

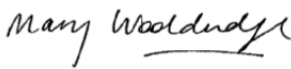
# Workplace Gender Equality Agency

## Public Interest Disclosure Policy

July 2024

# Document Information

## Publication details

Document Reference	HR Procedures_PID
Version Number	2.0
Released for publication by (Signature)	
Appointment	Chief Executive Officer
Date of Publication	22/07/2024

## Version history

Version	Issue date	Author	Reviewers	Outcome of Review
1.0		Human Resources	Human Resources	Initial procedure
1.1		Operations	Operations	Change to authorised officers and addition of reprisal procedures
1.2		Operations	Operations	Change to WGEA Director
1.3	06/08/2021	Operations	Operations	Change to WGEA Director and updated references
2.0	22/07/2024	Operations	OpsEM, COO, CEO	Revised in line with APSC guidance.

## Date for next review

Two years from review, or as required.

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## Acronyms, abbreviations, and definitions

<b>Agency</b>	Workplace Gender Equality Agency.
<b>Authorised Officer</b>	A public official belonging to an Agency, appointed in writing by the CEO (Principal Officer) as Authorised Officer for the purposes of the PID Act (as defined by Section 36 of the <i>Public Interest Disclosure Act 2013</i> ).
<b>Chief Executive Officer</b>	The head of a prescribed authority under the PID Act and is the Principal Officer as per Section 73 of the PID Act.
<b>Contracted Service Provider</b>	An officer or employee of a contracted service provider for an Agency contract; and provides services for the purposes (whether direct or indirect) of the Agency contract.
<b>Corrupt conduct</b>	Under the <i>National Anti-Corruption Commission Act 2022</i> a person engages in corrupt conduct if they are a public official and they breach public trust, abuse their office as a public official, or misuse information they have gained in their capacity as a public official. A person is also engaging in corrupt conduct if they do something that could cause a public official to behave dishonestly or in a biased way when they carry out their official duties.
<b>Disclosable conduct</b>	Suspected or probable illegal conduct or other wrongdoing (as defined in Section 26 of the PID Act) where the Authorised Officer considers the conduct would, if proven, provide reasonable grounds for termination.
<b>Disclose</b>	To make new or secret information known.
<b>Discloser</b>	Includes current and former Commonwealth public sector employees engaged, or who were engaged, by the Agency, officers and employees of contracted service providers and other public officials including the Board and committee members, who engage or have engaged in the act of disclosing.
<b>Identifying information</b>	Information or details which could be used to discover the identity of the discloser.
<b>Information</b>	(in relation to a disclosure) includes an allegation made in conjunction with another disclosure of information.
<b>Internal disclosure</b>	A public interest disclosure that has been made to the discloser's manager, the CEO, or an authorised Officer.

<b>National Anti-Corruption Commission</b>	The National Anti-Corruption Commission (NACC) established under the <i>National Anti-Corruption Act 2022</i> came into effect from 1 July 2023.
<b>Ombudsman</b>	The Commonwealth Ombudsman.
<b>PID Act</b>	<i>Public Interest Disclosure Act 2013</i> (Cth).
<b>Principal Officer</b>	The head of a prescribed agency (as defined under Section 73 of the PID Act). The Agency's Principal Officer is the Chief Executive Officer. The Principal Officer of an agency is also an Authorised Officer of that agency, meaning they can receive disclosures. A Principal Officer can delegate any or all of their functions or powers to a public official who belongs to the agency.
<b>Public Interest Disclosure</b>	Includes current or former Commonwealth public sector employees, contracted service provider and officers and employees of contracted service providers and other public officials including Board and committee members (as defined under Section 69 of the PID Act).
<b>Public Official</b>	Covers people in or with a relevant connection to the Commonwealth public sector, including Board and committees, and staff of contracted service providers.
<b>Line Manager</b>	(in relation to a person who makes a disclosure) is a public official who supervises or manages the person making the disclosure.
<b>Reprisal</b>	An act of retaliation against a person for making or being suspected of making a public interest disclosure. Under Section 13 of the PID Act, reprisal. From 1 July 2023, reprisals include harassment or intimidation, harm or injury to a person, and any damage to a person, in addition to employment-related harm

## Introduction

The *Public Interest Disclosure Act 2013* (PID Act) regulates the internal reporting of suspected wrongdoing or disclosable conduct within public sector agencies. It provides a framework and protections for public officials who make eligible disclosures under the PID Act.

## Scope

This policy applies to all current and former Commonwealth public sector employees, officers and employees of contracted service providers and other public officials including the Board and committee members.

## Purpose

The Workplace Gender Equality Agency (the Agency) is committed to ensuring the highest standards of ethical and accountable conduct. The Agency promotes an environment where appropriate action is taken to investigate and resolve public disclosures of suspected wrongdoing and maladministration.

The purpose of this policy is to set out the framework adopted by the Agency in complying with the PID Act and to provide guidance to Agency employees around Public Interest Disclosure (PID) procedures and protections offered under the PID Act. The objectives of the PID Act are to:

- promote integrity and accountability in the Commonwealth public sector.
- encourage the making of PIDs by public officials.
- ensure that public officials who choose to make PIDs are supported and protected from any adverse consequences relating to the disclosure.
- ensure that disclosures made by public officials are properly investigated and dealt with by the Agency.

This policy is to be read with the Workplace Gender Equality Agency Fraud Control Plan.

## Background

The Public Interest Disclosure Scheme (Scheme) commenced on 15 January 2014. Under the PID Act, the Scheme applies only to disclosures made from 15 January 2014, but can relate to disclosable conduct that occurred at any time. The PID Act repealed the whistleblower provisions under Section 16 of the *Public Service Act 1999* (PS Act) for Australian Public Service employees.

The National Anti-Corruption Commission (NACC) is an independent Commonwealth agency established under the *National Anti-Corruption Commission Act 2022* (NACC Act) to detect, investigate, and report on serious or systemic corruption in the Commonwealth public sector. Under the NACC Act, the Agency's Principal Officer and Authorised Officers are required to disclose matters to the NACC if such matters are suspected to be serious or systemic corruption.

