



# **PUBLIC INTEREST DISCLOSURE**

## **Standard Operating Procedures**



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## Standard Operating Procedures

# DEFENCE PUBLIC INTEREST DISCLOSURES

### Introduction

1. This document outlines the Department of Defence's (Defence) procedures for managing disclosures made under the *Public Interest Disclosure Act 2013* (the PID Act). Section 59 of the PID Act requires the Secretary of Defence (as Principal Officer under the PID Act) to establish procedures for facilitating and dealing with public interest disclosures. These procedures detail the legislative requirements for managing internal disclosures and provide guidance for decision-makers. It is not relevant for external disclosures, emergency disclosures, or legal practitioner disclosures.<sup>1</sup>

### Background

2. The PID Act commenced 15 January 2014 and applies to all Commonwealth Government Departments and Prescribed Agencies.
3. The PID Act provides a mechanism for public officials to report maladministration and wrongdoing within the Commonwealth public sector. Within Defence, the PID Act is administered by the Directorate of Public Interest Disclosures (DPID) within the Defence Integrity Division (DID).
4. For the purposes of the PID Act, the Secretary of Defence (Secretary) is the Principal Officer (PO).
5. The Secretary has delegated their PO powers and functions under the PID Act, to the First Assistant Secretary Defence Integrity (FAS DI) and the Assistant Secretary Fraud Control and Investigations Branch (AS FCIB).
6. The Director and Assistant Directors in DPID have been delegated with the PO's investigative powers and functions under Part 3, Division 2 of the PID Act.
7. For the purposes of this document, all those with the full powers of the Principal Officer, and delegates of the Principal Officer, will hereafter be referred to as the Principal Officer (PO).
8. The Director and Assistant Directors in DPID, as well as specific APS 5 or APS 6 position numbers within DPID are Authorised Officers (AO) appointed under section 36(b) of the PID Act.
9. The PID Act requires the PO to establish and have in place procedures for reporting, receiving, managing and investigating public interest disclosures. This document and other internal guidance documents and tools serve this purpose.
10. These procedures follow the legislated administrative process of the PID Act, from receipt of a disclosure to finalisation of a disclosure investigation as well as information on additional obligations of various roles, legislative reporting and guidance for decision making, investigating disclosures within Defence and maintaining records. All officials in DPID are to familiarise themselves with the

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<sup>1</sup> *Public Interest Disclosure Act 2013* (PID Act) s 26 items 2 to 4 of the table.

PID Act as a whole, as well as this document and other guidance and tools, in order to fully comprehend their legislative obligations. This includes the:

- a. PID Standard 2013<sup>2</sup>, and the
- b. Agency Guide to the *Public Interest Disclosure Act 2013*, published by the Office of the Commonwealth Ombudsman (the Ombudsman).

11. The objects of the PID Act are, in summary;

- a. The promotion of integrity and accountability in the Commonwealth public sector,
- b. Encouraging and facilitating the making of public interest disclosures by public officials,
- c. Ensuring that agencies support and protect public officials who make public interest disclosures, and
- d. Ensuring disclosures made by public officials are properly investigated and dealt with.<sup>3</sup>

It is important to note the effective implementation of the PID Act within Defence directly aligns to Defence's mission and purpose by:

- Investing in our people by providing a safe environment to report improper behaviour,
- Supports the delivery of future capability by investigating matters and making recommendations for improvement, and
- Advances Australia's prosperity by ensuring integrity is at the core of our work.

### Confidentiality

12. Confidentiality of a discloser's identity and allegations, and information obtained during the course of a disclosure investigation, is a requirement of the PID Act and is one of the primary means by which protection is provided to disclosers.
13. It is an offence under the PID Act to use or disclose information that may identify a person as a discloser. Unless the person likely to be identified by the information has consented to the disclosure or use of the information, or has acted in a way that is inconsistent with keeping that person's identity confidential.
14. For disclosures received *prior* to 1 July 2023, any information that is obtained in the course of conducting a disclosure investigation is **protected information**. It is an offence to disclose or use protected information unless it is for the purposes of this Act<sup>4</sup>.

<sup>2</sup> As available and current at [www.legislation.gov.au](http://www.legislation.gov.au).

<sup>3</sup> PID Act s 6.

<sup>4</sup> PID Act s 65 [superseded]

15. AOs, POs and any person involved in the administration of the PID Act within Defence must maintain confidentiality surrounding the PID process at all times. All individuals involved in dealing with a disclosure must;
  - a. Not seek to determine the identity of a discloser where a disclosure is made anonymously,
  - b. Only access (or attempt to access) information they are specifically authorised to access and only when it is relevant to managing a disclosure,
  - c. Not discuss, or disclose by any means, the identity of a discloser, the fact that a disclosure investigation is underway or information obtained during the course of a disclosure investigation with, or to, any person who does not need to know and only for a purpose permitted by the PID Act,
  - d. Advise the Director DPID immediately of any breach, or suspected breach, of discloser/disclosure investigation information.

