



Procedures for Handling Public Interest Disclosures

1. Overview

Purpose of these procedures

The purpose of this procedures document is to provide advice and guidance to Department of Foreign Affairs and Trade (the Department) employees about the procedures that have been established to deal with public interest disclosures made by a public official under the [Public Interest Disclosure Act 2013](#) (the PID Act).

The Department is committed to the highest standards of ethical and accountable conduct. The Department encourages and supports the reporting of wrongdoing by public officials under the PID Act. The Department will act on disclosures as appropriate and protect disclosers from any reprisals or threats of reprisals as a result of making a disclosure.

Relationship to other Department policies

The PID Act complements existing complaint handling schemes such as those relating to fraud or Code of Conduct issues. To obtain a full picture of your rights and responsibilities under the Department's conduct and ethics framework, this policy document should be read in conjunction with related Administrative Circulars and departmental policies available on the *Conduct and Ethics* intranet page including:

- [APS Code of Conduct](#)
- DFAT Code of Conduct for Overseas Service
- Reporting Alleged Misconduct and Criminal Offences in Chapter 10 of the Conduct and Ethics Manual
- Managing Alleged Misconduct in DFAT in Chapter 11 of the Conduct and Ethics Manual

What are public interest disclosures?

A public interest disclosure generally occurs when:

- a current or former public official (*the discloser*)
- discloses to their supervisor or manager, or an Authorised Officer¹
- information which tends to show, or the discloser believes on reasonable grounds tends to show, one or more instances of disclosable conduct.

In limited circumstances, a public official may disclose such information to a person outside government – this is known as an external disclosure or emergency disclosure. For more information please refer to the Commonwealth Ombudsman’s Agency Guide to the PID Act at: www.ombudsman.gov.au.

To gain the protections the PID Act provides to disclosers, a public official must make a disclosure to an appropriate person. Accordingly, it is important that persons contemplating making a disclosure of information carefully review the contents of the PID Act and seek their own independent legal advice where appropriate in order to determine whether the disclosure can be made in a way that attracts the protections of the PID Act.

Public officials may also make anonymous disclosures. Further information is available under **2. Roles and Responsibilities – Public Officials**.

What is disclosable conduct?

The full definition of disclosable conduct is set out in [section 29 of the PID Act](#). That definition applies for the purposes of these procedures.

In summary, disclosable conduct is conduct by an agency, a public servant or a government contractor that:

- contravenes an Australian law
- in a foreign country, contravenes a foreign law that applies to the agency, official or service provider
- perverts the course of justice
- is corrupt
- constitutes maladministration, including conduct that is based on improper motives or is unreasonable, unjust, oppressive or negligent
- is an abuse of public trust
- involves fabrication, plagiarism or deception relating to scientific research, or other misconduct in relation to scientific research, analysis or advice
- results in wastage of public money or property
- unreasonably endangers health and safety
- endangers the environment
- is prescribed by the PID Rules
- involves abuse of the public official’s position, or could, if proved, give reasonable grounds for disciplinary action against the public official.

What is not disclosable conduct?

Individual grievances or workplace conflicts would generally be appropriately dealt with by other existing agency and public sector mechanisms rather than be the subject of investigation under the PID Act. More information about these mechanisms can be found in Chapters 10 and 11 of the Conduct and Ethics Manual.

Conduct that is wholly private and has no bearing on the position as a public official is not disclosable conduct. Matters that reflect private or personal interest are generally not matters of public interest:

- personal disagreement with a government policy or proposed policy;
- personal disagreement with an action or proposed action by a Minister, the Speaker of the House of Representatives or the President of the Senate; or
- expenditure or proposed expenditure related to such policy or action.

If a staff member has a complaint that does not fall within the definition of “disclosable conduct” but nevertheless wishes to raise the issue with management or if the staff member simply wishes to raise a matter informally, depending on the nature of the issue, the staff member should approach:

- the Mentoring Performance and Diversity Section;
- their Diversity and Anti-Harassment Officer;
- the Employee Health and Safety Section; or
- the Employee Conduct and Ethics Section.

