



## Public Interest Disclosure Procedure (Revision 3)

*To provide advice and guidance to the Great Barrier Reef Marine Park Authority (the Authority) employees about the procedure which has been established to deal with public interest disclosures made by a public official under the Public Interest Disclosure Act 2013 (the PID Act).*

*Target audience: All Public Officials and volunteers (including work experience students).*

**Alert:** All public officials have a responsibility to familiarise themselves with these procedures so they are aware of what a public interest disclosure is, what action to take if they suspect wrongdoing, how disclosures will be handled and the protections available should they report suspected disclosable conduct.

### Objective/s

1. To outline the process staff are required to follow for reporting public interest disclosures, so matters can be investigated and dealt with promptly. By following this process, it promotes the integrity and accountability of the Authority.

### Context

2. The purpose of the PID Act is to promote the integrity and accountability of the Australian Public Service by providing a legislative scheme for the investigation of allegations of serious wrongdoing in the Commonwealth public sector. This legislation facilitates the making of disclosures, ensures that disclosures are properly investigated and that public officials who make disclosures in accordance with the provisions of the PID Act are supported and protected from adverse actions as a result of making the disclosure.
3. The Authority supports the reporting of serious wrongdoing by public officials in accordance with the PID Act. The Authority will take steps to actively support and protect persons who make disclosures by ensuring an effective system for reporting and investigating disclosable conduct.
4. The PID Act complements existing complaint handling schemes such as fraud or Code of Conduct. To obtain a full picture of your responsibilities and rights this document should be read in conjunction with related Accountable Authority Instructions (AAIs) and agency policies including:
  - 4.1. Code of conduct – Managing breaches in the Australian Public Service procedure
  - 4.2. Public Interest Disclosure policy
  - 4.3. Conflict of interest policy
  - 4.4. Fraud Control policy

### Definitions

5. **Authorised officer** as prescribed in section 36 of PID Act is either:
  - 5.1. the principal officer of the agency; or
  - 5.2. a public official who:
    - a) belongs to the agency; and
    - b) is appointed, in writing, by the principal officer of the agency as an authorised officer for the purposes of the Act to receive reports of disclosable conduct and have a range of decision-making, notification and other responsibilities.

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6. **'Deemed' public officials** – an authorised officer may deem an individual to be a public official if they reasonably believe that individual has information about wrongdoing and proposes to make a disclosure under section 70 of the PID Act.
7. **Designated publication restriction** means certain restrictions listed in section 8 of the PID Act. They generally concern protecting the identity of people by such means as court or tribunal orders that information not be published (such as under the *Family Law Act 1975* and the *Migration Act 1958*), witness protection and law enforcement mechanisms (refer to section 8 of PID Act for full definition).
8. **Principal Officer** – as defined in section 73 of the PID Act, the Principal Officer is the head of the agency / Chief Executive Officer and has specific responsibilities that include establishing PID Act procedures, investigating and providing reports on disclosures and ensuring that appropriate action is taken in relation to recommendations arising from an investigation.
9. **Public Official** is defined in section 69 of the PID Act. It is a broad term which includes any person who belongs to one of the agencies covered by the PID Act. This covers Commonwealth public servants working in Departments, executive agencies and prescribed authorities, members of the Defence Force, appointees of the Australian Federal Police, Parliamentary Service employees, directors or staff members of a Commonwealth company, statutory office holders or any other person who exercises powers under a Commonwealth law.

Certain contracted service providers are also considered to be 'public officials' under the PID Act (s 30(2)). This includes:

- 9.1. individuals who are contracted service providers for a Commonwealth contract
- 9.2. individuals who are officers or employees of contracted service providers for a Commonwealth contract, and who provide services for the purposes of that contract
- 9.3. individuals who are subcontractors to a person who is a contracted service provider for a Commonwealth contract, and who provide services for the purposes of that Commonwealth contract.<sup>1</sup>

### Related policies / procedures / legislation

10. *Public Interest Disclosure Act 2013*
11. *Public Interest Disclosure Standard 2013*
12. Public Interest Disclosure (document number 100337)
13. Fraud Control Policy and Plan (document number 100174)
14. Code of Conduct – Managing Breaches in the Australian Public Service (document number 100073)
15. Commonwealth Ombudsman's Agency Guide to the *Public Interest Disclosure Act 2013*

### Required forms / equipment

16. Nil.

### Procedure / process

#### **What is a Public Interest Disclosure?**

17. A public interest disclosure may be an internal disclosure, a legal practitioner disclosure, an external disclosure or emergency disclosure as set out in section 26(1) of PID Act. If a person makes a disclosure except in the circumstance defined in section 26(1), they are not

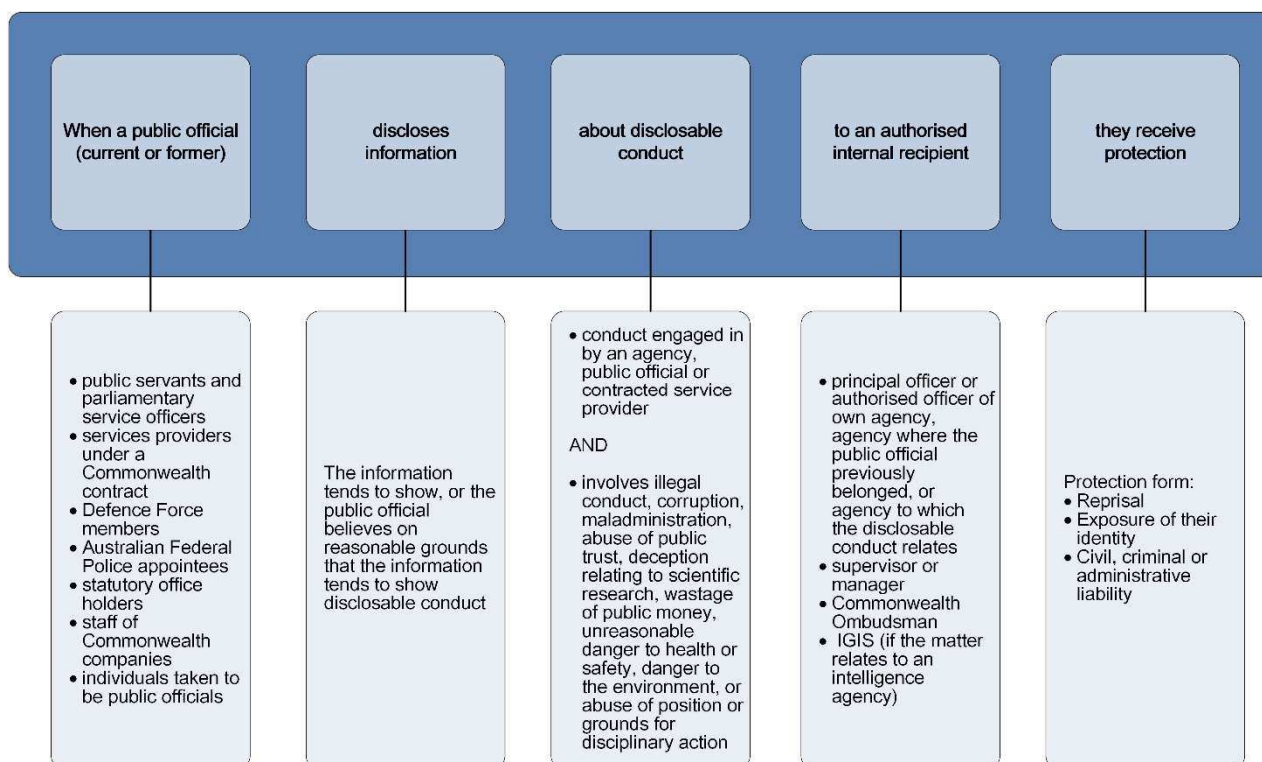
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protected from the consequences to breaching any privacy or confidentiality requirements that apply to the disclosed information.