### What is a Public Interest Disclosure (PID)

16. The PID Act complements existing notification, investigation, and complaint handling schemes in the Australian public sector. The PID Act provides additional protections for disclosers and reporting obligations for agencies.
17. A disclosure may be an internal disclosure, a legal practitioner disclosure, an external disclosure or an emergency disclosure. If a person makes a disclosure outside of defined circumstances,<sup>5</sup> they are not protected from the consequences of breaching any privacy or confidentiality requirements that apply to the disclosed information.
18. An internal disclosure is the most common type of disclosure under the PID Act. To make an internal disclosure, the person disclosing suspected wrongdoing must;
  - a. Be a current or former public official (or deemed to be a public official)<sup>6</sup>,
  - b. Make their disclosure to an authorised internal recipient or supervisor within Defence<sup>7</sup>, and
  - c. Provide information that they believe tends to show, on reasonable grounds, disclosable conduct within an Australian Government agency or by a public official.

### Receiving disclosures

19. Disclosures can be received face to face, via the PID phone line 1800 673 502, the Defence PID mailbox [defence.pid@defence.gov.au](mailto:defence.pid@defence.gov.au), or an allocation from the Ombudsman or other agency.
20. All disclosures received are to be recorded <sup>s47E(d)</sup> [REDACTED]  
[REDACTED] The discloser is

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<sup>5</sup> PID Act s 26(1)

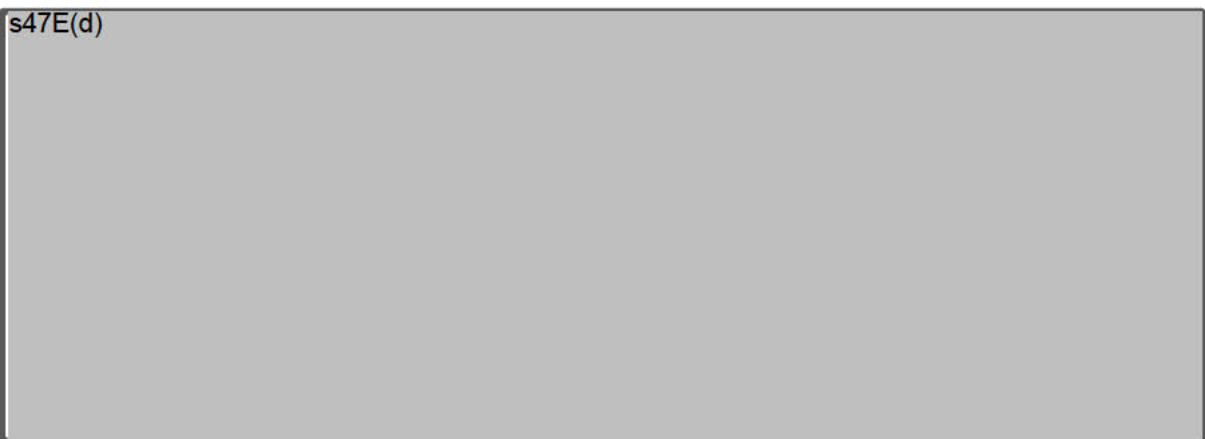
<sup>6</sup> Refer to paragraph 27 for information regarding public officials

<sup>7</sup> Refer to paragraph 33 for information regarding authorised internal recipients

to be sent written acknowledgment (where reasonably practicable) of the disclosure. The acknowledgment will inform disclosers;

- a. That the disclosure could be treated as an internal disclosure,
  - b. Of what the PID Act requires for the disclosure to be an internal disclosure,
  - c. About the circumstances (if any) in which a public interest disclosure must be referred to an agency, or other person or body, under another law of the Commonwealth, and
  - d. Of any orders or directions, that the AO is aware of, that may affect the disclosure of information.
21. AOs should use the guidance script when taking disclosures by phone, which covers the requirements of the PID Act and a record of conversation is to be completed and filed.
  22. All disclosures received will have a record created by the AO who will email the discloser an acknowledgement email. The team leader will then allocate the record to an AO for assessment.

s47E(d)



### Assessing Disclosures

23. AOs must use their best endeavours to assess and allocate the disclosure within 14 days of the receipt of a disclosure.<sup>8</sup>
24. The AO must assess disclosures having regard to the available information provided by the discloser, and the requirements of the PID Act. AOs must record a consistent level of detail when assessing whether to allocate a disclosure under the PID Act.
25. The AO must identify each individual issue raised in the information the discloser provides and frame it as an allegation. The AO must assess each allegation to determine if it is an internal disclosure.<sup>9</sup> Further information on assessing each of these criteria are detailed below.

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<sup>8</sup> PID Act s 43(5).

<sup>9</sup> Note that the individual types of disclosable conduct are required to be notified to the Commonwealth Ombudsman for the purposes of annual reports under s 76 of the Act (s 76(2)(ii) of the Act).