## Resources

Resources and legislation relevant to this policy include:

- APS Code of Conduct
- Commonwealth Fraud Control Guidelines
- Commonwealth Ombudsman – [Agency Guide to the Public Interest Disclosure Act 2013](#)
- Commonwealth Ombudsman – [Changes to the PID Scheme](#)
- [Commonwealth Ombudsman – Public Interest Disclosure \(Whistleblowing\)](#)
- *Crimes Act 1914* (Cth)
- Employee Assistance Program
- *Freedom of Information Act 1982* (Cth)
- *Public Interest Disclosure Act 2013* (Cth)
- *Public Interest Disclosure Amendment (Review) Standard 2023* (Cth)
- *Public Service Act 1999* (Cth)
- *Public Service Regulations 2023* (Cth)
- *National Anti-Corruption Act 2022* (Cth)
- [National Anti-Corruption Commission](#)
- WGEA Policy – Delegations of Agency Head Powers and Functions under the PID Act 2013
- WGEA Policy – Fraud Control Plan
- WGEA Policy – Media and Social Media

- WGEA Policy – Procedures for determining breaches of the APS Code of Conduct and for determining sanction
- WGEA Policy – Protective Security Policy

## Key Elements

### What is a “Public Interest Disclosure”?

For the purposes of the PID Act a PID includes:

- internal disclosure
- external disclosure
- emergency disclosure
- a legal practitioner disclosure.

These disclosures can be made by a Commonwealth public sector employee, contracted Commonwealth service provider or other public official, including Board and committee members, where the information tends to show, or the public official believes on reasonable grounds that the information tends to show disclosable conduct.

### What types of “Disclosable Conduct” can and cannot be reported?

Under the PID Act, a discloser can disclose information that they believe on reasonable grounds demonstrated an act of wrongdoing or “disclosable conduct”. Below table outlines conduct that can and cannot be reported.

Disclosable conduct that can be reported	Disclosable conduct that cannot be reported
→ Conduct that contravenes a Commonwealth, state, or territory law.	→ Disagreement with government policy.
→ Conduct that occurred in a foreign country that contravenes a foreign law that applies to that agency, official or service provider.	→ Disagreement with a government action.
→ Conduct that is corrupt.	→ Disagreement with government expenditure.
→ Conduct that perverts the course of justice.	→ Personal work-related conduct including bullying and harassment, conduct relating to the terms and conditions of engagement and disciplinary action.
→ Conduct that results in wastage or public funds or property.	→ Disclosures made while performing one’s ordinary functions as a public official including discussions in agencies where everyday functions involve investigation or wrongdoing.
→ Conduct that is an abuse of public trust.	
→ Conduct that unreasonably endangers health and safety or endangers the environment.	
→ Conduct that involves fabrication, falsification plagiarism, or deception relating to scientific research, or misconduct relating to scientific research, analysis, or advice.	
→ Conduct that is considered maladministration, including conduct that is based on improper motives or is unreasonable, unjust, oppressive, or negligent.	

From 1 July 2023 personal work-related conduct is not considered disclosable conduct. Personal work-related conduct includes:

- Interpersonal conflict, including bullying and 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 PS Act or comparable review process.
- Concerns about a recruitment process or outcome that the discloser was not directly involved in.

Disclosures that contain both disclosable and personal work-related conduct should be allocated as an internal disclosure under the PID Act unless the conduct disclosed would be more appropriately investigated under another law or power.

## To whom can a disclosure be made?

A disclosure must be made to an appropriate person to gain the protections available under the PID Act. Below outlines the various options for disclosers looking to disclose a matter:

Type of disclosure	To whom can a disclosure be made	Conditions
Internal disclosure	<ul style="list-style-type: none"> <li>→ Direct supervisor/manager</li> <li>→ Principal Officer</li> <li>→ Authorised Officer</li> <li>→ Commonwealth Ombudsman</li> <li>→ NACC</li> </ul>	<ul style="list-style-type: none"> <li>→ If the disclosure is relating to an agency other than the Agency, the disclosure should be made to an Authorised Officer.</li> <li>→ If the discloser believes it would be appropriate for the Ombudsman to investigate, the disclosure should be made to an Authorised Officer of the Ombudsman.</li> <li>→ If a public official believes the Agency did not appropriately investigate and deal with the disclosure, they can report it to the Ombudsman.</li> <li>→ If the matter is suspected to be a serious or systemic corruption, the Principal Officer or Authorised Officer must refer the matter to the NACC.</li> </ul>
External disclosure	<ul style="list-style-type: none"> <li>→ Commonwealth Ombudsman</li> <li>→ NACC</li> </ul>	<ul style="list-style-type: none"> <li>→ A public official can make a disclosure outside of the government provided the information or matter does not include intelligence or sensitive law enforcement information and the disclosure is not made to a foreign public official.</li> <li>→ A public official who has made an internal disclosure under the PID Act may make a disclosure to any person under limited conditions: <ul style="list-style-type: none"> <li>• If the internal investigation was not completed within 90 days and no extension was granted.</li> <li>• If the investigation was inadequate.</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>• The Agency took inadequate action once the investigation was completed.</li> <li>• It is not contrary to public interest for an external disclosure to be made.</li> </ul>
Emergency Disclosure	<ul style="list-style-type: none"> <li>→ Commonwealth Ombudsman</li> <li>→ NACC</li> </ul>	<ul style="list-style-type: none"> <li>→ Disclosure made if the discloser reasonably believes there is significant and imminent danger to public health or safety including to the environment.</li> <li>→ The extent of the information disclosed must only be what is necessary to alert the recipient of the substantial and imminent danger.</li> </ul>
Legal practitioner disclosure	→ Australian legal practitioner	→ Disclosed for the purposes of seeking legal or professional advice in relation to making a disclosure.
Disclosures to the National Anti-Corruption Commission	→ NACC	<ul style="list-style-type: none"> <li>→ The NACC Commissioner has discretion to investigate a corruption issue if they are of the opinion that the issue could involve serious or systemic corrupt conduct.</li> <li>→ The NACC Commissioner may refer the matter back to the relevant agency for consideration or investigation.</li> </ul>

If a discloser is a current Agency staff member, they can disclose the information to their Line Manager. If the manager believes that the information concerns disclosable conduct, the manager must give the information to an Authorised Officer of the Agency as soon as reasonably practicable.