Protection for disclosers

A discloser is subject to protection from reprisal under the PID Act unless such a disclosure does not fall within the Act, or these procedures do not apply. Those protections include confidentiality and immunity from criminal and civil liability or disciplinary action.

However, making a disclosure under the PID Act does not protect a discloser from their own wrongdoing. A person who intentionally makes a false or misleading disclosure will not receive protections under the PID Act.

When a disclosure is made, the Department will conduct a risk assessment that considers the risk of reprisal action being taken against the discloser. The Department will provide support to disclosers, regardless of the result of that risk assessment, and where the risk of reprisals is greater than ‘low’ the Department will take steps to mitigate that risk. For more detail on the risk assessment process see Appendix 3.

Even where a disclosure is made but is later determined not to be a public interest disclosure under the PID Act and instead dealt with under other complaint handling processes, the Department will provide disclosers with the protections offered by the Act. For example, where a person reports misconduct under the PID process but an Authorised Officer determines that the report should be dealt with as a Code of Conduct investigation using the processes detailed in Chapter 10 of the Conduct and Ethics Manual, the Department will still maintain that person’s confidentiality and take steps to reduce the risk of reprisals against that person.

2. Roles and responsibilities

Public Officials

All public officials have an obligation to report serious wrongdoing by another public official in the course of, or in connection with, their APS employment. Public officials must make any report on the basis of information that they believe on reasonable grounds may provide evidence of behaviour that is disclosable conduct.

A person must be a current or former “public official” to make a public interest disclosure. A public official is defined under the PID Act and includes a Commonwealth public servant and individuals and organisations that provide goods or services under a Commonwealth contract (including subcontractors).

A disclosure must be made to an appropriate person (an Authorised Officer or supervisor/manager) in order to gain the protections available under the PID Act. Public officials will receive the Department’s full support and protection from recrimination, victimisation or discrimination as a result of making their report. However there is a corresponding obligation on the part of the public official that disclosures are made in good faith, and are not frivolous, vexatious, false, fabricated or malicious.

Public officials can make anonymous disclosures if they wish to do so.

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

If a potential discloser wishes to make a disclosure about another agency or department, the potential discloser should make that disclosure to the relevant agency or department. Further guidance can be sought from the Commonwealth Ombudsman’s website: www.ombudsman.gov.au.

Further advice on the role of public officials can be sought from the Employee Conduct and Ethics Section at conduct@dfat.gov.au.

The Secretary

The Secretary has specific responsibilities that include establishing PID Act procedures, investigating and providing reports on disclosures and ensuring that appropriate action is taken in relation to recommendations arising from an investigation.

The Secretary has delegated all powers and functions under the PID Act to the Department’s Chief People Officer (CPO).

The Secretary has also delegated the investigative powers and functions under the PID Act to a number of positions within the Department. These are listed in the Secretary's delegations on the intranet.

Authorised Officers

Authorised Officers are senior officers (appointed by the Secretary or the Chief People Officer) who are authorised to receive reports of disclosable conduct and have a range of decision-making, notification and other responsibilities under the PID Act.

The Department's Authorised Officers are those occupying the positions, either substantively or in an acting capacity, that are listed in delegations on the intranet. Authorised officers can be contacted directly or by email at PID@dfat.gov.au.

Managers and supervisors

Under the PID Act, supervisors and managers are able to receive public interest disclosure reports and have specific obligations in dealing with disclosures. Supervisors and managers play a key role in ensuring that the Department's workplace culture supports the making of public interest disclosures in a safe environment.

If a public official discloses to a supervisor and the supervisor has reasonable grounds to believe that the information concerns, or could concern, disclosable conduct, the supervisor must give the information to an appropriate Authorised Officer as soon as reasonably practicable. The Department has a contact email for Authorised Officers published on its [website](#). Individual contact details for Authorised Officers can be found using the DFAT directory. If a potential discloser has difficulty in identifying the relevant person, they should contact the Ombudsman's Office.

Further information for supervisors and managers can be found at Section 4.

The Employee Conduct and Ethics Section

Employees are encouraged to contact the Employee Conduct and Ethics Section (EES) if they are considering whether the conduct witnessed is reportable under the PID Act or if another complaint handling process would be more appropriate.