26. The *National Anti-Corruption Commission Act 2022* (NACC Act) requires all PID Officers to consider whether information disclosed relates to serious or systemic corruption. If the disclosure meets the requirements set out in the NACC Act, the PID Officer should refer the information to the Commission through the Director of Public Interest Disclosures. (See paragraphs 112-118)

***Is the discloser a public official?***

27. For the purposes of the PID Act and its application to Defence, a public official includes both current and former;
- APS employees,
  - Permanent and Reserve members of the ADF,
  - Contracted service providers (including subcontractors in some cases) to the Commonwealth, and
  - A Cadet, officer or instructor in the Australian Defence Force Cadets.
28. Within Defence, AOs can check if a discloser is a current or former employee, ADF member, or contractor by asking the discloser, s47E(d) [REDACTED]
29. Where the disclosure is made anonymously, the AO may be able to determine a discloser's status from the information provided and the language used.
30. If the discloser is not a public official, but the AO is of the view that the matter warrants consideration under the PID Act, the AO may 'deem' the person to be a public official.<sup>10</sup>
31. In making such a decision, the AO must believe, on reasonable grounds, that the person has information concerning disclosable conduct, that the individual was not a public official when they obtained the information and the individual has disclosed or proposes to disclose the information.
32. If the AO 'deems' the discloser to be a public official, they must record their decision (with specific reference to the factors in the previous paragraph) on the s47E(d) [REDACTED] record.
33. Where a discloser requests a determination be made that they are a public official, the AO must, after considering the request, make a determination as to whether they will be deemed a public official and clearly record their considerations. The AO must notify the discloser the reasons for this determination.<sup>11</sup>

***Has the disclosure been made to an Authorised Internal Recipient?***

34. Where the conduct disclosed relates to Defence and the discloser is a public official, regardless of which agency they are employed by, AOs appointed under section 36(b) of the PID Act will be an authorised internal recipient.

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<sup>10</sup> PID Act s 70(1).

<sup>11</sup> PID Act s 70(3).



35. However, it is possible that disclosers may make a disclosure to a Defence AO about another part of Defence that is treated separately under the PID Act e.g. Australian Submarine Agency or the ADF Canteen Association.
36. In these cases the AO must have regard to the agency to which the conduct relates. The AO must make an initial assessment and seek consent from the AO of the other agency in order to allocate them the matter.
37. Any disclosures that relate to conduct within an intelligence agency must be reported to an AO of that intelligence agency and to the IGIS.<sup>12</sup> However, if the disclosure is made to DPID it must go through the assessment process. This not only ensures that Defence is meeting its legislative obligations, it also ensures that there is a record of the resources spent on dealing with the matter. This relates to disclosures Defence may receive from Australian Signals Directorate or Defence Intelligence Group employees.

### ***Types of disclosable conduct***

38. Types of disclosable conduct include;<sup>13</sup>
  - a. Conduct that contravenes a law of the Commonwealth, State or Territory,
  - b. Conduct that perverts the course of justice or involves corruption of any other kind,
  - c. Conduct that constitutes maladministration that is based on improper motives, is unreasonable, unjust or oppressive; or is negligent,
  - d. Conduct that is an abuse of public trust,
  - e. Conduct that results in the wastage of relevant money, property,
  - f. Conduct that unreasonably results in or increases a risk of danger to health or safety,
  - g. Conduct engaged in for purpose of abusing one's public office.

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

39. Personal work-related grievances are not disclosable conduct unless the conduct involved would constitute taking a reprisal or is so significant in nature it would undermine public confidence.
40. Section 29A defines personal work-related conduct and it includes (but is not limited to) conduct that relates to;
  - a. An interpersonal conflict between two public officials such as bullying and harassment,
  - b. A transfer or promotion,
  - c. Terms and conditions of employment, and
  - d. Disciplinary action.

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<sup>12</sup> PID Act s 34, Table Item 2 (a) and (b), noting that for item (c) that an 'investigative agency' for the purposes of the Act is the Commonwealth Ombudsman, IGIS, or agency prescribed by the PID Rules.

<sup>13</sup> PID Act s 29

41. It is not disclosable conduct if it only relates to a policy, or proposed policy of the Commonwealth Government or action that is being taken by a Minister, the Speaker of the House of Representatives, or the President of the Senate.<sup>14</sup>
42. It is not disclosable conduct if it relates only to amounts, purposes or priorities of expenditure, or proposed expenditure relating to Government policy, or proposed policy with which a person disagrees.<sup>15</sup>
43. Conduct connected with courts, Commonwealth tribunals or with intelligence agencies in regard to performance of function, is not disclosable conduct.
44. Conduct engaged in by a public official that is not in connection with his or her position as a public official, is not disclosable conduct.<sup>16</sup>