Alternatively, the discloser can disclose information directly to an Authorised Officer of the Agency. Authorised Officers are responsible for receiving and investigating PIDs related to the PID Act.

The appointment of the Agency's Authorised Officer is at **Appendix B**.

The discloser may also disclose information to the Ombudsman, the Inspector General of Intelligence and Security (IGIS) if the matter concerns national security, or the NACC, who may investigate the matter or allocate the matter to the relevant agency for investigation. The Ombudsman and IGIS will receive a copy of all investigation reports and may make recommendations about investigation reports without a complaint having been made.

A discloser may disclose information to an Authorised Officer in a different agency. This may happen if the person has moved to a new agency and reports suspected wrongdoing in their previous workplace.

## Freedom of Information requests

Documents associated with a PID are not exempt from the operation of the *Freedom of Information Act 1982* (FOI Act). Requests for access to documents under the FOI Act should be considered on a case-by-case basis. A range of exemptions may apply to individual documents or parts of documents, particularly in relation to material received in confidence, personal information, operation of agencies and law enforcement.

## Procedure for making a disclosure

### Who can make a disclosure?

A PID may either expressly, or by implication, make an allegation about another APS employee or Commonwealth service provider about actual conduct which the discloser believes to be a disclosable conduct. A current or former public official may make a disclosure and receive protection under the PID Act.

## How a public interest disclosure can be made

A discloser can make a disclosure in person, by telephone or in writing, including by email to their Line Manager, the Principal Officer, or an Authorised Officer. If a disclosure is made verbally, a record should be made of what was said and the discloser should sign the record as being correct.

An Authorised Officer is a person who is delegated by the CEO, or through legislative mandate to receive and investigate PIDs. At the Agency, Authorised Officers are:

- the Chief Executive Officer
- the Chief Operating Officer
- the Operations Executive Manager.

Contact details for the Principal Officer and Authorised Officers of the Agency are provided in **Appendix A**.

## Anonymous disclosures

Disclosers do not have to identify themselves and may remain anonymous. Remaining anonymous means disclosers do not identify themselves at any stage or to anyone, including the Officer who receives the disclosure.

The Agency will investigate disclosures made anonymously whenever possible. However, the Agency retains the right not to investigate the matter if necessary information cannot be sought from an anonymous discloser.

Disclosers should consider identifying themselves to an Authorised Officer, or at least provide a means of contact to assist the Agency in carrying out an effective investigation of their disclosure, for the following reasons:

- the PID Act requires agencies to keep a discloser's identity confidential, subject to limited exceptions including obtaining the discloser's consent.
- it will be difficult to ensure protection from reprisal if the agency does not know the discloser's identity.
- 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 discloser who has made an anonymous disclosure may come forward at any stage to disclose their identity and seek protections under the PID Act.

## What information should be provided?

The discloser does not need to prove the disclosure but must notify the Agency that they believe on reasonable grounds that there has been a wrongdoing. To assist the Agency in undertaking an effective investigation of the disclosure, the discloser should consider providing (if possible):

- their name and contact details
- the nature of the wrongdoing
- who they think committed the wrongdoing
- when and where the wrongdoing occurred
- relevant events surrounding the issue
- if they did anything in response to the wrongdoing
- others who know or ought to know about the wrongdoing and have allowed it to continue
- whether they believe their information is a PID under the PID Act
- whether they are concerned about possible reprisal as a result of making the disclosure.

Disclosers should be clear and factual in their statements and avoid speculation, personal attacks, and emotive language. A person who wishes to make a disclosure should not investigate the matter themselves prior to making a disclosure. The sooner a disclosure is made, the easier it will be for the Agency to take appropriate action. A template for reporting conduct is provided at **Appendix D**.

If information provided by a discloser turns out to be incorrect, or unable to be substantiated, their disclosure is protected under the PID Act, provided that the disclosure was made to the appropriate person under the PID Act, and the discloser believed on reasonable grounds that the information regarded disclosable conduct.

## **The discloser's own wrongdoing**

Making a disclosure does not necessarily protect a discloser from the consequences of their own wrongdoing, including where they have been involved in the misconduct they are reporting. Depending on the circumstances of the issues being reported, the Agency will decide on a case-by-case basis whether to take action against the discloser, in particular if the discloser has had only minimal involvement.

## **The discloser's obligations**

Disclosers should not discuss the details of a disclosure with anyone who does not need to know. Any unauthorised discussions will not be protected under the PID Act. A discloser should be prepared to provide further information and to assist with the resulting investigation.

# **Procedure for allocating a disclosure**

## **Protection for disclosers**

To gain the protections of the PID Act, a public official must make their disclosure to someone who is authorised to receive it.

The identity of a person who makes a disclosure will be kept confidential as far as practicable. It is an offense to provide identifying information about a person who makes a disclosure without their consent unless authorised by the PID Act. A discloser also has immunity from civil, criminal, and administrative liability (including disciplinary action) for making a disclosure. It is a criminal offence to take or threaten to take a reprisal, such as discriminatory treatment, termination of employment or injury against someone because they make a PID. This also includes a proposed or suspected disclosure.

If a public official is found to have knowingly made a misleading or false statement, they may be subject to civil, criminal, or disciplinary action.

## **Confidentiality for disclosers**

The Agency will make every reasonable effort to protect the discloser's identity. It should be noted that the PID Act cannot provide absolute protection of the discloser's identity in all situations. The discloser's identity may need to be disclosed to certain people if it is necessary to conduct an effective and proper investigation, or to protect the discloser against reprisals. If it is necessary or highly likely that a discloser's identity will be revealed, the Agency's Authorised Officer should discuss this with the discloser before proceeding.