Please note that if you are a supervisor or manager and/or an Authorised Officer, you are able to contact the EES to obtain advice on the potential PID disclosure that you may have received. Please note that under these circumstances you should de-identify any involved parties for confidentiality reasons. For further information please refer to section 7.

Confidentiality.

The EES undertakes investigations under the PID Act and other legislative schemes. The EES can be contacted by email: conduct@dfat.gov.au.

3. How to make a disclosure

Who can you report to?

If a public official is considering making a disclosure, the public official can, in the first instance, seek advice from the Employee Conduct and Ethics Section.

Disclosures should be made to an Authorised Officer who is trained to receive public interest disclosures and can provide information on the process to make a disclosure and the protections given to disclosers under the PID Act. You can contact an Authorised Officer by email at PID@dfat.gov.au or by post at the below address:

For Authorised Officer Only
Public Interest Disclosure
Employee Conduct and Ethics Section
Department of Foreign Affairs and Trade
44 Sydney Ave
BARTON ACT 0221

All Authorised Officers will be able to view all emails sent to PID@dfat.gov.au. If a discloser does not wish for one or more of the Authorised Officers to access the email, the discloser should email one of the Authorised Officers directly and in that email specify that the email is not to be shared with the other Authorised Officers.

A list of the Department's Authorised Officers is located on the Corporate Delegations page of the Department's intranet.

Disclosures can also be made to supervisors or managers under the PID Act who will then be required to forward the disclosure to an Authorised Officer.

In certain circumstances, disclosures can also be made to the Commonwealth Ombudsman. Please refer to the Commonwealth Ombudsman's [website](#) for more details.

A potential discloser should not investigate a matter themselves before making a disclosure.

What should a disclosure include?

Information contained in the disclosure should:

- be clear and factual;
- so far as possible, avoid speculation, personal attacks and emotive language;
- contain supporting evidence where that is available to the discloser; and
- where possible, identify any witnesses to the disclosable conduct.

There is no required format for the making of a disclosure. A disclosure can be made:

- anonymously or openly;

- orally or in writing;
- without stating that the disclosure is made under the PID Act.

Circumstances giving rise to protections

A person who knowingly makes a false or misleading disclosure will not receive protections under the PID Act.

A person who is considering making a disclosure should be aware that making a disclosure does not entitle them to protection from the consequences of their own wrongdoing.

Anonymous disclosures

Public officials can make anonymous disclosures if they wish to do so. A disclosure is considered anonymous if:

- the identity of the discloser is not revealed and if no contact details for the discloser are provided; or
- the discloser does not disclose their name but does provide anonymous contact details.

However, if a disclosure is made anonymously and no contact details are provided, it may prevent investigation of the disclosure.

There are reasons why disclosers should consider identifying themselves to an Authorised Officer, or at the very least providing a means of contact:

- the PID Act requires the Department to keep a discloser's identity confidential, subject to limited exceptions including the discloser's consent. The person's identity may nonetheless become apparent if an investigation is commenced;
- it is more difficult to ensure protection from reprisal if the department does not know the discloser's identity;
- the Authorised Officer who receives an anonymous report must have reasonable grounds to suspect the disclosable conduct has occurred in order to allocate the matter for investigation. If the Authorised Officer cannot contact the discloser to seek necessary further information, the matter may not proceed.
- An Investigator has the discretion not to investigate, or investigate further, if it is impracticable to investigate because the discloser has not provided their name and contact details or is unable to give the Investigators further information or assistance if needed; and
- a discloser who does not provide a means of contact cannot be updated on the progress of the matter, including the outcome of the investigation.

A person who has made an anonymous public interest disclosure may come forward at a later stage to disclose their identity and seek the protections of the PID Act.

What happens after you make a disclosure

Once a public interest disclosure has been made, it cannot be withdrawn. But a discloser may state that they do not wish the disclosure to be investigated and they may refuse to consent to their name and contact details being provided to the Secretary or delegates. The current Secretary and a list of delegates can be found on the intranet.