### Internal disclosure

18. An internal disclosure is the most common type of disclosure under the PID Act. To make an internal public interest disclosure, the person disclosing the suspected wrongdoing must:
  - 18.1. be a current or former public official (or deemed to be a public official)
  - 18.2. make their disclosure to the correct person within an the Authority i.e. either a supervisor<sup>1</sup> or an authorised internal recipient
  - 18.3. provide information which tends to show, or the discloser believes on reasonable grounds tend to show, one or more instances of disclosable conduct.
19. In limited circumstances a public official may disclose such information to a person outside the government - this is known as an external disclosure or emergency disclosure. A Public interest disclosure can also be made to a legal practitioner for the purposes of getting advice about making one of the other forms of public interest disclosure.
20. Figure 1 summarises the elements of making an internal disclosure under the PID Act.



**Figure 1 - What is an internal public interest disclosure?**

### External disclosure

21. A public official who has already made an internal disclosure under the PID Act may subsequently make a disclosure to any person (except a foreign public official), if (s 26(1) item 2):

<sup>1</sup> Although a supervisor may receive an internal disclosure from an official that they supervise, the supervisor's role in handling that disclosure is to pass the information on to an authorised officer as soon as reasonably practicable.

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- 21.1. the final report of the internal PID investigation has not been prepared within 90 days of allocation, or the extended investigation period approved by the Ombudsman or IGIS (this condition does not apply to Ombudsman/IGIS investigations), or
  - 21.2. the PID investigation has been completed and the discloser believes on reasonable grounds that the investigation was inadequate, or
  - 21.3. an investigation has been completed (whether the investigation was conducted under the PID Act or under other legislation) and the discloser believes on reasonable grounds that the response to the investigation was inadequate.
22. For more detailed information on external disclosure refer to Commonwealth Ombudsman's Agency Guide to the *Public Interest Disclosure Act 2013*.

### Emergency disclosure

23. If a public official believes on reasonable grounds that the information they have concerns a substantial and imminent danger to the health or safety of one or more people or to the environment, they may make an emergency disclosure to any person except a foreign public official (s 26(1) item 3), provided they meet certain requirements:
- 23.1. The extent of the information they disclose must be only what is necessary to alert the recipient of the substantial and imminent danger.
  - 23.2. If they have not previously made an internal disclosure about the matter, or if they have done so and the investigation is not yet completed, there must be exceptional circumstances justifying their decision to make an external disclosure. This might include, for example, if investigation was taking too long to complete having regard to the risk to a person's health and safety.
24. For more detailed information on emergency disclosure refer to Commonwealth Ombudsman's Agency Guide to the *Public Interest Disclosure Act 2013*.

### Legal Practitioner

25. A legal practitioner disclosure allows a public official to disclose information to an Australian legal practitioner for the purposes of seeking legal advice or professional assistance in relation to the official's actual or proposed disclosure elsewhere (i.e. an internal disclosure, an emergency disclosure or an external disclosure).
26. More detailed information on different types of disclosures can be obtained from the Commonwealth Ombudsman website at [www.ombudsman.gov.au](http://www.ombudsman.gov.au).

## Who can make a Public Interest Disclosure

### Public officials

27. Current and former public official are eligible to make public interest disclosures. This includes:
- 27.1. A Commonwealth public servant
  - 27.2. Member of the Defence Force
  - 27.3. Appointee of the Australian Federal Police
  - 27.4. Parliamentary Service employees
  - 27.5. Director or staff member of a Commonwealth company

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- 27.6. Statutory office holder or other person who exercises powers under a Commonwealth law
- 27.7. Individuals and organisations that provide goods or services under a Commonwealth contract, including subcontractors who are responsible for providing goods or services for a Commonwealth contract.

### *'Deemed' public official*

28. An authorised officer may also deem an individual to be a public official if they reasonably believe that individual has information about wrongdoing and proposes to make a disclosure as prescribed in section 70 of the PID Act.
29. An authorised officer might consider it appropriate to deem an individual to be a public official if the individual is not a public official, but nevertheless has 'inside information' about the agency's wrongdoing. Example might include:
  - 29.1. a current or former volunteer with the agency
  - 29.2. a member of an advisory body to the agency (where the terms of engagement do not meet the definition of a public official)
  - 29.3. an employee of an organisation that receives grant funding from the Australian Government, or
  - 29.4. state or territory department officials who work alongside Commonwealth officials.

### *What can be disclosed?*

30. The full definition of disclosable conduct is set out in section 29 of the PID Act. This definition applies for the purposes of this procedure. In summary terms, disclosable conduct is conduct by an agency or by a public official that:
  - 30.1. contravenes a law of the Commonwealth, a State or a Territory, or
  - 30.2. occurs in a foreign country and contravenes a law in force in that country that applies to the agency or public official and that corresponds to a law in force in the Australian Capital Territory, or
  - 30.3. perverts, or attempts to pervert, the course of justice or involves corruption of any other kind, or
  - 30.4. constitutes maladministration, including conduct that:
    - a) is based on improper motives
    - b) is unreasonable, unjust or oppressive, or
    - c) is negligent, or
  - 30.5. is an abuse of public trust, or
  - 30.6. is fabrication, falsification, or deception in relation to scientific research, or misconduct in relation to scientific research, analysis or advice, or
  - 30.7. results in the wastage of public money or public property or of the money or property of an authority covered by the PID Act, or
  - 30.8. unreasonably results in a danger to the health and safety of a person or unreasonably results in or increases the risk of a danger to the health and safety of a person, or

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- 30.9. results in a danger to the environment or results in or increases the risk of a danger to the environment, or
  - 30.10. is prescribed by the PID Rules, or
  - 30.11. is engaged in by a public official that:
    - a) involves abuse of the public official's position, or
    - b) could, if proved, give reasonable grounds for disciplinary action against the public official.
31. Disclosable conduct also includes conduct by a public official that:
- 31.1. Involves or is engaged in for the purposes of abusing their position as a public official, or
  - 31.2. Could give reasonable grounds for disciplinary action against the public official as prescribed in section 29(2) of the PID Act.
32. It does not matter whether disclosable conduct occurred before or after 15 January 2014.
33. It does not matter whether the public official who carried out the alleged conduct has ceased to be a public official since the time the conduct is alleged to have occurred, but it is necessary that they carried out the conduct in connection with their position as a public official.

### ***What is not disclosable conduct?***

34. Individuals grievance or workplace conflicts would generally be appropriately dealt with by other existing Authority
35. Conduct that is wholly private and has no bearing on the position as a public official is not disclosable conduct. Matters that reflect private or personal interest are generally not matters of public interest i.e. it is not disclosable just because a person disagrees with:
- 35.1. a government policy or proposed policy of the Commonwealth government; or
  - 35.2. an action or proposed action by a minister, the Speaker of the House of Representatives or President of the Senate; or
  - 35.3. amounts, purposes or priorities of expenditure or proposed expenditure relating to such a policy or proposed policy, or such action or proposed action.<sup>2</sup>

### ***Time limits for making a disclosure***

36. There are no time limits for making a disclosure.
37. A disclosure can be made about conduct that occurred at any time, including before the PID Act commenced.
38. The PID Act continues to apply after:
- 38.1. the public official or contracted service provider alleged to have committed the wrongdoing has ceased to be a public official or contracted service provider<sup>3</sup>
  - 38.2. the agency ceases to exist<sup>4</sup>.
39. However, if the age of the disclosed information would make an investigation impracticable, the principal officer or their delegate may decide not to investigate the disclosure in accordance with section 48 of the PID Act.

