the suspected reprisal¹⁵, noting that such a report may indicate disclosable conduct and will be referred by a supervisor or senior manager to an Authorised Officer for assessment
- arranges for the matter to be dealt with in an appropriate manner.

Conducting Interviews

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
- the process of conducting an investigation
- the authority of the investigator under the PID Act to conduct an investigation
- the protections provided to the person by s 57 of the PID Act.

¹⁴ In the section relating to reprisal and protections for disclosers.

¹⁵ As with disclosers who make reprisal claims, and depending on the circumstances, this might include confidential discussions with any or all of the following: the witness alleging reprisal, the alleged perpetrator, the witness' supervisor, the site supervisor, and the relevant Senior Assistant Ombudsman.

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 privilege against incriminating themselves or exposing themselves to a penalty)
- not to take or threaten to take reprisal action against the discloser
- to maintain the confidentiality of the investigation
- subject to the PID Act, not to disclose the identity of the person who made the disclosure (see ‘Protecting the discloser’s identity’ on page 8 for more information).

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 to 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

The requirement to provide a person with an opportunity to respond to an allegation about them only arises at the point where it is likely that an adverse finding is to be made about their conduct. As such, procedural fairness does not require that they be advised as soon as the disclosure is received or as soon as an investigation is commenced.

Procedural fairness may require the discloser’s identity be revealed to the person who is the subject of the disclosure. The information that they are entitled to be told will depend upon what is necessary to investigate the disclosure and for them to know the substance of allegations and evidence against them.

Where the investigator proposes to make a formal finding of disclosable conduct, they must give the person or agency who is the subject of that proposed finding a copy of relevant evidence and provide the person or agency with a reasonable opportunity to comment.

Before commencing a process to provide the subject of the allegations with procedural fairness, the investigator should inform the discloser that this will occur. At this stage, the investigator should also remind the discloser to raise any concerns immediately in the event they believe that reprisal has occurred or is occurring.

Time Limits

The investigator has 90 calendar days from the date the disclosure was allocated, reallocated, a decision was made to reinvestigate, or a NACC stop action no longer applies, to complete the investigation.

It is possible to seek one or more extensions of time from the Ombudsman (or his or her delegate).

A request for an extension of time should be made where an investigation has not been completed within 80 days of the date the disclosure was allocated and the investigator considers completion is not possible within the remaining timeframe. However, where it is

apparent to the investigator at an earlier point in the investigation that its scope will necessitate longer than 90 days, they should consider seeking an extension as soon as it is practicable to reasonably estimate the additional time required.

A request for extension should include the reasons why the investigation cannot be completed within the time limit, the views of the discloser about the proposed extension and an outline of action taken to progress the investigation.

An investigation that is not completed within 90 days, or by the revised due date where an extension has been granted, 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 the discloser, any witnesses 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.

Some of the reasons why it may be necessary to reveal identifying information include:

- procedural fairness requirements
- where, due to the nature of the allegations under investigation, not knowing the discloser's identity would prevent a witness from offering essential or relevant information
- where it is necessary to inform other appropriately senior Office staff about the existence of an investigation, or the identity of the discloser or other people involved in the investigation (including the subject and witnesses), insofar as this is required to support the implementation of strategies to protect disclosers and witnesses from reprisal.

If taking any of these steps becomes necessary, the investigator should inform the affected person – which may be the discloser, a witness or the subject of the allegations – about who will be made aware of their identity, in the context that an investigation is on foot, and explain why it is necessary.

Any preliminary verbal enquiries conducted by an Authorised Officer or interviews conducted by delegates (including investigators) should be conducted in private and appropriate records should be kept.

Any preliminary verbal enquiries or interviews with the discloser should be arranged so as to avoid the identification of the discloser by other staff of the Office.

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, these procedures and the Office's PID SOPs.

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

- the matters considered in the course of the investigation
- the duration of the investigation
- the investigator's findings (if any)

- the action (if any) that has been, is being or is recommended to be taken
- any claims made about, and any evidence of, detrimental action taken against the discloser or any other person, and the Office's response to those claims and that evidence.