Any Agency employee involved in the submission of, or inquiry into, a public disclosure or its outcomes, or who has any knowledge of the same, is required to comply with the Agency's Media and Social Media Policies in relation to communicating with anyone who does not possess express authorisation from the CEO to be in possession of that knowledge. Employees should be aware that Section 70(1) of the *Crimes Act 1914* makes it a criminal offense for an APS employee to publish or communicate any fact or document which came into their possession by virtue of their APS employment and in respect of which there is a duty to disclose without authorisation. Regulation 2.1 of the *Public Service Regulations 2023* (PS Regs) also provides that an APS employee must not, except during his or her duties as an APS employee or with the CEO's express authority, give or disclose, directly or indirectly to any person, any information about a public business or anything of which the employee has official knowledge.

## Risk Assessment

The Agency must assess the risks that reprisals may be taken against a person who makes a PID. An accurate and objective risk assessment will allow the Agency to put suitable strategies in place to control the risks and defend itself against any allegations of having failed to protect a discloser.

The risk assessment should be conducted by an Authorised Officer as soon as possible after a disclosure is received. If the disclosure is first made to a Line Manager and the discloser wishes to remain anonymous, the Line Manager should conduct the risk assessment.

The template risk assessment checklist can be found at **Appendix C**.

## Determining if the information is an internal disclosure

The Principal Officer or an Authorised Officer must examine the information received and decide whether it is an internal disclosure under the PID Act. If a person has disclosed information to their Line Manager and that person reasonably believes the information could contain disclosable conduct, the manager must pass the information to an Authorised Officer as soon as reasonably practicable. Due to confidentiality requirements, the manager should obtain the discloser's consent before passing on their identifying information.

## Preliminary inquiries

The PID Act gives Authorised Officers the power to make preliminary inquiries and obtain further information before making a decision about allocating the matter for investigation. Preliminary inquiries could include asking the discloser for further details. Making a preliminary inquiry is not the same as investigating as the purpose of a preliminary inquiry is not to draw conclusions or reach an outcome. If there is evidence of criminal conduct at a preliminary inquiry stage, the Authorised Officer may also need to consider referring that evidence to a law enforcement agency. A template to assist with the preliminary investigation is at **Appendix D**.

## Allocating a disclosure

The Principal Officer or an Authorised Officer must allocate the handling of the disclosure to an appropriate entity, unless they are reasonably satisfied that there was no reasonable basis for considering the matter to be an internal disclosure. The Authorised Officer must consider the matter and allocate it for investigation within 14 days of becoming aware of the disclosure. Disclosures can be allocated to one or more agencies. Appropriate entities include their own Agency, the Ombudsman, IGIS, or the NACC.

An Agency may allocate a PID investigation to another agency within their portfolio that is better able to handle the disclosure. An Agency is also able to decide not to allocate or investigate a disclosure if it would be more appropriately investigated under another Commonwealth law or power. In these circumstances there must be another law or power under which the conduct could be investigated, or an alternative process must be more appropriate than investigation under the PID Act. An alternative investigation may be more appropriate because it is designed for investigating the specific kind of alleged conduct, includes specific and required investigative powers, or is more flexible or otherwise better suited to investigating and responding to the alleged conduct.

## What information should be given to a receiving agency

Once a decision has been made to allocate a disclosure, the Authorised Officer must fully inform the Principal Officer of the allocated Agency of:

- the allocation to their Agency
- the information that was disclosed
- the suspected disclosable conduct
- the discloser's name and contact details if known and the discloser consents.

The Authorised Officer must also inform the Ombudsman by providing a brief outline of the disclosure and the allocation to the appropriate agency. A notification form is available on the [Ombudsman website](#).

## Informing the discloser of the allocation

The Authorised Officer must let the discloser know of their decision to allocate the matter for investigation as soon as practicable after the allocation. If the Authorised Officer decides not to allocate the matter because they have determined that the disclosure is not an internal disclosure, they must inform the discloser of the reasons why, and advise them of any other options that they might have under Commonwealth law (such as in relation to workplace grievance).

The Authorised Officer must make a written record of the allocation decision, the reasons for the decision and the receiving agency's consent. The record must also contain a record of when the discloser was notified of the allocation, including the day, time and means of notification and the content of the notification.

## Procedure for investigating a disclosure

### Investigating a disclosure

The Principal Officer must investigate a disclosure that has been allocated for investigation unless the PID Act allows otherwise. The Principal Officer may delegate any of their functions or powers to a public official who belongs to the Agency.

### Decision not to investigate

The Principal Officer or the Authorised Officer may decide not to investigate, or may discontinue an investigation, for one of the following reasons:

- the discloser is not a current or former public official.
- the information does not, to any extent, concern serious disclosable conduct.
- the disclosure is frivolous or vexatious.
- the disclosure is the same, or substantially the same, as another disclosure which has been or is being investigated under the PID Act.
- the disclosure is the same, or substantially the same, as a disclosure already investigated or currently being investigated under another law or power, and:
  - it would be inappropriate to conduct another investigation at the same time, and
  - the Principal Officer is reasonably satisfied that there are no matters that warrant further investigation.
- the disclosure would be more appropriately investigated under another Commonwealth law or power.
- the discloser has advised the Principal Officer or an Authorised Officer that they do not wish the investigation to be pursued, and the Principal Officer is reasonably satisfied that there are no matters that warrant further investigation.
- it is impractical to investigate the disclosure because:
  - of the age of the information.
  - the discloser has not revealed their name and contact details, or
  - the discloser has failed, or is unable, to give the investigator the information or assistance they requested.

If the Principal Officer or an Authorised Officer decides not to investigate the disclosure, they must inform the Ombudsman of the decision and of the reasons for the decision. A notification form is made available on the [Ombudsman website](#).

Notice of the decision not to investigate must be given to the discloser, provided they are readily contactable. The notice must provide reasons for the decision and other action that may be available to them under other Commonwealth laws.

## Conducting the investigation

The Principal Officer is responsible for conducting investigations and may delegate those powers and functions to an officer who belongs to their Agency. Investigators must ensure they do not have an actual or perceived conflict of interest. Unless there are compelling reasons not to do so, the investigator should be separate from the workgroup where the alleged wrongdoing has occurred.