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### **Responsibilities and Obligations**

#### *Public Official*

40. All public officials have an obligation to report serious wrongdoing by another public official in the course of, or in connection with, their APS employment. They must make this report on the basis of information which they believe on reasonable grounds may provide evidence of behaviour that is disclosable conduct
41. As prescribed in clause 27, a person must be a current or former 'public official' to make a public interest disclosure.
42. Disclosure must be made to an appropriate person (an authorised officer or direct supervisor of the discloser<sup>5</sup>) in order to gain the protections available under the PID Act. Public officials will receive the Authority's full support and protection from recrimination, victimisation or discrimination as a result of making their report. However, there is a corresponding obligation on the part of the public official that disclosures are made in good faith, and are not frivolous, vexatious, false, fabricated or malicious.
43. Public officials can make anonymous disclosures if they wish to do so. A disclosure is considered to be anonymous if;
  - 43.1. The identity of the discloser is not revealed and if no contact details for the discloser are provided; or
  - 43.2. The discloser does not disclose their name but does provide anonymous contact details.
44. All public officials have a responsibility to familiarise themselves with these procedures so they are aware of what a public interest disclosure is, what action to take if they suspect wrongdoing, how disclosures will be handled and the protections available should they report suspected disclosable conduct.
45. Advice can be sought from the Director, Human Resources.

#### *Principal Officer*

46. The Principal Officer has a range of obligations under the PID Act aimed at ensuring that Authority public officials are aware they can make a disclosure; that the procedures are publicised and accessible and the Authority deals appropriately with every disclosure made.
47. A principal officer's specific responsibilities under the PID Act include:
  - 47.1. establishing internal procedures for facilitating and dealing with public interest disclosures relating to the Authority (s 59(1)) - these procedures must include assessing risks that reprisals may be taken against a person who makes a disclosure, and providing for confidentiality of investigative processes)
  - 47.2. taking reasonable steps to protect public officials who belong to the Authority from detriment or threats of detriment (section 59(3)(a)).
  - 47.3. appointing authorised officers (section 36)
  - 47.4. ensuring there are sufficient authorised officers to be readily accessible to public officials who belong to the Authority and that public officials are aware of their identity (sections 59(3)(b), (c))

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- 47.5. notifying the discloser and the Ombudsman or the Inspector-General of Intelligence and Security (IGIS) as appropriate at various stages in handling a disclosure (sections 44, 50, 50A, 51(4))
  - 47.6. ensuring disclosures are properly investigated (sections 47, 52, 53)
  - 47.7. preparing an investigation report (section 51) and taking appropriate action in response to the report (section 59(4))
  - 47.8. providing information and assistance to the Ombudsman and IGIS, including in relation to PID Act annual reporting (section 76(3)).
48. The principal officer can delegate any or all of those functions or powers to a public official who belongs to the Authority (s 77(1)), refer to Delegations – Chairman – Human Resources (document no.100380) for more information.
49. The principal officer is also an ‘authorised officer’ who can receive disclosures about the Authority, or from the public officials who belong to the Authority.
50. Most disclosures are likely to be made to the other authorised officers appointed by the principal officer or via a public official’s supervisor. However, the principal officer remains an ‘authorised officer’ even after other authorised officers are appointed in the Authority.

### Authorised officer

51. An authorised officer are officers of the Authority appointed by the principal officer in writing.<sup>6</sup>
52. Authorised officers require good judgement and should be skilled in dealing with sensitive matters. They must be familiar with the provisions of the PID Act, so they can provide advice to disclosers and potential disclosers about the process and the protections available to them (s60).
53. Authorised officers have a range of decision-making, notification and other responsibilities under the PID Act, including:
- 53.1. receiving disclosures from current or former public officials who belong to the Authority (ss 26 and 34)
  - 53.2. receiving disclosures from other public officials about conduct concerning the Authority (ss 26 and 34)
  - 53.3. deeming a person to be a public official to allow them to make a public interest disclosure (s 70)
  - 53.4. explaining the requirements of the PID Act to disclosers
  - 53.5. advising disclosers of any designated publication restrictions that apply to the information they have disclosed (s 60)<sup>10</sup>
  - 53.6. assessing reported information to determine whether information could be considered to be a public interest disclosure (s 43(2))
  - 53.7. making any preliminary inquiries necessary to make an allocation decision (s 43(4))
  - 53.8. allocating all or part of the disclosure to the Authority’s principal officer for handling and/or another agency that has agreed to handle the disclosure (ss 43(1) and (6))
  - 53.9. notifying the Authority’s principal officer of the allocation decision; the details of the disclosure and (if the discloser consents) the discloser’s identity (s 44(1))

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- 53.10. if any other agency has agreed to handle the disclosure, notifying the Authority's principal officer of the allocation decision; the details of the disclosure and (if the discloser consents) the discloser's identity (s 44(1))
  - 53.11. notifying the Ombudsman (or IGIS where appropriate) of the allocation decision; the details of the disclosure and (if the discloser consents) the discloser's identity (s 44(1A)).
  - 53.12. informing the discloser of the allocation decision (s 44(2))
  - 53.13. consenting to the allocation of a disclosure by an authorised officer of another agency (s 43(6))
  - 53.14. advising the discloser of a decision not to allocate, the reasons why and any other course of action that may be available under Commonwealth law (s 44(3)).
  - 53.15. The Chief Operating Officer will:
    - a) be the contact point in the Authority for general advice about the operation of the PID Act
    - b) liaise with the Ombudsman or IGIS on related matters as required.
54. The Authority's authorised offices are those occupying roles either substantively or in an acting capacity as found in Delegations – Chairman – Human Resources (document no.100380).

## Supervisors and managers

55. Under the PID Act, supervisors and managers are able to receive public interest disclosure reports and have specific obligations in dealing with disclosures.
56. Supervisors and managers play a key role in ensuring that the Authority's workplace culture supports the making of public interest disclosures in a safe environment and should:
- 56.1. have good general awareness of the PID Act and the Authority's procedures, particularly in relation to what is 'disclosable conduct' and the obligation to inform an authorised officer
  - 56.2. be careful to observe confidentiality requirements
  - 56.3. know who the authorised officers are for the Authority
  - 56.4. be approachable to staff work wish to raise concerns
  - 56.5. hold awareness sessions or discussion forum for their staff
  - 56.6. ensure staff undergo available training
  - 56.7. confront any workplace prejudices about making a disclosure
  - 56.8. support a staff member who they know has made a public interest disclosure including ensure the staff member is protected from reprisal
  - 56.9. pay close attention to interactions in the workplace where necessary for example if workplace conflicts occurs after a disclosure is made or while it is being investigated
  - 56.10. ensure identified problems in the workplace are corrected
  - 56.11. set an example for staff through their own conduct and ethical approach.

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57. A supervisor / manager who receives a disclosure form someone they manage or supervise are obliged to give the information to an authorised officer in the Authority as soon as is reasonably practicable.<sup>7</sup>

### All Staff

58. Section 61 of the PID Act requires all public officials to use their 'best endeavours' to assist the principal officer in the conduct of an investigation, and to assist the Ombudsman or IGIS in their functions under the PID Act.
59. Staff as public officials are expected to share general responsibility for ensuring the system works effectively by:
- 59.1. reporting matters where there is evidence that shows or tends to show disclosable conduct
  - 59.2. identifying areas where there may be opportunities for wrongdoing to occur because of inadequate systems or procedures, and proactively raising those with management
  - 59.3. maintaining confidentiality whenever they are aware of the identity of a discloser, of anyone against whom an allegation has been made, or of anyone who has contributes to a disclosure investigation
  - 59.4. supporting staff known to have made public interest disclosures
  - 59.5. reporting to an appropriate person (a supervisor or authorised officer) any threats or reprisal action in relation to a disclosure.