Where relevant, a report must:

- identify whether there have been one or more instances of disclosable conduct
- identify any regulations, rules, administrative requirements or similar matters to which the disclosable conduct (if any) relates
- explain the steps taken to gather evidence
- set out a summary of the evidence and how the evidence informed the findings
- 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 reasonably practicable, provide the discloser with a copy of the report.

The Ombudsman (or delegate) may redact any information from the copy of the report given to the discloser that is likely to enable the identification of any person or the inclusion of which would result in the document being exempt for the purpose of Part IV of the *Freedom of Information Act 1982*; would result in a national security or other protective security classification; relates to intelligence information, or would contravene a designated publication restriction.

The PID team must also be notified of the completion of an investigation and given a copy of the report.

RECORD-KEEPING AND MONITORING

Record keeping

Authorised Officers and delegates should maintain records in an electronic form where possible. Where hard copy records are necessary (for example due to security classifications) the record should be securely stored in a safe appropriate for the document's classification with a shell record created in Objective or Resolve). Access to these records must be restricted to the Authorised Officers, delegates or other employees in the Office who require access 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 or correspondence is required to be sent under these procedures, a copy of the form or correspondence 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 System¹⁶ and stored in the appropriate storage container.

¹⁶ Generally an "Official: Sensitive" marking would usually be required.

Any email messages sent by Authorised Officers or delegates that contain identifying information must be clearly marked 'Private and Confidential'.

Where a person will cease being an Authorised Officer or delegate in the Office (including because of resignation or movement to another area of the office or another agency), their access to protected PID systems should be removed.

Monitoring of investigations

Where a disclosure relating to the Office is allocated to the Office for handling, the Authorised Officer will provide a brief to the Ombudsman which contains a summary of the information disclosed, the suspected disclosable conduct (by reference to the relevant item or paragraph of the PID Act definition) and, if the discloser consents, the name and contact details of the discloser.

Thereafter, the PID Team will coordinate a regular report to and/or verbal briefing for the Ombudsman which contains advice about the progress of any investigation.

INTERACTION BETWEEN THE NATIONAL ANTI-CORRUPTION COMMISSION AND THE PID SCHEME

Mandatory referral obligations for PID staff

Authorised officers and those tasked with investigating internal disclosures (PID officers) have obligations under the *National Anti-Corruption Commission Act 2022* (the NACC Act) to refer certain issues to the NACC. These obligations are called mandatory referral obligations.¹⁷

If a PID officer becomes aware of a suspected corruption issue under the NACC Act, they must tell the NACC about it if:

- they received the internal disclosure, or information, in the course of performing their functions under the PID Act
- the internal disclosure or information raises a corruption issue that the PID officer suspects could meet the threshold of serious or systemic under the NACC Act, and
- the corruption issue concerns the conduct of a person who is, or was, a staff member of the agency while that person is, or was, a staff member of the agency.

The PID officer must refer the corruption issue to the NACC as soon as reasonably practicable after becoming aware of it.

What is serious or systemic corrupt conduct?

The NACC Act defines corrupt conduct as when a public official:

- does something that breaches the public trust
- abuses their office as a public official, or

¹⁷ These obligations are separate from the ability to make voluntary referrals under the NACC Act, and the mandatory referral requirements for Agency Heads. For more information about those obligations, see separate advice about the NACC available on the Office intranet.

- misuses information they have access to in their capacity as a public official.

It also applies to any person (whether or not they are a public official) who does something, or tries to do something, that could adversely affect a public official's honesty or impartiality in their official capacity.

The terms 'serious' and 'systemic' are not defined in the NACC Act and will take their ordinary meaning. This means that serious corruption requires something that is significant, while systemic corruption requires something indicating a pattern of behaviour or something that affects or is embedded in a system.

A PID officer does not need conclusive or firm evidence that the conduct could involve serious or systemic corrupt conduct. It is enough for the PID officer to suspect that it could be serious or systemic. However, when the PID officer refers the corruption issue to the NACC (they must explain why they suspect it could be serious or systemic).