***Does the information tend to show disclosable conduct?***

45. The age of the alleged conduct is irrelevant as the PID Act captures conduct that occurred before the PID Act came into force.<sup>17</sup> The PID Act can capture conduct, which occurred in an agency that no longer exists and where the public official or Contracted Service Provider (CSP) alleged to have engaged in the conduct has ceased to be a public official or CSP respectively.<sup>18</sup>
46. Conduct alleged must be in connection with the subject's position as a public official or, for CSPs, the conduct must be in connection with their contracted work.<sup>19</sup>
47. Conduct that occurs in a public official's private capacity, which is of a serious criminal nature, may be grounds for termination of employment. This is particularly relevant where the subject holds a security clearance. If it is determined that the private conduct is sufficient to warrant revocation of a security clearance, this may result in the subject no longer being able to work and could result in termination of employment.
48. This conduct may also be a breach of section 13 of the *Public Service Act 1999* as a breach of the Code of Conduct. Given this, conduct of a personal nature may be caught by the PID Act and AOs must consider such matters when assessing disclosures.
49. In assessing the disclosure against the requirements of the PID Act, the AO should limit their inquiries to only obtaining information sufficient to determine if the allegations should be allocated as a PID or not. Generally this will be restricted to information provided by the discloser and should rarely involve seeking information from any other third party.<sup>20</sup> Obtaining information that may prove or disprove disclosable conduct is an investigative function conducted by the PO.

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<sup>14</sup> PID Act s 31(a)(b).

<sup>15</sup> PID Act s 32(c).

<sup>16</sup> PID Act s 29(1)(b)

<sup>17</sup> PID Act s 29(3).

<sup>18</sup> PID Act ss 29(3)(b), (c) and (d).

<sup>19</sup> PID Act s 30.

<sup>20</sup> PID Act s 43(1).

50. The AO must not consider irrelevant factors in their assessment such as possible reputational damage to Defence or the Commonwealth or how, if the disclosure is allocated, Defence will investigate it.
51. In assessing the alleged conduct, the AO should consider information provided by the discloser, and identify any relevant legislation or policy that may have been breached.

There is no public interest test relating to the assessment of internal disclosures within the PID Act. AOs are not to consider the seriousness of the conduct alleged in their assessment unless the only suitable category by which to classify the alleged conduct is section 29(2A) of the PID Act.

52. When assessing a disclosure, the AO must weigh up the available information to form a view on the matter. Relevant considerations in assessing disclosures may include;
  - a. How the alleged conduct was witnessed – in general, first hand witness accounts are given more weight than if, for example, the discloser heard the information from their cousin's brother's ex-partner who heard something from an unidentified spouse of an unidentified serving ADF member,
  - b. Specificity of details provided (names, dates, locations, witnesses etc) and,
  - c. Supporting documents such as emails, letters, text messages etc.
53. It is not the role of a discloser to search through Defence systems and AOs should not advise disclosers to actively seek supporting documents to assist the assessment.
54. Firstly, the AO should determine if the information tends to show disclosable conduct. This requires the AO to consider whether a reasonable person, having regard to the circumstances and available information, would believe it is likely that wrongdoing has occurred.

### Allocation decision

Prior to allocation, the AO must contact the discloser (where contact details have been provided), to ask if they consent to their name and contact details being provided to the delegate and Commonwealth Ombudsman. If the discloser does not consent to their name and contact details being provided, the AO is not to attempt to convince them otherwise.

Where the AO determines that all three section 26 criteria are met and the disclosure is an internal disclosure, they must allocate the matter to one or more agencies for investigation, unless they determine the conduct would be more appropriately investigated under another law or power.

55. The PID Act details specific factors to which the AO must have regard to in determining which agency should handle the disclosure. These factors are of particular importance when dealing with disclosures about various trusts, which may be associated with Defence, but which are separate prescribed agencies for the purposes of the PID Act.<sup>21</sup>
56. The PID Act sets out the process for reallocation where a decision has not yet been made about an allocation or a decision has been made to reallocate a disclosure. This situation can occur following recommendations made by the Ombudsman.<sup>22</sup>
57. Prior to allocation the AO must consider whether their obligations have been satisfied, which include;<sup>23</sup>
  - a. Informing the discloser that the disclosure could be treated as an internal disclosure,
  - b. Explain the consequences of making the disclosure,
  - c. Advise about the circumstances that the matter may be referred to an agency or another law, and
  - d. Advise of any orders or directions that the AO is aware of relating to designated publication restrictions.<sup>24</sup>
58. The AO must also consider whether the conduct would be more appropriately investigated under another law or power.
59. If the AO is satisfied, on reasonable grounds, that the conduct disclosed would be more appropriately investigated under another law or power, the AO must take reasonable steps to refer the disclosure to that other law or power.
60. An AO is required to facilitate the referral of the conduct disclosed if it would more appropriately be investigated under another law or power. The steps taken to facilitate a referral may include providing the discloser with contact details for making a complaint and providing the discloser with any forms or background information necessary to make the complaint under another law or power.
61. If the AO is able to hand the referral to a more appropriate area, they should do so. For example referrals to other areas within Defence, e.g Code of Conduct, IGADF.
62. It is a requirement that the Ombudsman is notified of the decision not to allocate the disclosure, the reasons for not allocating and whether the AO has taken action to refer a disclosure.
63. The legislation requires the AO to take action in relation to the referral, and notify the Ombudsman of the action taken. The information to the Ombudsman