### Human Resources Section

60. Employees are encouraged to contact Human Resources Section if you are considering whether the conduct witnessed is serious wrongdoing appropriate for reporting under the PID Act or if another complaint handling process would be more appropriate.
61. Please note that supervisors and managers are able to contact the Human Resources Section to obtain advice regarding a potential public interest disclosure that has been received, noting that under these circumstances all parties' information should be de-identified for confidentiality reasons refer to Confidentiality section for further information.
62. The Human Resources Section:
- 62.1. provides assistance to managers and employees with concerns raised about the workplace conduct and behaviour of employees.
  - 62.2. conducts preliminary inquiries and assessments of allegations made about the conduct and behaviour of employees and makes recommendations to the Chairman about any further action that may be required in the circumstances.
  - 62.3. supports the Authority's legal and ethical standards of conduct.
  - 62.4. closely liaises with other Commonwealth agencies including the Australian Public Service Commission (APSC) and the Merit Protection Commissioner (MPC), about Australian Public Service (APS) Code of Conduct and ethical behaviour issues.
  - 62.5. provides education, guidance and advice to employees and managers on the APS Code of Conduct, Public Interest Disclosure and Fraud awareness initiatives to promote integrity in the performance of employees' duties, in Authority processes

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and procedures and in the ethical use of the Authority's resources and information and communication technology (ICT) systems.

- 62.6. reports on trends and systemic policy, process and / or procedural deficiencies identified during investigations to positively assist with the Authority' strategic direction.

### How to make a disclosure

63. Under the PID Act there is no required format for making of a disclosure. A public interest disclosure may be made:
  - 63.1. orally or in writing (s 28(1))
  - 63.2. anonymously or openly
64. A person making a disclosure does not need to assert that the disclosure is made under the PID Act for it to be a public interest disclosure and for the requirements of the PID Act to apply (s 28(3)).
65. If a disclosure is made orally, a record should be made of what was said. It is good practice to ask the discloser to sign the record as being correct.
66. Disclosures should be made to an authorised officer who is trained to receive public interest disclosures and can provide information on the process to make a disclosure and the protections given to disclosers under the PID Act.
67. Disclosures can also be made to supervisors or managers under the PID Act who will then be required to forward the disclosure to an authorised officer.
68. Information contained in the disclosure should be clear and factual, and should as far as possible, avoid speculation, personal attacks and emotive language which can divert attention from the real issues of the disclosure.
69. The discloser should cover where possible the following matters to assist the Authority in determining how to proceed:
  - 69.1. Discloser's name and contact details
  - 69.2. The nature of the suspected wrongdoing
  - 69.3. Who is believed to have committed the suspected wrongdoing
  - 69.4. Where and when the suspected wrongdoing occurred
  - 69.5. How the discloser became aware of the suspected wrongdoing
  - 69.6. Whether the suspected wrongdoing has been reported to anyone else
  - 69.7. If so, what has that person done to fix, stop or prevent it
  - 69.8. Whether the discloser is concerned about possible reprisal as a result of making a disclosure.
  - 69.9. Any supporting correspondence or other documents such as file notes or a diary event and names of any people who witnessed the conduct or who may be able to verify the disclosure information.
70. A potential discloser should not investigate a matter themselves before making the disclosure as this may hinder a future investigation.

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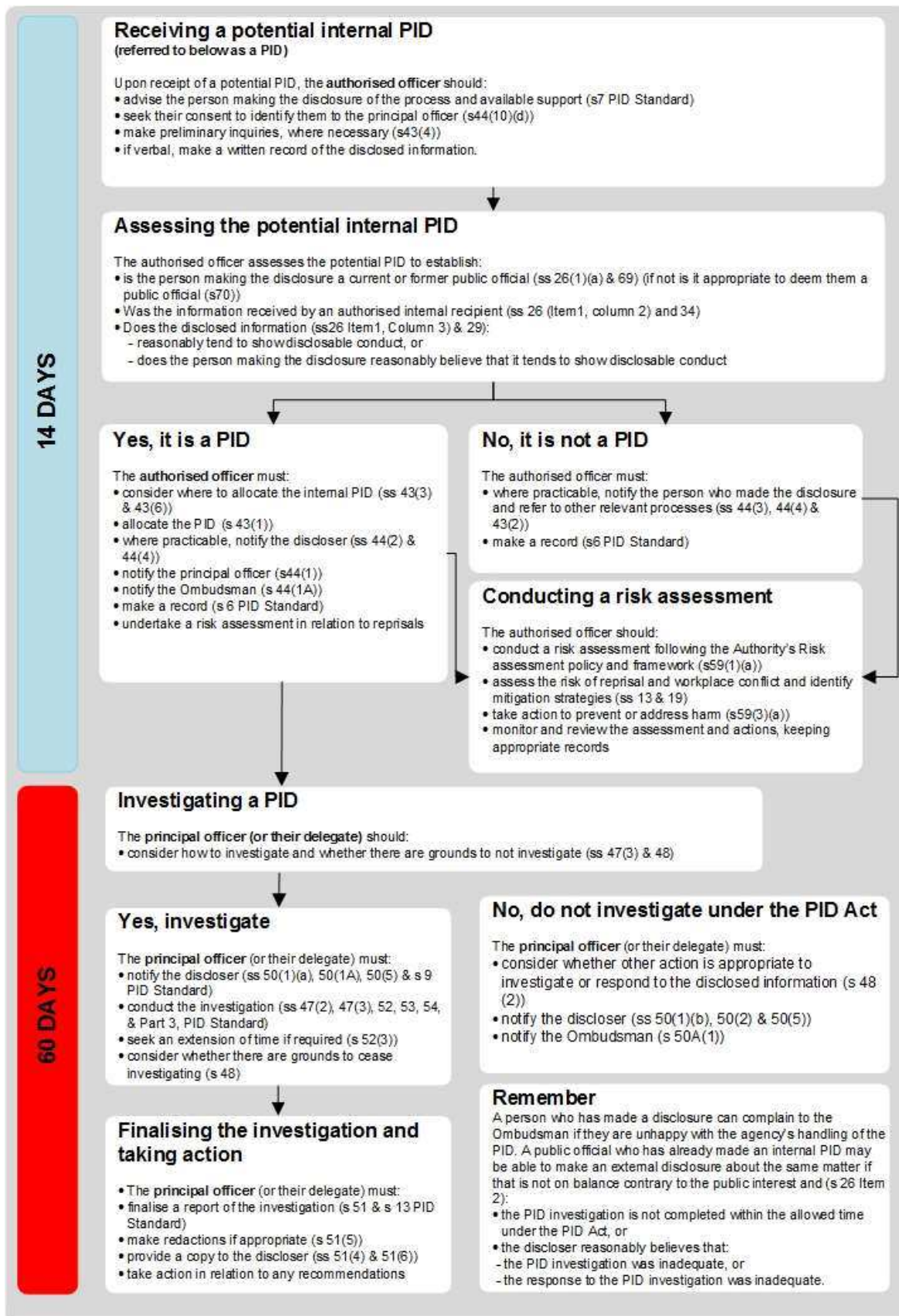
71. A person who knowingly makes a false or misleading disclosure will not have any protections under the PID Act.
72. Public officials can make anonymous disclosures if they wish to do so, however if a disclosure is made anonymously and no contact details are provided, it may prevent an authorised officer from investigating the disclosure. A disclosure is considered to be anonymous if:
  - 72.1. The identity of the discloser is not revealed and if no contact details for the discloser are provided; or
  - 72.2. The discloser does not disclose their name but does provide anonymous contact details.
73. A person who has made an anonymous disclosure may come forward at a later stage to disclose their identity and confirm that they have the protections of the PID Act.
74. The discloser's motive and intentions does not determine whether an investigation is warranted only the substance of the report is considered.
75. Once a public interest disclosure has been made, it cannot be withdrawn. But a discloser may state that 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.
76. A person who has made a disclosure should not discuss the details of their disclosure with anyone who does not need to know about it. Discussions with people who are not performing functions under the PID Act are not covered by the protections of the PID Act (unless the discussion meets the criteria for an external disclosure, emergency disclosure or Legal Practitioner disclosure).