An investigation of a PID should be conducted as the investigator best sees fit, obtaining information, and making enquiries as they believe to be most appropriate. When conducting the investigation, the investigator must comply with any standards issued by the Ombudsman. The Ombudsman's guide for conducting an investigation is available on the [Ombudsman website](#). Where the investigation relates to fraud against the Commonwealth, the investigator must also act in accordance with the Commonwealth Fraud Control Guidelines.

In investigating an alleged breach of the Code of Conduct under the *Public Service Act 1999* (PS Act), the investigator must comply with the procedures established under Section 15(3) of the PS Act.

## Time limit for investigations

Investigations under the Act must be completed within 90 days of the date the matter was allocated for investigation.

If more time is required, the Agency must lodge an application to the Ombudsman for an extension of time to investigate. This application must be submitted at least 10 days before the 90-day period has expired. Such an application should include reasons why the investigation cannot be completed within the 90 days, the views of the discloser, and an outline of the actions taken to progress the investigation. The notification form for time extension is made available on the [Ombudsman website](#).

If an extension is granted, the Ombudsman will inform the discloser and give reasons for the extension. The Principal Officer must also let the discloser know as soon as reasonably practicable after the extension is granted about the progress of the investigation.

## Standard of proof and evidence

The Principal Officer must ensure that a disclosure is investigated on the basis that there is sufficient evidence to prove or disprove the disclosure. A fact is taken to have been proven if the Principal Officer is satisfied that it is likely that the fact is true.

The Principal Officer must ensure that a finding is based on logically probative evidence and that the evidence relied on in an investigation is relevant.

## Ensuring confidentiality during the investigation

Disclosures should be assessed and investigated discreetly, with a strong emphasis on maintaining confidentiality of both the discloser and any person who is the subject of the disclosure.

All interviews should be conducted in private. Any interviews with the discloser should be arranged discreetly to avoid identification by other individuals. Care should be taken to avoid any authorised divulging of information. All information obtained, including documents and interview recordings, should be stored securely and only be accessible on the need-to-know basis. Those who are interviewed should be advised that information relating to the matter is confidential, that release of information may jeopardise an investigation and that they may be committing an offence if they divulge any information that is likely to identify the discloser.

The Agency will ensure that:

- all paper and electronic documents and files, and other materials relating to disclosures, are secure and only accessible by Authorised Officers, investigators and other officers involved in managing internal disclosures.
- communications are not sent to an email address to which other staff have access or documents sent to a printer in an open area of the office.

## Conducting an interview

The Principal Officer must ensure that, if a person is interviewed as part of the investigation of a disclosure, the interviewee is informed of the following:

- the identity and function of each individual conducting the interview
- the process of conducting an investigation
- the authority of the Principal Officer under the PID Act to conduct the investigation
- protections provided under the PID Act.

The Principal Officer must ensure that:

- audio or visual recording/s of the interview are not made without the interviewee's knowledge
- when an interview ends, the interviewee is given an opportunity to make a final statement, comment, or express a position
- any final statement, comment or position by the interviewee is included in the recording of the interview.

## Criminal matters

During a disclosure investigation, if the investigator suspects on reasonable grounds that some or all of the information disclosed or obtained in the course of the investigation is evidence of an offence against a law of the Commonwealth, a state or a territory, the investigator may choose to disclose the information and any evidence to law enforcement agency for investigation.

## Keeping records

Details about how and when a PID was made must be recorded and kept in a secure place. If the disclosure is given verbally, the discloser will be requested to sign a written statement of their disclosure. Subsequent conversations where the disclosure is discussed should also be documented.

Each disclosure should be given a unique reference number. Details of risk assessment of reprisal, allocation, the investigation, notifications to the discloser and others should also be kept. The records should be factual and free from unnecessary statements such as personal opinions.

## Procedural fairness

The rules of procedural fairness require that:

- an investigator or decision maker must be impartial and free of actual or apparent bias
- a person whose interests are directly affected by the decision is entitled to know the case against them and must be given a reasonable opportunity to present their side of the story and respond to any adverse information relevant to their case
- the decision maker must make their decision only after having considered the evidence.

Employees who are the subject of a PID are entitled to procedural fairness including having the right to be heard. This means that before a final determination is made, an Agency employee who is the subject of a PID:

- may be provided with the substance of the material that the decision maker is considering
- may be provided with a reasonable opportunity to be heard on whether the disclosure about their behaviour is true or false and whether further action should be taken.

In most cases, the opportunity to be heard will be provided to an employee against whom the allegation has been made. However, there may also be cases where this opportunity is not provided to the employee, including where:

- the report is found to be without substance and an inquiry is not pursued
- advising the employee of the allegations may seriously disrupt workplace harmony, or adversely affect the health of the employee to a serious degree.

In most circumstances, a discloser is not entitled to procedural fairness as their role in the matter is essentially that of an informant or witness. If it becomes apparent that adverse finding/s or recommendation/s may result about the discloser themselves because of the inquiry, the discloser will be entitled to procedural fairness.

## After an investigation

### Report of investigation

After an investigation, the Principal Officer must ensure that a report is prepared, and that appropriate action is taken by the Agency.

The investigator must prepare a report that details the following:

- whether there have been one or more instances of disclosable conduct
- any regulations, rules, administrative requirements, or similar matters to which the disclosable conduct relates
- the matters considered in the course of the investigation
- the steps taken to gather evidence
- the duration of the investigation
- a summary of the evidence, as well as any findings that were made
- any action either recommended or taken
- any claims or evidence of detrimental action to the discloser, and the agency's response to those claims.

In preparing the report, the investigator must comply with any standards issued by the Ombudsman. The investigation report must show that conclusions have been drawn based on sufficient substantiating evidence. A template PID Reporting form is provided at **Appendix D**.

### Copy of report for the discloser

The Principal Officer must provide a copy of the report to the discloser within a reasonable timeframe after the report is completed. This is not required where the discloser is unable to be contacted. The version given to the discloser may have certain information redacted if the information:

- reveals, or is likely to reveal, the identity of the discloser or another person
- will render the report as an exempted document for the purposes of Part 5 (Exemptions) of the FOI Act, or
- has, or is required to have, a national security or other protective security classification.