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<sup>21</sup> PID Act ss 43(1),(2) and (5)

<sup>22</sup> PID Act s 45

<sup>23</sup> PID Act s 60(1)

<sup>24</sup> PID Act s 43(6).

regarding a referral should include the other law or power, the agency or other person to which the conduct is referred and steps taken to facilitate the referral.

64. For internal disclosures made to Defence, in the vast majority of cases it will be allocated to Defence.
65. The AO must, as soon as reasonably practicable, notify the discloser of the allocation decision by email where contact details have been provided.<sup>25</sup>
66. Once the AO has obtained consent or otherwise of the discloser for their name and contact details to be provided to the PO or referring area, the AO will s47E(d) so the investigation process can commence.

### ***Allocation to another Agency***

67. If the AO has assessed a disclosure relating to another agency or prescribed agency for the purposes of the PID Act (for example a Defence trust), they must allocate the disclosure to the other agency, or decide not to allocate if they believe the disclosure is not an internal disclosure. Alternately, if the conduct disclosed would be more appropriately investigated under another law or power they must facilitate its referral.
68. The AO will make enquiries in deciding an allocation,<sup>26</sup> which must include contacting the AO of the receiving agency to determine if it is the appropriate area to investigate the matter.
69. An AO of the receiving agency must consent to the allocation. If it refuses, the AO should consider allocating the matter to the Commonwealth Ombudsman and make any enquiries necessary to facilitate this.<sup>27</sup>
70. If an AO of the receiving agency consents to the allocation, the AO must notify the discloser of the allocation if contact details have been provided.

### **AO decision not to allocate**

71. If the AO determines that any of the three section 26 criteria are not met, this provides sufficient reason for the AO to be satisfied that there is no reasonable basis for considering the disclosure to be an internal disclosure. Given this, the AO is not required to allocate the disclosure for investigation under the PID Act.<sup>28</sup>
72. If the AO is satisfied, on reasonable grounds, that the conduct disclosed would be more appropriately investigated under another law or power, the AO must take reasonable steps to refer the disclosure to that other law or power (see 60-63).

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<sup>25</sup> PID Act s 44(4).

<sup>26</sup> PID Act s 44(4).

<sup>27</sup> PID Act s 43(6).

<sup>28</sup> PID Act s 44A(1).

73. The AO must document all considerations and advise the discloser of the decision, provide them with reasons for the decision and, where possible, advise of,
- a. Who their matter will be referred to, and how, or
  - b. Other laws of the Commonwealth under which they may pursue the matter.<sup>29</sup>

### Risk assessments

74. The PO has a legislative obligation to ensure that there are procedures in place to assess the risk that reprisal may be taken against a discloser<sup>30</sup> and to protect public officials from detriment relating to a public interest disclosure they make.<sup>31</sup> Risks to consider include;
- a. Dismissal of an employee,
  - b. Injury of an employee in their employment,
  - c. Alteration of an employee's position to their disadvantage,
  - d. Discrimination between an employee and other employees of the same employer,
  - e. Harassment or intimidation of a person,
  - f. Harm or injury to a person, including psychological harm,
  - g. Damage to a person's property,
  - h. Damage to a person's reputation,
  - i. Damage to a person's business or financial position, and
  - j. Any other damage to a person.
75. Upon receipt of the disclosure, the AO will conduct an initial risk assessment by completing a 'PID Risk Assessment' form and provide the discloser with a 'Consent Acknowledgement' and 'Risk Self-Assessment' form. If the discloser returns a completed risk self-assessment, the AO will consider that information along with the following factors, in assessing potential risk;
- a. s47E(d)
  - b. The seriousness of the conduct alleged,
  - c. Whether the discloser and subject work together,
  - d. Whether the subject is in the discloser's line management,
  - e. The number of people who are aware of the alleged conduct,
  - f. Whether the conduct has previously been reported and investigated under another process, and
  - g. Reasonably foreseeable dangers to the discloser.

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<sup>29</sup> PID Act s 44A(1).

<sup>30</sup> PID Act s 59(4)(a)

<sup>31</sup> PID Act 59(9)

76. Where a disclosure is made anonymously, the AO and/or PO should also consider whether there may be any possible risks within the work area where the conduct has occurred or any other areas relating to the disclosure.
77. Where possible, Defence should contact the discloser to discuss the risk assessment, particularly where there are concerns about how risks will be mitigated or where Defence does not accept the discloser's assessment of risk.
78. Details of the risk assessment should be clearly recorded s47E(d)
79. The risk assessment should be continually reviewed as relevant information comes to hand.