### *Protection for discloser*

77. A person who makes a disclosure about disclosable conduct in compliance with the PID Act will be covered by a range of legislated protections. Even if the disclosed information turns out to be incorrect or unable to be substantiated, a discloser is protected by the PID Act, provided that they:
  - 77.1. made their disclosure to an appropriate person under the PID Act and
  - 77.2. honestly believed on reasonable grounds that the information tended to show disclosable conduct and
  - 77.3. did not knowingly make false or misleading statements (s 11) and
  - 77.4. did not knowingly provide information which contravenes a designated publication restriction, without a reasonable excuse for that contravention (s 11A).
78. A person who makes a disclosure that is intentionally false or misleading will not gain the protections under the PID Act (s 11). An incident of false reporting may be considered for disciplinary action.
79. A person who is considering making a disclosure should be aware that making a disclosure does not entitle them to protection from the consequences of their own wrongdoing. The discloser's immunity from liability under the PID Act relates only to the act of making the disclosure, not the conduct the disclosure is about.
80. Refer to Figure 2 - Handling an internal disclosure under the PID Act for a flowchart of the internal disclosure process.

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**Figure 2 - Handling an internal disclosure under the PID Act**

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### Procedures for Supervisors and Managers

81. A supervisor / manager has specific responsibilities under the PID Act to refer a disclosure to an authorised officer where:
  - 81.1. a public official discloses information to their supervisor or manager, and
  - 81.2. the supervisor or manager has reasonable grounds to believe that the information concerns disclosable conduct.
82. The supervisor or manager must take a written record of the facts of the disclosure including the time and date of the disclosure, as well as their best assessment of any risks that reprisal action might be taken against the disclosure refer to Reprisal / Work place conflict risk assessment procedures section.
83. The supervisor or manager must also seek consent from discloser to include the name and contact details in the written record. If possible the discloser should sign the written record or at least be advised that a written record has been forwarded to an authorised officer and provide the authorised officer's name and contact details.
84. Where a supervisor / manager receives an anonymous disclosure, they must refer it to an authorised officer as soon as is reasonably practicable.
85. Supervisors / managers must treat disclosures with the highest degree of confidentiality. For further information please refer to the Confidentiality section.

### Procedures for authorised officers

#### *Receiving disclosures*

86. The authorised officer has specific responsibilities in relation to advising disclosers and potential disclosers about the PID Act. Links to all forms mentioned in this section can be found in [Notification forms](#) section.
87. Where:
  - 87.1. 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
  - 87.2. the authorised officer has reasonable grounds to believe that the person may be unaware of what the PID Act requires for the disclosure to be an internal disclosure, and
  - 87.3. the authorised officer is aware of the contact details of the person
  - 87.4. the authorised officer must:
    - 87.5. inform the person that the disclosure could be treated as an internal disclosure under the PID Act,
    - 87.6. explain to the person what the PID Act requires for a disclosure to be an internal disclosure,
    - 87.7. explain to the person the protections provided by the PID Act to persons who make disclosures under the Act, and
    - 87.8. advise the person of any orders or directions that may affect disclosure of the information.

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88. Where a current or former public official makes a disclosure of disclosable conduct directly to an authorised officer, the authorised officer must make a written record of the fact of the disclosure. The authorised officer must ask the discloser to sign the written record of the disclosure, where this is practicable.
89. Where the authorised officer is aware of the contact details of the discloser, they must, as soon as practicable after receiving the disclosure and before allocating the disclosure, ask the discloser whether he/she:
  - 89.1. consents to the authorised officer giving the discloser's name and contact details to the Principal Officer and to the Principal Officer's Delegates, and
  - 89.2. wishes the disclosure to be investigated.
90. The authorised officer must make a written record of the discloser's responses (if any) to these questions. Where a discloser does not respond within 7 days to the question referred to above:
  - 90.1. in clause 89.1 – the discloser is taken not to have consented to the disclosure of their name and contact details to the principal officer and their delegates, and
  - 90.2. in clause 89.2 – the discloser is taken to wish the disclosure to be investigated
91. The authorising officer must assess the risk that reprisal may be taken against a person who makes a public interest disclosure (s59(1)(a)). This involves assessing specific behaviour and circumstance that may result in reprisals, and then putting in place appropriate strategies to prevent or contain them. The authorised officer should also make a written record of their risk assessment and any action taken to protect or support the discloser. Detailed information about risk assessments can found in the Reprisal / Work place conflict risk assessment procedures

### *Anonymous disclosures*

92. A discloser may wish to use a pseudonym throughout the PID process. This may be appropriate in circumstances where the discloser is identifiable to their supervisor or an authorised officer, but decides to hide their identity to others. Consistent with the approach taken in the Australian Privacy Principles, and in addition to anonymity, pseudonymity should be made available as an option.
93. Where an authorised officer receives an anonymous disclosure, they must consider whether to exercise the power in section 70 of the PID Act to determine on their own initiative that a person who has disclosed information to them is a public official in relation to the making of the disclosure. Considerations include:
  - 93.1. If the authorised officer cannot contact the discloser, no determination can be made because the authorised officer must be able to give written notice of the determination to the individual refer to section 70(1) of the PID Act.
  - 93.2. It is anticipated that an authorised officer would make this decision having regard to whether it is in the public interest, in the Authority's interest and in the discloser's interest to have the disclosure dealt with a disclosure under the PID Act.
  - 93.3. Where the discloser request the authorised officer to make this determination, the authorised officer must made a decision on this request and must inform the discloser accordingly. If the authorised officer's decision is to decline the request to make a determination under section 70, they must also give the discloser reasons for their decision.

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94. Where an authorised officer decides to make a determination under section 70 that the PID Act has effect as if the individual had been a public official, the authorised officer should seek assistance on the drafting of the written notice.
95. The written notice must be given to the individual. A copy of the determination notice should also be given to the Primary Delegate of the Principal Officer at the same time as Form 2 - Notification of decision not to investigate

### *Allocating disclosures*

96. Where a disclosure has been given to or made to an authorised officer, the authorised officer:
  - 96.1. Must use their best endeavours to decide on the allocation of the disclosure within 14 days after the disclosure is given to or made to the authorised officer.
  - 96.2. Must decide whether they are satisfied, on reasonable grounds, that there is no reasonable basis on which the disclosure could be considered to be an internal disclosure. The bases on which an authorised officer could be satisfied of this include:
    - a) that the disclosure has not been made by a person who is, or was, a public official;
    - b) that the disclosure was not made to an authorised internal recipient or supervisor;
    - c) that the disclosure is not about disclosable conduct;
    - d) that the person who is alleged to have carried out the disclosable conduct was not a public official at the time they are alleged to have carried out that conduct; and
    - e) that the disclosure is not otherwise a public interest disclosure within the meaning of the PID Act.
  - 96.3. 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.
97. Where an authorised officer decides that a disclosure that has been made to them is **not to be allocated**, they must, where the discloser's contact details are known to the authorised officer, advise the discloser in writing that the disclosure is not to be allocated, by sending to them a completed Form 1 - Notification of allocation.
98. Where an authorised officer **allocates a disclosure within the GBRMPA**, they must complete Form 1 - Notification of allocation and send it to the Primary Delegate or other Delegate as appropriate.
99. If an authorised officer wishes to **allocate an internal disclosure to another agency**, the authorised officer must obtain the consent of an authorised officer in that agency before the allocation can be made.
100. Once allocation is complete, the authorised officer must copy the completed Form 1 - Notification of allocation to the relevant contact officer in the Ombudsman's Office.