### Action to be taken by the Agency

The action taken by the Agency at the end of an investigation will vary with the circumstances. The Principal Officer will take appropriate action in response to the recommendations and other matters contained in the investigation report. Actions may include:

- commencing Code of Conduct proceedings under the PS Act or another disciplinary process
- referral of the matter to the Police or another body that can take further action
- mediating or conciliating a workplace conflict
- an internal audit or other review of an issue or the operations of a particular unit
- implementing or changing policies, procedures, or practices
- conducting training and awareness sessions for staff.

## What if the discloser is not satisfied with the action taken?

If a discloser is not satisfied with the Agency's decision not to investigate a matter, or if they believe that the investigation or the Agency's response to the investigation was inadequate, the discloser can approach the Principal Officer or an Authorised Officer to discuss their concerns about the process or the outcome. The Agency can undertake review or reconsideration measures to address the discloser's concerns.

It is important for the discloser to understand that they do not "own" the PID, and that it is up to the Agency to determine how best to resolve matters by identifying problems and taking corrective action. However, a reasonable belief that an investigation or the agency's response to an investigation was inadequate is one of the conditions for making an external disclosure.

A discloser who is dissatisfied with the process or how they have been treated may also lodge a complaint to the Ombudsman. Contact details for the Ombudsman are provided in **Appendix A**.

## Support and protection

Under the PID Act, current and former public officials are protected from adverse consequences when making a PID. These protections also apply to internal disclosures, external and emergency disclosures made in accordance with the PID Act.

Even if the discloser's report of wrongdoing turns out to be incorrect or unable to be substantiated, they will still be protected under the PID Act, provided they reasonably believe at the time of the disclosure that the information tends to show disclosable conduct.

### Protection from reprisal

Reprisal occurs if someone causes, or threatens to cause, any detriment to another person because they believe or suspect that person made, may have made, propose to make, or could make a PID.

The Agency will take seriously, record and respond to allegations of reprisal. The Agency will monitor the work environment of a discloser for signs of detriment, harassment, intimidation, victimisation, harm or injury to a person and any damage to a person and will take corrective action if necessary. Reprisals include both direct and indirect threats to cause detriment.

Responses to alleged reprisals will depend on their seriousness and other circumstances. Actions which may be taken to resolve workplace conflict include holding discussions with staff, providing guidance and support and closer supervision of the workplace for inappropriate workplace behaviours.

Conduct amounting to a reprisal may be a breach of the APS Code of Conduct and any such instances will be dealt with under the Agency's Procedures for determining breaches of the APS Code of Conduct and for determining sanction.

### Support for disclosers

The Agency will provide active support for a discloser throughout the process, including:

- acknowledgment for having come forward with a report of wrongdoing
- an offer of support and information about what options are available
- an assurance that the Agency will take all reasonable steps necessary to protect them.

The Agency also provides access to the Employee Assistance Program to disclosers to access professional counselling services. Contact details for the EAP are provided in **Appendix A**.

The investigator is not the most appropriate person to provide support to the discloser throughout the investigation process, as their role is to investigate the matter objectively and impartially.

## Keeping the discloser informed

The PID Act requires the discloser to be notified at various stages in the process, provided that the person's contact details are available. The discloser must be advised:

- when the disclosure is either allocated for investigation, or not allocated because it has been determined not to be an internal disclosure
- regarding information about the Principal Officer's discretionary powers not to investigate (within 14 days of the disclosure being allocated)
- if the Agency decides to investigate
- regarding the estimated length of the investigation
- if the Agency decides not to investigate, the reasons for the decision and any action that might be available to the discloser under other Commonwealth laws
- if an extension of time is granted by the Ombudsman, the progress of the investigation
- after the investigation report is completed.

The Agency will keep the discloser up to date with reasonable information about what is being done in response to their disclosure. Early in the process, an Authorised Officer should make sure the discloser understands:

- what the Agency intends to do
- the likely timeframe for the investigation
- the discloser's responsibilities (such as maintaining confidentiality)
- how they will be updated on progress and outcomes
- who to contact if they want further information and are concerned about reprisal.

## Stop action direction under the NACC Act

The NACC Commissioner may direct the Principal Officer to stop taking certain actions in relation to a PID which involves a corruption issue. If such stop action direction is received under the NACC Act, the Principal Officer must notify the discloser that they cannot investigate, or further investigate, the disclosure due to the stop action direction.

## Protection for witnesses

No Agency employees, Board or committee member, contractor or their employees will be subject to any criminal or civil liability or disadvantage because they provide information relating to an investigation into a PID.

This does not apply if the information obtained related to the Agency employee or contractors' own behaviour or conduct.

## Protection for a person subject to an allegation

A person who is subject to allegations of wrongdoing will be given information about their rights and obligations under the PID Act, the Agency's investigation procedures and any other relevant matter such as a Code of Conduct proceedings. Anyone who is subject to an allegation is innocent of any wrongdoing until proven otherwise. The identity of a person who is the subject of allegations or an investigation should be protected as much as practicable.

## Support for a person subject to an allegation

Any employee involved in an inquiry into a PID is entitled to have a support person attend any meetings or discussions in relation to the report. The role of a support person is to provide the employee with emotional support and to act as a witness to the proceedings. A support person may not advocate on behalf of the employee but may take notes for the employee's later reference. The investigator may also utilise the services of another authorised employee to take notes and act as a witness to the proceedings.

## Frivolous, vexatious, false, fabricated, or malicious reports

Employees should be aware that disciplinary action may be taken against anyone who deliberately makes a frivolous, vexatious, malicious, fabricated, or false report of suspected misconduct by another employee.

An employee who knowingly makes a statement that is false or misleading, or knowingly without reasonable excuse, contravenes certain publication restrictions listed within the PID Act, will not receive any protection under the PID Act.