### Allegations of reprisal action

80. Where during the course of a disclosure investigation, or after a disclosure investigation has been finalised, a discloser, witness or other person who assisted with a disclosure investigation, raises concerns that they may have been subject to adverse action against them<sup>32</sup>, the Case Officer should record the concerns s47E(d)  
s47E(d)  
s47E(d)
81. s47E(d)

### Disclosure Investigations

82. The PO must appoint someone to conduct the disclosure investigation. The authorised officer who has assessed the disclosure should not be appointed to conduct the disclosure investigation.
83. Disclosure investigations should be finalised within 90 days after the allocation decision.<sup>33</sup> Finalisation of an investigation is either by way of;
  - a. A decision that a different investigation should be conducted under another law or power,<sup>34</sup>
  - b. Using a discretion not to investigate, or not investigate further,<sup>35</sup> or
  - c. Preparation of a report finalising the investigation under the PID Act.<sup>36</sup>

### *Deciding not to investigate under the PID Act*

84. The PID Act sets out the grounds for not investigating an internal disclosure has been allocated to an agency.<sup>37</sup> This decision can be made at any time

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<sup>32</sup> PID Act s 13(1)

<sup>33</sup> PID Act s 52(1).

<sup>34</sup> PID Act s 47(3)

<sup>35</sup> PID Act s 48

<sup>36</sup> PID Act s 52(2), noting as well that a section 51 report may include section 48 decisions, or certain allegations may be subject to section 48 decisions and notices sent, whilst other allegations in the same disclosure are investigated.

<sup>37</sup> PID Act s 48

during the disclosure investigation and may relate to all or some of the allegations allocated for investigation.

85. Reasons to not investigate or cease an investigation include;<sup>38</sup>
- The discloser is not, and has not been, a public official,
  - The information does not concern serious disclosable conduct,
  - The disclosure is frivolous or vexatious, or
  - The information is the same as information previously disclosed under this Act, and:
    - a decision was previously made not to investigate the earlier disclosure, or
    - the earlier disclosure has been, or is being, investigated as a disclosure investigation, or
  - The conduct disclosed is being or has been investigated under another law or power, or
  - The PO is satisfied that the conduct disclosed would be more appropriately investigated under another law or power, or
  - The discloser does not wish the investigation to be pursued and the PO is satisfied there are no matters that warrant investigation, or
  - It is impracticable for the disclosure to be investigated.
86. If the PO is satisfied that the conduct disclosed would be more appropriately investigated under another law or power then they must take reasonable steps to facilitate the referral for investigation.<sup>39 40</sup>

### ***Investigations under the PID Act***

87. The investigation may initially involve preliminary enquiries to assist with determining whether to investigate.
88. If the PO is not initially inclined to use their discretion not to investigate they must, as soon as reasonably practicable, advise the discloser that further enquiries need to be made and provide advice of the estimated length of time the investigation will take.<sup>41</sup>
89. The investigation of the disclosure can be handled in a manner as the investigator thinks fit.<sup>42</sup> Within Defence, this may include, but is not limited to, any or all of the following;

- a. s47E(d)

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<sup>38</sup> PID Act s 48


<sup>39</sup> PID Act s 48(ga)

<sup>40</sup> PID Act s 50AA

<sup>41</sup> PID Act s 50(1A).

<sup>42</sup> PID Act s 53(1).



- b. Conducting a desktop review of policy and legislation,
  - c. A review of the information provided by the discloser,
  - d. Determining if the subject matter of the disclosure has been previously investigated under another process,
  - e. Any other avenue of enquiry the investigator thinks fit, and
  - f. Speaking with witnesses and persons of interest.
90. The investigator may obtain any information from any persons, and make any enquiries as they think fit in investigating a disclosure.<sup>43</sup> This can include requesting:
- s47E(d)
- 
91. If the investigator determines that a person will be interviewed as part of a disclosure investigation, they must ensure compliance with standard 10 of *Public Interest Disclosure Standard 2013*. The person conducting the interview must inform the interviewee of the;
- a. Identity and function of each person conducting the interview,
  - b. Process by which the interview will be conducted,
  - c. Authority of the PO/delegate under the PID Act to conduct disclosure investigations.
92. The investigator must also ensure that;
- a. No audio or visual recording of the interview is made without express knowledge of the interviewee,
  - b. At the end of the interview, the interviewee is afforded the opportunity to make a final statement, comment or express a position, and
  - c. Any final statement, comment or position by the interviewee is included in the record of the interview.
93. Public officials must use their best endeavours to assist investigators.<sup>44</sup>
94. If new information is uncovered in the course of a disclosure investigation, where a PO is satisfied on reasonable grounds that it is tangential or remote to the original disclosure, the information does not need to be investigated as part of the original disclosure investigation.<sup>45</sup>

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<sup>43</sup> PID Act s 3(3).