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101. Where the authorised officer is aware of the contact details of the discloser, the authorised officer must inform the discloser of the allocation using completed Form 1 - Notification of allocation.
102. Where an authorised officer allocates a disclosure, they must conduct a risk assessment based on a checklist of risk factors, and having regard to any assessment of risk provided under these procedures by the discloser's supervisor or manager. Information on how to carry out a risk assessment is at Reprisal / Work place conflict risk assessment procedures. Form 1 - Notification of allocation

### *Deciding whether or not to investigate*

103. Where an authorised officer allocates an internal disclosure to the Primary Delegate (or other Delegate if appropriate) and the contact details of the discloser are known, the discloser must be informed in writing (Form 1 - Notification of allocation) within 14 days after the disclosure was allocated that the Principal Officer or Delegate may decide:
  - 103.1. not to investigate the disclosure, or
  - 103.2. not to investigate the disclosure further, andthe Primary Delegate (or other Delegate if appropriate) must inform the discloser of the grounds on which that decision will be taken.
104. The Principal Officer or Delegate must, as soon as practicable after receiving an allocation of a disclosure from an authorised officer (whether from within or without the GBRMPA) consider whether to exercise the discretion under s 48 of the PID Act not to investigate the disclosure under the PID Act.
105. In broad terms, Delegate may decide not to investigate (or may decide to discontinue an investigation already begun) if:
  - 105.1. the discloser is not a current or former public official (and a determination has not been made under section 70 of the PID Act), or
  - 105.2. the information does not to any extent concern serious disclosable conduct, or
  - 105.3. the disclosure is frivolous or vexatious, or
  - 105.4. the disclosure is substantially the same as a disclosure that has been investigated under the PID Act, or
  - 105.5. the disclosure is substantially the same as a disclosure that has already been investigated, or is currently being investigated, under another law of the Commonwealth, and
    - a) it would be inappropriate to conduct another investigation at the same time, or
    - b) the Primary Delegate (or other Delegate as appropriate) is reasonably satisfied that there are no matters that warrant further investigation, or
  - 105.6. the discloser has informed the Primary Delegate (or other Delegate as appropriate) that they do not wish the disclosure to be pursued and the Primary Delegate (or other Delegate as appropriate) is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation, or
  - 105.7. it is impracticable to investigate the disclosure because:
    - a) the discloser has not revealed their name and contact details, or

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- b) the discloser has refused or has failed or is unable to give the investigator the information they requested, or
  - c) of the age of the information.
106. Guidance on factors that might go towards the exercise of the power in section 48 is provided in the Commonwealth Ombudsman's 'Agency Guide to the Public Interest Disclosure Act 2013'.
107. Where the Primary Delegate (or other Delegate as appropriate) decides under section 48 of the PID Act **not to investigate** a disclosure under Division 2 of Part 3 of the PID Act, the Primary Delegate (or other Delegate as appropriate) must, as soon as reasonably practicable:
- 107.1. inform the Ombudsman of that decision, and of the reasons for that decision, by completing Form 2 - Notification of decision not to investigate and sending it to the relevant contact in the Ombudsman's Office.
  - 107.2. where they have been given the name and contact details of the discloser, 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, by completing Form 2 - Notification of decision not to investigate and sending it to the discloser.
108. Where the Primary Delegate (or other Delegate as appropriate) has considered exercising the discretion under section 48 of the PID Act and has decided that they are required **to investigate** the disclosure, and where the Primary Delegate (or other Delegate as appropriate) has been given the name and contact details of the discloser, the discloser must be informed that the disclosure will be investigated, and must be informed of the estimated length of the investigation. This can be achieved by completing Form 1 - Notification of allocation and sending it to the discloser.
109. If the Primary Delegate (or other Delegate as appropriate) decides to investigate the disclosure and starts to investigate the disclosure but then decides not to investigate the disclosure further under section 48, the Primary Delegate (or other Delegate as appropriate) must inform:
- 109.1. the discloser of that decision, or the reasons for the decision and of other courses of action that might be available to the discloser under other laws of the Commonwealth by completing Form 2 - Notification of decision not to investigate and sending it to the discloser; and
  - 109.2. the Ombudsman of that decision and the reasons by completing Form 2 - Notification of decision not to investigate and sending it to the relevant contact in the Ombudsman's office.

### Procedures for Investigators

110. Where the Primary Delegate (or other Delegate as appropriate) has decided to commence an investigation into an internal disclosure, they may conduct the investigation as they think fit (s 53), subject to the need to comply with the PID Standard (s 74). There are also special mandatory requirements for investigations into possible fraud (refer to Investigations of alleged fraud section) or a possible breach of the Codes of Conduct which apply to employees of the Australian Public Service, or Parliamentary Service. Links to all forms mentioned in this section can be found in [Notification forms](#) section.

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111. Investigators must ensure that they do not have an actual or perceived conflict of interest (for example, if information suggests they or a family member are implicated in the alleged wrongdoing). Unless there are other compelling reasons not to do so, the investigator should be separate from the workgroup where the alleged wrongdoing has occurred.
112. A report of an investigation under the PID Act must set out:
- 112.1. the matters considered in the course of the investigation, and
  - 112.2. the duration of the investigation, and
  - 112.3. the investigator's findings (if any), and
  - 112.4. the action (if any) that has been, is being or is recommended to be taken, and
  - 112.5. any claims made about, and any evidence of, detrimental action taken against the discloser, and the GBRMPA's response to those claims and that evidence.
113. Where relevant, a report must:
- 113.1. identify whether there have been one or more instances of disclosable conduct, and
  - 113.2. identify any regulations, rules, administrative requirements or similar matters to which the disclosable conduct (if any) relates, and
  - 113.3. explain the steps taken to gather evidence, and
  - 113.4. set out a summary of the evidence, and
  - 113.5. set out any recommendations made based on that evidence.
114. Where an investigator has completed a report of an investigation under the PID Act, and where they have been given the discloser's contact details, the investigator must, as soon as practicable, advise the discloser in writing by completing Form 1 - Notification of allocation:
- 114.1. that the report has been completed, and
  - 114.2. whether the report was completed within the time limit provided for by the PID Act.
115. The investigator must, within a reasonable time of preparing a report of an investigation under the PID Act, give a copy of the report to the discloser.
- 115.1. The investigator may delete from the copy of the report given to the discloser any material:
  - 115.2. that is likely to enable the identification of the discloser or another person, or
  - 115.3. the inclusion of which would result in the copy being a document:
    - a) that is exempt for the purposes of Part IV of the Freedom of Information Act 1982, or
    - b) having, or being required to have, a national security or other protective security classification, or
    - c) containing intelligence information.
116. The investigator must delete from the copy of a report given to the discloser any material which would result in the report contravening a designated publication restriction.

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### *Interviewing witnesses*

117. 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:
- 117.1. the identity and function of each person conducting the interview, and
  - 117.2. the process of conducting an investigation, and
  - 117.3. the authority of the investigator under the PID Act to conduct an investigation, and
  - 117.4. the protections provided to the person by section 57 of the PID Act, and
  - 117.5. the person's duty:
    - a) if they are a public official – to use their best endeavours to assist the investigator in the conduct of an investigation under the PID Act (subject to the public official's privilege against incriminating themselves or exposing themselves to a penalty), and
    - b) not to take or threaten to take reprisal action against the discloser, and
    - c) subject to the PID Act, not to disclose the identity of the person who made the disclosure.
118. Where the investigator conducts an interview as part of an investigation, at the end of the interview, the interviewee must be given an opportunity to make a final statement or comment or express a position. The investigator must include any final statement, comment or position in the record of the interview.