PID officers considering a referral might consider if the alleged conduct could involve any of the following:

- a criminal offence and, if so, the seriousness of the offence and maximum penalty if a person is found guilty
- a financial gain or loss and, if so, the amount of money gained or lost
- another benefit or detriment and, if so, the significance of that benefit or detriment
- misuse of information and, if so, the sensitivity of the information and potential harm from an improper disclosure or misuse of that information
- a person who holds a senior or trusted role and, if so, the seniority of the person; the level of trust or influence they exercise in their role; and whether the person should have understood their responsibilities and duties in that role
- a person trying to cause a public official to act dishonestly or in a biased way and, if so, the significance if the public official did behave dishonestly or showed an inappropriate preference.

PID officers may also consider whether the conduct:

- involved deception or was done secretly
- was planned or deliberate
- occurred over a prolonged period of time.

What information to refer - secrecy obligations and confidential information

Broadly speaking PID officers are required to comply with their mandatory referral obligations even if doing so would breach a secrecy obligation under another law. This means that in most cases all relevant information should be referred to the NACC.

However, if one of the following secrecy obligations applies to the information the PID officer is not required to provide this information as part of the referral:

- Part 11 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*
- Section 34 of the *Inspector-General of Intelligence and Security Act 1986*
- Secrecy provisions under the *My Health Records Act 2012*
- Secrecy provisions in Part VIIIA of the *Privacy Act 1988*

- Sections 45 and 45B of the *Surveillance Devices Act 2004*
- Sections 63 and 133 of the *Telecommunications (Interception and Access) Act 1979*
- a secrecy provision that is a provision of a taxation law
- a secrecy provision in another law that says it still applies despite the NACC Act.

How to make a mandatory referral

PID staff who decide to refer a serious or systemic corruption issue to the NACC must as soon as reasonable practicable:

- make the referral by making a report using the NACC [webform](#)
- notify the person who made the internal disclosure
- if becoming aware of new information after making the referral, provide this to the NACC.

All records and decisions relating to a possible mandatory referral to the NACC are to be recorded, held in confidence on a need-to-know basis, and are to be held in accordance with the Office's policies and procedures for storing information concerning sensitive and confidential staff conduct matters.

How does a mandatory referral affect other obligations?

If a mandatory referral is made to the NACC about a disclosure we are assessing or investigating, **the Office is required to continue to assess or investigate the corruption allegations** unless the NACC issues a 'Stop Action Direction' requiring the Office to not take any further action until the 'Stop Action' is revoked.

Stop action directions

The NACC Commissioner can direct an agency to stop taking action in relation to a corruption issue. This is called a stop action direction.

A stop action direction overrides the operation of any other Commonwealth law, including the PID Act, and prevents an agency from taking particular action in relation to the corruption issue, or from taking any action at all.

An agency head can seek permission from the Commissioner of the NACC to take action in relation to a corruption issue where the action would otherwise be prohibited by the stop action direction.

Certain actions can be taken where a stop action direction is in place without requiring permission from the Commissioner. Section 44 of the NACC Act provides that the following actions can be taken without permission:

- actions to prevent or lessen an imminent risk to the safety of the person, or to protect a person's life
- actions in the interests of the security, defence or international relations of Australia
- actions to prevent loss to the Commonwealth of an amount, greater than the amount (if any), prescribed in regulations made under the NACC Act
- actions for which it would be unreasonable in the circumstances to wait for the Commissioner's permission.

See additional requirements under s 44(2) of the NACC Act for an agency head if action is taken without permission.

How does a stop action direction affect other obligations under the PID Act?

A stop action direction may prevent allocating or investigating a disclosure under the PID Act, or notifying a discloser that a particular matter has been referred to the NACC. If a stop action direction specifies that a PID officer cannot allocate or investigate a disclosure under the PID Act, the PID officer is relieved of their obligation under the PID Act for as long as the stop action direction remains in place.

ATTACHMENT A - 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](#).