<sup>44</sup> PID Act s 61(1).

<sup>45</sup> PID Act s 47(2)(b).

### ***Referral of investigation under another law***

95. During the course of a disclosure investigation, or upon receipt of an allocated internal disclosure, the PO may be of the view that the information is more appropriately investigated under another law (this is inclusive of processes established under a law of the Commonwealth) as provided for by section 47(3) of the PID Act. If this is the case, the PO may prepare a report for the purposes of section 51 with a recommendation that the matter be investigated by a relevant area under the specified law.<sup>46</sup>
96. Within Defence, other laws or processes established include, but are not limited to;
- a. *Defence Force Discipline Act 1982* (DFDA),
  - b. *Defence Act 1903*,
  - c. Procedures created under section (15)(3) of the *Public Service Act 1999*,
  - d. *Public Governance, Performance and Accountability Act 2013*, and
  - e. *Commonwealth Criminal Code Act 1995*.
97. It is also open to the PO to adopt the findings of another investigation under a law of the Commonwealth.<sup>47</sup> For example, if particular allegations have been previously investigated under the DFDA, the delegate may adopt those findings for the purposes of a disclosure investigation. In this case, this should be clearly articulated in the investigation report.

### **Disclosure investigation recommendations**

98. Where a PO makes recommendations in the investigation report, they are required to ensure that appropriate action is taken on those recommendations.<sup>48</sup>
99. Where recommendations have been made, the s47E(d) record will remain open until the PO is satisfied that appropriate action has been taken on those recommendations.

### **Mandatory notifications to policing agencies**

100. The PID Act recognises that during the course of a disclosure investigation, evidence may indicate a criminal offence has been committed. In such cases, the agency may disclose the information to a member of an Australian Police Force.<sup>49</sup> Where the offence is punishable by imprisonment for a period of two years or more, the PO must notify the relevant police force, unless the PO believes on reasonable grounds the agency has the appropriate skills and resources needed to investigate and take action against the conduct.<sup>50</sup>

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<sup>46</sup> PID Act s 51(2) Note 1.

<sup>47</sup> PID Act s 54

<sup>48</sup> PID Act s 59(4)

<sup>49</sup> PID Act s 56(2).

<sup>50</sup> PID Act s 56(4)(a).

### Extension requests

101. If the investigator is of the view that the disclosure investigation will not be finalised within the 90-day timeframe, they may request an extension of time from the Commonwealth Ombudsman.<sup>51</sup>

102. s47E(d)

103. Additionally, requests for extension should be made at least 10 working days prior to the 90-day expiry date.<sup>52</sup>

104. Where the Commonwealth Ombudsman grants an extension, the investigator must inform the discloser of the extension and the progress of the investigation as soon as possible.

### Finalising the disclosure investigation

105. A disclosure investigation is finalised when the PO has prepared and signed an investigation report. The Investigation Report must comply with the requirements of Standard 13 of the *Public Interest Disclosure Standard 2013*.

106. Upon completion of the disclosure investigation, the PO must provide a copy to the discloser and the Ombudsman as soon as reasonably practicable.<sup>53</sup>

107. The PO may redact certain information from the report.<sup>54</sup> In general the following may be redacted;

- a. Names of the discloser, subject and witnesses,
- b. Position titles,
- c. Any personal information regarding any of the above, and
- d. Any classified or confidential information.

### Review and Recommendations from the Ombudsman

108. The Ombudsman may review an agency's handling of a disclosure, and may obtain information or documents from such persons and make such inquiries, as they think fit.<sup>55</sup>

109. The Ombudsman may make recommendations to the agency. The recommendations can include, that the disclosure should be allocated, reallocated, further investigated, or reinvestigated.<sup>56</sup>

110. The Principal Officer must consider any recommendations and implement them as they see fit.

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<sup>51</sup> PID Act s52(3)(b)

<sup>52</sup> This timeframe is a policy of the Commonwealth Ombudsman and is not referred to in the Act.

<sup>53</sup> PID Act s 51(4).

<sup>54</sup> PID Act s 51(5) of the Act provides further details on what may be redacted from a s 51 report.

<sup>55</sup> PID Act s 55

<sup>56</sup> PID Act s 55(6).

111. The Principal Officer must give written notice to the Ombudsman of the action taken, or if no action will be taken, an explanation as to why.<sup>57</sup>

### National Anti-Corruption Commission Act 2022

112. The *National Anti-Corruption Commission Act 2022* (NACC Act) requires PID Officers to consider whether information disclosed relates to serious or systemic corruption. If the disclosure meets the requirements set out in the NACC Act, the PID Officer must refer the information to the Commission.

113. s47E(d)

114. Until informed otherwise, the PID Officer should progress the disclosure the same as any other disclosure.

115. In situations in which the NACC wants to investigate a matter further, they may deliver a stop action to the agency. This requires the agency to cease their disclosure investigation. This also pauses the PID clock meaning an agency will not require an extension from the Ombudsman.