### *Investigations of alleged fraud*

119. The effect of s 21 of the Public Governance, Performance and Accountability Act 2013 and the Commonwealth Fraud Control Policy is to require all non-corporate Commonwealth entities to comply with the Australian Government Investigations Standards (AGIS) when conducting investigations into fraud against them, or relating to the programs and legislation they administer. The AGIS sets out minimum case handling standards for fraud investigations, including minimum training requirements for investigators and requirements for conducting interviews and preparing briefs of evidence.
120. If the principal officer of a non-corporate Commonwealth entity is investigating a disclosure that concerns alleged fraud against the Commonwealth, the PID investigation must also comply with the Commonwealth Fraud Control Policy and the AGIS(s 53(4)). If there is any inconsistency between the requirements of the Commonwealth Fraud Control Policy and the requirements of the PID Act and PID Standard, the PID requirements must be followed. However, it should be noted that when a PID investigation relates to fraud, Part 3 of the PID Standard (which deals with the conduct of interviews for a PID investigation) applies only to the extent that it is not inconsistent with the Commonwealth Fraud Control Policy (s 8(2), PID Standard).
121. Given the complexity of concurrently complying with the requirements of the PID Act and PID Standard, and the Commonwealth Fraud Control Policy, the recommended course of action when investigating disclosure of alleged fraud is as discussed in 7.3.4 above.
122. The person investigating the disclosure (whether that be under the PID Act, and/or the Commonwealth Fraud Control Policy and the AGIS) should be aware of their obligation to

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notify the police of information that they suspect on reasonable grounds is evidence of a serious criminal offence.

### *Procedural Fairness*

123. Procedural fairness does not require that a person against whom allegations are made must be advised as soon as the disclosure is received or as soon as an investigation is commenced.
124. Procedural fairness may require that the discloser's identity be revealed to the person who is the subject of the disclosure.
125. Where the investigator in preparing the report of their investigation proposes to:
  - 125.1. make a finding of fact, or
  - 125.2. express an opinion that is adverse to the discloser, to a public official who is the subject of the disclosure or to another person:
    - a) The investigator or Delegate must give the person who is the subject of that proposed finding or opinion a copy of the evidence that is relevant to that proposed finding or opinion and must give the person a reasonable opportunity to comment on it.

NOTE: The above clause will not apply where the investigation does not make substantive findings or express adverse opinions but instead simply recommends or decides that further investigation action should or should not be taken or will or will not be taken.

126. The investigator must ensure that a finding of fact in a report of an investigation under the PID Act is based on logically-probative evidence.

### *Time Limits*

127. The investigator has **90 days from the date the disclosure was allocated** in which to complete the investigation.
128. It is possible to seek one or more extensions of time from the Ombudsman. A request to the Ombudsman for an extension of time must be made where an investigation has not been completed within 70 days of the date the disclosure was allocated. The application for extension should include reasons why the investigation cannot be completed within the time limit, the views of the discloser and an outline of action taken to progress the investigation.
129. An investigation that is not completed within time does not become invalid.

### **Reports of investigations**

130. In preparing a report of an investigation under the PID Act the investigator must comply with the PID Act, the Ombudsman's Standard and these procedures. Links to all forms mentioned in this section can be found in [Notification forms](#) section.
131. A report of an investigation under the PID Act must set out:
  - 131.1. the matters considered in the course of the investigation, and
  - 131.2. the duration of the investigation, and
  - 131.3. the investigator's findings (if any), and

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- 131.4. the action (if any) that has been, is being or is recommended to be taken, and
  - 131.5. any claims made about, and any evidence of, detrimental action taken against the discloser, and the GBRMPA's response to those claims and that evidence
132. Where relevant, a report must:
- 132.1. identify whether there have been one or more instances of disclosable conduct, and
  - 132.2. identify any regulations, rules, administrative requirements or similar matters to which the disclosable conduct (if any) relates, and
  - 132.3. explain the steps taken to gather evidence, and
  - 132.4. set out a summary of the evidence, and
  - 132.5. set out any recommendations made based on that evidence.
133. Where an investigator has completed a report of an investigation under the PID Act, and where they have been given the discloser's contact details, the investigator must, as soon as practicable, advise the discloser in writing by completing Form 1 - Notification of allocation:
- 133.1. that the report has been completed, and
  - 133.2. whether the report was completed within the time limit provided for by the PID Act.
134. The investigator must, within a reasonable time of preparing a report of an investigation under the PID Act, give a copy of the report to the discloser.
135. The investigator may delete from the copy of the report given to the discloser any material:
- 135.1. that is likely to enable the identification of the discloser or another person, or
  - 135.2. the inclusion of which would result in the copy being a document:
    - a) that is exempt for the purposes of Part IV of the Freedom of Information Act 1982, or
    - b) having, or being required to have, a national security or other protective security classification, or
    - c) containing intelligence information.
136. The investigator must delete from the copy of a report given to the discloser any material which would result in the report contravening a designated publication restriction.

### Notification forms

137. The *Public Interest Disclosure Act 2013* requires that the Authority notify the Ombudsman of an allocation of a disclosure, and whenever it makes a decision not to investigate a disclosure, or to stop investigating a disclosure.
138. Where an investigation cannot be completed within 90 days of allocation, the Authority can ask the Ombudsman to grant an extension of time to carry out a PID investigation. The following forms are provided by the Commonwealth Ombudsman to facilitate these notifications and requests and can be found at <http://www.ombudsman.gov.au/about/making-a-disclosure/pid-resources>:
- Form 1 - Notification of allocation ([Word](#))
  - Form 2 - Notification of decision not to investigate ([Word](#))

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- Form 3 - Request for extension of time ([Word](#))

### Confidentiality

139. The investigation of the disclosure should be conducted in as confidential a manner as is possible. In particular, the identity of both the discloser and the person alleged to have engaged in the disclosable conduct should not be revealed except where this is reasonably necessary for the effective investigation of the disclosure (including because of the need to afford procedural fairness).
140. Any email correspondence between supervisors or managers, authorised officers and Principal Officers or Delegates should include in the subject line **For Addressee Eyes Only – Public Interest Disclosure**. This alerts any support staff who may have access to emails that this email is not to be opened. If emails are opened and the identity of the discloser is seen, support staff may be subject to criminal prosecution.
141. Any interviews conducted by an authorised officer or delegates (including investigators) should be conducted in private.
142. Any interviews with the discloser should be arranged so as to avoid the identification of the discloser by other staff of the agency.
143. Supervisors, managers and authorised officers who seek further advice from the People Management Section regarding a disclosure must de-identify the information. When referring to involved parties they should be referred to as the 'discloser' and the 'subject person'.

### Record-keeping

144. Where an authorised officer is required to keep a record under these procedures, the record may be kept in hard copy or in an electronic form or in both. Access to these records must be restricted to the authorised officers, delegates (including investigators) or other employees in the GBRMPA who require access in order to perform some function under the PID Act or for the purposes of another law of the Commonwealth (for example, under the *Work Health and Safety Act 2011* or the *Public Service Act 1999*).
145. Where a form is required to be sent under these procedures, a copy of the form must be kept.
146. All records made for the purposes of the PID Act in accordance with these procedures must be marked as 'in-confidence' and hard copies stored in the appropriate storage container.
147. Any email messages sent by supervisors or managers, authorised officers or delegates that contain identifying information must be clearly marked '**For Addressee Eyes Only – Public Interest Disclosure**'.
148. When a person ceases their role as an authorised officer in the GBRMPA (including because of resignation or movement to another agency), they must transfer all their PID records to another authorised officer in the GBRMPA.