## Information and assistance required by the Ombudsman

The Principal Officer must provide the following information to the Ombudsman:

- the number of PID received by Authorised Officers of the agency during the reporting period
- the kinds of disclosable conduct to which those PIDs related
- the number of disclosures allocated to the agency during the period covered by the report
- the number of disclosure investigations that the Principal Officer conducted during the period covered by the report
- the actions that the Principal Officer has taken during the relevant period in response to recommendations in reports relating to those disclosure investigations
- any other information required by the Ombudsman.

The Principal Officer must provide the information within a time requested by the Ombudsman.

## Roles and responsibilities

The roles and responsibilities under this Policy include:

### Principal Officer (Chief Executive Officer)

The CEO, as the Principal Officer of the Agency, is responsible for the following in relation to the PIDs:

- take reasonable steps to protect public officials who belong to the Agency against reprisals in relation to PIDs that have been, may have been, are proposed to be, or could be made to the Agency.
- take reasonable steps to encourage and support disclosers, including potential disclosers, and those who help in relation to PIDs.
- take reasonable steps to provide ongoing training and education to public officials about the Act, and any training necessary to support officials to carry out their functions under the PID Act.
- ensure that there are sufficient Authorised Officers readily accessible to public officials who belong to the Agency and public officials are aware of their identity.
- ensure disclosures are properly investigated.
- prepare an investigation report and take appropriate action, as soon as reasonably practicable, in response to recommendations made in the report.
- notify the discloser and the Ombudsman (or IGIS) of the completion of an investigation under the PID Act and provide a copy of the investigation report. Ombudsman or IGIS may review the handling of a disclosure and recommend an agency take particular action. In response, they must provide notice to the Agency of action taken or proposed to be taken in response. If no action is proposed to be taken, the notice must provide a reason why.

### Authorised Officer

The Authorised Officer is responsible for the following in relation to PIDs:

- 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.
- when explaining the requirements of the PID Act to disclosers, explain the circumstances in which a PID must be referred to another agency, person, or body, under another law (e.g. referral to the NACC if the disclosure could involve serious or systemic corrupt conduct).
- notify the Ombudsman of the reallocation of a disclosure.
- notify the Ombudsman when a disclosure is not allocated for investigation under the PID Act.
- notify the Ombudsman when a stop action direction from the NACC prevents allocation of all or part of a disclosure.
- determine whether personal work-related conduct included in a disclosure may be disclosable conduct (it will only be disclosable conduct if it concerns reprisal or has significant implications for an agency).

## Investigation Officers (Investigators)

The investigator is responsible for the following in relation to PIDs:

- ensure investigation complies with requirements of the PID Act, the Ombudsman's requirements, and this policy.
- the discretion to not investigate or further investigate where the information is the same or substantially the same as information previously disclosed under the PID Act and the decision was previously made to not investigate or further investigate the earlier disclosure.
- the discretion to not investigate or further investigate where the conduct disclosed would be more appropriately investigated under another law or power.
- check that the investigation report set out claims of reprisal taken against the discloser or any other person (together with related evidence), and the Agency's response to those claims or evidence. If remedial action is required, ensure relevant recommendations are made.
- complete investigations within 90 days of allocation unless an extension has been granted. The time will start counting again on reallocation, a decision to reinvestigate, or the day the Principal Officer becomes aware a NACC stop action direction no longer applies.
- notify discloser and Ombudsman (or IGIS if relevant) of the completion of an investigation under the PID Act and provide a copy of the investigation report.
- ensure referral of suspected serious or systemic corruption uncovered in a PID investigation to the NACC.

## Line Manager

A Line Manager must be aware of how the PID Act operates. If a public official discloses information to a line manager and they have reasonable grounds to believe that the information concerns disclosable conduct, the line manager must, as soon as reasonably practicable, give the information to an Authorised Officer. The line manager must also:

- inform the discloser that their disclosure could be treated as an internal disclosure.
- explain to the discloser the next steps in the PID process (i.e. referring their disclosure to the Authorised Officer, the potential allocation of the PID, and investigation of the PID).
- advise the individual about the circumstances in which a PID must be referred to an agency, or other person or body, under another law of the Commonwealth.
- explain the civil and criminal protections the PID Act provides to disclosers, and those assisting with the handling of a PID.

## **Agency staff and contractors**

Agency staff and contractors are required to adhere to this Policy. They must also assist the Principal Officer, the Authorised Officers, and the investigator by responding to any requests for information or documentation in a reasonable timeframe in relation to a disclosure.

# Appendix A: Contact details

## Principal Officer (Chief Executive Officer)

Mary Wooldridge

Chief Executive Officer

**Postal Address:** Level 7, 309 Kent Street Sydney NSW 2000

**Telephone:** (02) 9432 7093

**Email:** [mary.wooldridge@wgea.gov.au](mailto:mary.wooldridge@wgea.gov.au)

## Authorised Officer

Janette Dines

Chief Operating Officer

**Postal Address:** Level 7, 309 Kent Street Sydney NSW 2000

**Telephone:** (02) 9432 7006

**Email:** [janette.dines@wgea.gov.au](mailto:janette.dines@wgea.gov.au)

## Authorised Officer

Anne Beath

Operations Executive Manager

**Postal Address:** Level 7, 309 Kent Street Sydney NSW 2000

**Telephone:** (02) 9432 7006

**Email:** [anne.beath@wgea.gov.au](mailto:anne.beath@wgea.gov.au)

## Commonwealth Ombudsman

Complaints to the Commonwealth Ombudsman can be made in writing, by phone or in person. Details can be found on the [Ombudsman's website](#).

**Postal address:** GPO Box 442, Canberra ACT 2601

**Telephone:** 1300 362 072

**Email:** [ombudsman@ombudsman.gov.au](mailto:ombudsman@ombudsman.gov.au)

**Online form:** [Web Form Submission \(ombudsman.gov.au\)](#)

## Employee Assistance Program

The Agency, through TELUS Health, provides a range of services under its Employee Assistance Program (EAP). These services include personal and professional support for employees and their families. EAP services are free and confidential.