116. If a stop action prevents an AO from allocating a disclosure, the AO must give written notice to the Ombudsman regarding the stop action related to the disclosure.<sup>58</sup>

117. If a stop action pauses the investigation, the PO must provide written notice to the Ombudsman both when it is issued and when it is revoked.<sup>59</sup>

118. Once an agency becomes aware of the stop action being lifted, the disclosure investigation must continue and the clock restarts from the date it was stopped.

### Record keeping

119. s47E(d)

120. Officials are required to contemporaneously record all relevant matters s47E(d)  
s47E(d)

121. All notes and running sheet entries are to be in full sentences using Defence writing standards and impartial language. s47E(d)

<sup>57</sup> PID Act s 55(8).

<sup>58</sup> PID Act s 44B(2).

<sup>59</sup> PID Act s 50A.

s47E(d)

## Reporting under the PID Act

### *Notification requirements to the Ombudsman*

122. Defence is required to report the following to the Commonwealth Ombudsman using forms available on their website;
- a. Notification of allocation or reallocation,
  - b. Notification of decision not to investigate or not investigate further,
  - c. Extension of time to investigate a PID,
  - d. Notification of decision not to allocate,
  - e. Notification of a finalised PID investigation, and
  - f. Notification of a stop action direction.

### *Biannual Reporting*

123. The Commonwealth Ombudsman is required to report to the Minister biannually on the operation of the PID Act. The mandatory items, which must be included in the report, are set out in section 76 of the PID Act.
124. It is extremely important that all officers involved in the management of disclosures are aware of the s47E(d) so that Defence can report accurate information to the Commonwealth Ombudsman.
125. The reporting periods are between 1 July – 31 December and 1 January – 30 June.

## Complaints

126. Complaints regarding Defence's handling of a PID can be made to the Commonwealth Ombudsman at [PID@ombudsman.gov.au](mailto:PID@ombudsman.gov.au).
127. Complaints may be made to the Commonwealth Ombudsman about the following;
- a. The manner in which a disclosure is allocated or a decision not to allocate the disclosure,<sup>60</sup>
  - b. The manner in which a disclosure is investigated or a refusal to investigate using a section 48 discretion,<sup>61</sup> and
  - c. The manner in which additional obligations are complied or not complied with.<sup>62</sup>
128. Where the Ombudsman decides that it will investigate a complaint about Defence's management of a disclosure, it will send a formal Section 8 notice

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<sup>60</sup> PID Act s 42 Note 2.

<sup>61</sup> PID Act s 46 Note 1.

<sup>62</sup> PID Act s 58.

advising of the investigation. s47E(d)

129. s47E(d)

## Support and other Obligations

### *Authorised Officer Obligations*

130. AOs and POs have a significant role in managing discloser expectations regarding the Act. AOs have the following additional obligations;<sup>63</sup>
- a. Inform the discloser that the information could be treated as an internal disclosure,
  - b. Explain what an internal disclosure is per the requirements of the PID Act,
  - c. Advise the discloser about the circumstances (if any) in which a public interest disclosure must be referred under another law or power, and
  - d. Advise the discloser of any orders or directions, of which the AO is aware, which are designated publication restrictions, that may affect the disclosure of the information.
  - e. Where a need is identified, appropriate support avenues must be provided to the discloser.
131. An AO must take reasonable steps to protect public officials against reprisals that have been, or may be, taken in relation to public interest disclosures.
132. Additionally, the AO should endeavour to explain to disclosers the administrative steps in the PID process as well as legislative contact requirements.<sup>64</sup>
133. All of the above contribute to the discloser obtaining a clearer understanding of the PID process.
134. s47E(d)

### *Principal Officer Obligations*

135. Principal Officers have additional obligations under the PID Act, as set out in section 59.
136. The PO must ensure they;
- a. Facilitate public interest disclosures,
  - b. Have procedures for dealing with public interest disclosures,
  - c. Respond to investigations,
  - d. Take reasonable steps to ensure ongoing training and education, and

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<sup>63</sup> PID Act s 60

<sup>64</sup> PID Act s 60(2)

- e. Protect public officials against reprisals.

137. In addition, The Public Interest Disclosure Standard 2013 states that the Principal Officer must ensure that a discloser is given information about the Principal Officer’s powers to;

- a. Decide not to investigate the disclosure, or
- b. Decide not to investigate the disclosure further, or
- c. Decide to investigate the disclosure under a separate investigative power, or
- d. Decide to investigate the disclosure under another law or power.

**Document Change Control**

Version number	Date of Issue	Brief description of changes
1.0	April 2023	Updated to separate DPID and DI procedures
2.0	October 2023	Updated to align with changes in the legislation
2.1	November 2023	Minor editorial and formatting changes

**Document Approval**

Approved by: s47E(c) Public Interest Disclosures  
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 Date: 9 November 2023