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### Monitoring and evaluation

149. Each authorised officer must provide a six monthly report to the primary delegate specifying the number of public interest disclosures received by the authorised officer and the nature of the disclosable conduct for each disclosure (by reference to the relevant item or paragraph in the definition). The report must also include any disclosures that have been allocated to the agency by another agency's authorised officer.
150. The Primary Delegate will collate the GBRMPA's report to the Ombudsman on disclosures made during the financial year.
151. Each investigator must advise the Primary Delegate of every decision made by the investigator to investigate a disclosure during the financial year.
152. Each Delegate of the Principal Officer who takes action in response to a recommendation made in an investigation report must make a report of this action to the Primary Delegate.
153. The Primary Delegate must prepare the agency's report for the Principal Officer's consideration within the time specified by the Principal Officer.
154. The Principal Officer will send the Agency's report to the Ombudsman within the time requested by the Ombudsman or as otherwise agreed with the Ombudsman.

### Reprisal / Work place conflict risk assessment procedures

155. An initial risk assessment using the agency risk management policy and framework should be completed by the authorised officer as soon as possible after a disclosure is received, or after the Authority is notified that a disclosure concerning their agency has been received (for example, if the Ombudsman, IGIS or investigative agency decides to investigate a disclosure made directly to them). This gives the Authority the best chance of recognising any risk of reprisals or associated workplace conflict. To assist in identification of individual factors which may cause or contribute to a risk of reprisal or workplace conflict, refer to table 1 below.

**Table 1 - Possible causes and contributing factors that may indicate a risk of reprisal or workplace conflict <sup>8</sup>**

Cause / contributing factors	Prompt questions
<b>Threats or past experience</b>	<ul style="list-style-type: none"> <li>Has a specific threat against the discloser been made?</li> <li>Is there a history of conflict between the discloser and the subjects of the disclosure, management, supervisors or colleagues?</li> <li>Is there a history of reprisals or other conflict in the workplace?</li> <li>Is it likely that the disclosure will exacerbate this?</li> </ul>
<b>Confidentiality unlikely to be maintained</b>	<ul style="list-style-type: none"> <li>Who knows that the disclosure has been made or was going to be</li> <li>Has the discloser already raised the substance of the raised the substance of the disclosure or revealed their identity in the workplace?</li> </ul>

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Cause / contributing factors	Prompt questions
	<ul style="list-style-type: none"> <li>• Who in the workplace knows the discloser’s identity?</li> <li>• Is the discloser’s immediate work unit small?*</li> <li>• 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?</li> <li>• Will the discloser become identified or suspected when the existence or substance of the disclosure is made known or investigated?</li> <li>• Can the disclosure be investigated while maintaining confidentiality?</li> </ul>
<b>Significant reported wrongdoing</b>	<ul style="list-style-type: none"> <li>• Are there allegations about individuals in the disclosure?</li> <li>• Who are their close professional and social associates within the workplace?</li> <li>• Is there more than one wrongdoer involved in the matter?*</li> <li>• Is the reported wrongdoing serious?</li> <li>• Is or was the reported wrongdoing occurring frequently?*</li> <li>• Is the disclosure particularly sensitive or embarrassing for any subjects of the disclosure, senior management, the agency or government?</li> <li>• Do these people have the motivation to take reprisals – for example, because they have a lot to lose?</li> <li>• Do these people have the opportunity to take reprisals – for example, because they have power over the discloser?</li> </ul>
<b>Vulnerable discloser</b>	<ul style="list-style-type: none"> <li>• Is or was the reported wrongdoing directed at the discloser?*</li> <li>• Are there multiple subjects of the disclosure?</li> <li>• Is the disclosure about a more senior officer?</li> <li>• Is the discloser employed part-time or on a casual basis?*</li> <li>• Is the discloser isolated – for example, geographically or because of shift work?</li> <li>• Are the allegations unlikely to be substantiated – for example, because there is a lack of evidence?*</li> <li>• Is the disclosure being investigated outside your organisation?*</li> </ul>

156. The risk assessment involves assessing the specific behaviour and circumstance that may result in reprisals. Once those risks have been assessed, and the likelihood of them

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\*Note: Risks of poor treatment for reporting wrongdoing identified by research (Brown, AJ (ed.) 2008, *Whistleblowing in the Australian public sector: Enhancing the theory and practice of internal witness management in public sector organisations*, ANU E Press, Canberra, pp. 137-164).

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occurring, the agency needs to consider appropriate strategies to prevent or contain them. Inappropriate workplace behaviour, including harassment, intimidation, undermining of authority, ostracism, humiliation, questioning of motives and heavier scrutiny of work, can greatly increase stress and can result in serious injury to someone who has made a disclosure. The risk assessment can include not only the risk of direct reprisal against the discloser, but also the risk of related workplace conflict or difficulties. Examples of the types of impacts that may occur if the risk of reprisal is not sufficiently managed are:

- 156.1. Assault
  - 156.2. Verbal assault
  - 156.3. Stalking
  - 156.4. Cyber-bullying
  - 156.5. Silent treatment in the workplace
  - 156.6. Interference to personal items in the workplace
  - 156.7. Excluded from legitimate access to information
  - 156.8. Excluded from promotion
  - 156.9. Excluded from workplace sanctioned social events
  - 156.10. Unjustified change to duties / hours of work
  - 156.11. Dismissal
  - 156.12. Unjustified refusal of leave
  - 156.13. Onerous / unjustified audit of access to ICT / Time sheets
  - 156.14. Onerous / unjustified audit of expenditure of Commonwealth money / Cabcharge use.
157. An accurate and objective risk assessment allows the Authority to put suitable strategies in place to control the risks, protect the discloser and defend itself against any allegations of having failed to protect a discloser.
158. The risk of reprisal may increase or change as the PID investigation progresses, and more people become aware of the disclosure. Even after the investigation has been completed, the risk of reprisal may persist, or even increase, particularly if action has been recommended to address the investigation findings. It is therefore necessary to review the risk assessment when things change, and document the updated assessment and any new information and action(s) to be taken.
159. The discloser and their supervisor or manager (provided that person is not involved in the alleged wrongdoing) may be the best sources of information to inform a risk assessment. Asking the discloser why they are reporting wrongdoing and who they might fear a reprisal from can be helpful in:
- 159.1. assessing likely perceptions amongst staff as to why the discloser came forward and how colleagues may respond if the discloser's identity becomes known
  - 159.2. managing the discloser's expectations about how other staff might perceive their disclosure
  - 159.3. reducing the potential for future conflict between the discloser and management about whether effective support was provided
  - 159.4. identifying the motives of staff allegedly involved in reprisals if a later investigation becomes necessary.
160. In the case of anonymous disclosers, a risk assessment should still be conducted to assess whether the discloser's identity can be readily ascertained or may become apparent during an investigation.

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## Public Interest Disclosure (Revision 3)

### References/ related material

- 1 Commonwealth Ombudsman, *Agency Guide to the Public Interest Disclosure Act 2013, April 2016 Version 2*, Commonwealth of Australia, Canberra ACT, viewed 20 October 2017, <[http://www.ombudsman.gov.au/\\_\\_data/assets/pdf\\_file/0020/37415/Agency\\_Guide\\_to\\_the\\_PID\\_Act\\_Version\\_2.pdf](http://www.ombudsman.gov.au/__data/assets/pdf_file/0020/37415/Agency_Guide_to_the_PID_Act_Version_2.pdf)>
- 2 Section 31 of the *Public Interest Disclosure Act 2013*
- 3 Section 29(3)(a) of the *Public Interest Disclosure Act 2013*
- 4 Section 29(3)(b) of the *Public Interest Disclosure Act 2013*
- 5 Section 26 of the *Public Interest Disclosure Act 2013*
- 6 Section 36 of the *Public Interest Disclosure Act 2013*
- 7 Section 60A of the *Public Interest Disclosure Act 2013*
- 8 Adapted from NSW Ombudsman, *Managing risk of reprisals and conflict*, Public Interest Disclosure Guideline C4, p. 3.

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