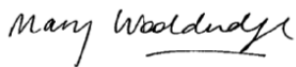
**Telephone:** 1300 361 008

**Website:** [Workplace wellbeing made easy | TELUS Health](#)

**Request an EAP Appointment (within Australia):** [Booking Form \(vision6.com.au\)](#)

## Appendix B: Written appointment of the Agency's Authorised Officers

I, Mary Wooldridge, Chief Executive Officer of the Workplace Gender Equality Agency, appoint Janette Dines and Anne Beath as the Agency's Authorised Officer's and delegate these public officials the functions and powers of the Principal Officer under the *Public Interest Disclosure Act 2013* (Cth).



22 July 2024

**Mary Wooldridge**

Chief Executive Officer

Workplace Gender Equality Agency

## Appendix C: Template risk of reprisal assessment checklist

### Risk identification

Risk identification involves determining the specific behaviour and circumstances that may result in reprisals or related workplace conflict.

When undertaking a risk of reprisals assessment, consideration should be given to the organisational context of when and where reprisals or related workplace conflict are likely to occur.

The person doing the risk assessment should clearly define the individual factors affecting the discloser (both organisational and personal) that could influence the chances of risks materialising.

The level of risk of reprisals or related workplace conflict should be assessed by considering the following:

- the likelihood of reprisals or related workplace conflict occurring – this may be high if:
  - there have already been threats
  - conflict already exists in the workplace
  - there is a combination of circumstances and risk factors that indicate reprisals or related workplace conflict are likely to occur.
- The potential consequences if they do occur – both to the immediate and long-term wellbeing of the discloser and the cost to the organisation.

### Risk assessment

Discuss with the discloser their perception of the likelihood of reprisals and of their identity becoming known.

Ask the discloser to whom they have told about the wrongdoing or disclosure, and how they think those involved, the associates of those involved and work colleagues in general might respond.

Using the template risk assessment checklist, assess the level of risk that reprisals or related workplace conflict may occur.

## Controlling risks

If the risks are assessed as sufficiently high, you should prepare a plan to prevent and contain reprisals against the discloser or related workplace conflict. This may include verifying the organisational position or work performance of the staff member at the point they reported to provide a benchmark against which alleged reprisals can be measured.

If it is determined that a discloser will require support, you should develop a strategy for providing an appropriate level of support. This may include appointing a support person who can be involved in helping the discloser manage their own responses to risks.

Any decision on controlling risk should be made in consultation with the discloser and will depend on the individual circumstances of the case.

## Monitoring and reviewing risks

Risk management is an evolving process. To best prevent reprisals, the risk assessment should be regularly monitored and reviewed as necessary. Issues can arise at any point after a report has been made. This may include:

- during an investigation into the disclosure
- once the outcome of an investigation is known
- if the subject of the disclosure is removed from and then reintegrated into the workplace
- at any point after the investigation is finalised.

You should identify who is responsible for monitoring and reviewing risks and plan how to monitor and address any problems that may arise – such as deterioration in workplace relationships or sudden unexplained changes in work performance.

You should also consult with the discloser and any support person on an ongoing basis to check if reprisals have occurred or they have concerns that they will.

## Risk assessment checklist

### 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 an investigation 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 disclosed their identity within the workplace?
- ☐ Who in the workplace knows the identity of the discloser?
- ☐ Is the size of the discloser's immediate work unit small?

- ☐ Are there circumstances such as the stress level of the discloser that will make it difficult for them to not discuss the matter with those 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 allegations made 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 the disclosure particularly sensitive or embarrassing for any subjects of the disclosure, senior management, the organisation or the 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 than the discloser?
- ☐ Is the discloser employed part-time or on a casual basis?
- ☐ Is the discloser isolated – for example, geographically or due to shift work?
- ☐ Are the allegations in the disclosure unlikely to be substantiated – for example because there is a lack of evidence?
- ☐ Is the disclosure being investigated outside of the organisation?

## Appendix D: Public Interest Disclosure report template

Preliminary Investigation	
Agency:	
Authorised Officer:	
Contact details of Authorised Officer:	Ph: Email:
Date disclosure reported to Authorised Officer or supervisor:	---- / ---- / ----
Date initial discussions held with discloser outlining process and responsibilities	---- / ---- / ----
Name of person making the disclosure	
Position of person making the disclosure	
Address of person making the disclosure	
Contact number of person making the disclosure	
Risk assessment completed	YES / NO
Consent obtained from discloser to reveal their identity at a later stage	YES / NO
Nature of the wrongdoing (ensure factual details are provided)	

Details of person that has committed the proposed wrongdoing	
Name:	
Position:	
Phone:	
Email:	
When and where did the wrongdoing occur:	
(include all relevant circumstances and events surrounding the issue)	
What did the discloser do at the time of the wrongdoing?	
Were there any other witnesses to the wrongdoing or has the incident been discussed with anyone else? YES / NO	
Name:	Contact details (if known):

**Preliminary actions taken by Authorised Officer** (include any action to protect the discloser if risk of reprisal is identified)


**If the issue is deemed by the Authorised Officer not to be an internal disclosure under the PID Act, provide rationale for decision and any alternative action if appropriate.**


**If the issue is deemed by the Authorised Officer as an internal disclosure requiring further investigation briefly summarise the course of action to be taken.**


<div style="border-top: 1px dashed black; height: 40px; margin-bottom: 5px;"></div> <div> <div>Signature of Authorised Officer</div> <div>Date:</div> </div>	
Date decision reported to Principal Officer:	
*Date Ombudsman notified (if required):	
Date discloser informed of decision:	

<b>Formal investigation report</b>
<b>Executive Summary</b>
<b>Issues considered during the investigation</b>
<b>Evidence gathered to support allegation/s</b> (provide brief details on how the evidence was gathered. Ensure each disclosure is provided with a unique reference number to assist with record keeping).



<b>Name and signature of investigating officer</b>		<b>Date:</b>
<b>Name and signature of Authorised Officer</b>		<b>Date:</b>
<b>Name and signature of Principal Officer</b>		<b>Date:</b>

<b>Date decision reported to discloser:</b>	----- / ----- / -----
<b>Date Ombudsman notified for Annual Report:</b>	----- / ----- / -----
<b>Date case referred to Police or other Agency (if appropriate):</b>	----- / ----- / -----