A person who has made a disclosure under the PID Act should not discuss the details of their disclosure with anyone who does not have a need to know about it. Discussions with these people will not be protected by the PID Act.

See **Appendix 2: Internal disclosure process flowchart**.

4. Procedures for supervisors and managers

Where a public official discloses information to their supervisor or manager that the supervisor or manager has reasonable grounds to believe constitutes disclosable conduct, the supervisor or manager must, as soon as practicable, give the information to an Authorised Officer.

Supervisors or managers should make their assessment of whether the information concerns disclosable conduct by exercising common sense. Supervisors or managers should have regard to the definition of disclosable conduct in [section 29 of the PID Act](#).

Before referring a disclosure to an Authorised Officer, the supervisor or manager must:

- take a written record of the facts of the disclosure, including the time and date of the disclosure;
- if the person wishes to remain anonymous, do a written assessment of any risks that reprisal action might be taken against the discloser (see **Appendix 3: Risk Assessment**);
- seek consent from the discloser to include the discloser's name and contact details in the written record;
- seek the discloser's consent to passing on the disclosure by email; and
- ask the discloser to sign the record of disclosure, where this is practicable.

At the time a supervisor or manager gives information to an Authorised Officer, the supervisor or manager must also:

- give the Authorised Officer all records in relation to the disclosure,
- if the person wishes to remain anonymous, give the Authorised Officer their written assessment of the risk of reprisal, and
- inform the discloser that they have given the information to an Authorised Officer and advise the discloser of the name and contact details of that Authorised Officer,

Where a supervisor or manager receives an anonymous disclosure, the supervisor or manager must refer it to an Authorised Officer as soon as is reasonably practicable.

Supervisors and managers must treat disclosures with the highest degree of confidentiality. For further information please refer to section **7. Confidentiality**.

5. Procedures for authorised officers

Authorised Officers have specific responsibilities in relation to advising disclosers and potential disclosers about the PID Act.

Step 1: Consider whether a disclosure meets the requirements for a public interest disclosure

When an Authorised Officer receives a disclosure of information, the Authorised Officer will consider the information disclosed and determine whether there are reasonable grounds on which the disclosure could be considered to be an internal disclosure made in accordance with the PID Act.

The Authorised Officer should consider whether:

- the disclosure was made by a person who is, or was, a public official;
- the disclosure was made to an authorised internal recipient or supervisor;
- the disclosure is about disclosable conduct;
- the person who is alleged to have carried out the disclosable conduct was a public official at the time they are alleged to have carried out that conduct; and
- the disclosure is otherwise a public interest disclosure within the meaning of the PID Act.

Where an Authorised Officer receives a disclosure, the Authorised Officer may obtain information and may make such inquiries as they think fit, for the purposes of deciding the allocation of the disclosure, including for the purposes of deciding whether the disclosure is an internal disclosure or not.

If the Authorised Officer is satisfied the disclosure could be an internal disclosure, the Authorised Officer will follow the process outlined in the following steps.

If the Authorised Officer is **not** satisfied the disclosure could be an internal disclosure, the disclosure will not be allocated for investigation and:

- if contacting the discloser is reasonably practicable, the Authorised Officer must advise the discloser in writing that the disclosure is not to be allocated, by advising them of:
 - the reasons why the disclosure will not be allocated to an agency; and
 - any other course of action that might be available to the discloser under other laws of the Commonwealth;
- if the disclosure relates to conduct that may need to be addressed under the Department's:
 - *Fraud Control Plan*;

- *Managing Alleged Misconduct in DFAT policy* (contained in Chapter 12 of the Department's Conduct and Ethics Manual);
- *Work Health and Safety Policy*; or
- any other of the Department's policies or procedures;

the Authorised Officer may refer the matter to be dealt with in accordance with the relevant policy or procedure.

Step 2: Consider whether the discloser understands the PID Act

When an Authorised Officer receives a disclosure of information and the Authorised Officer is aware of the discloser's contact details, the Authorised Officer should firstly consider the discloser may be unaware of the provisions of the PID Act.

If the Authorised Officer has reasonable grounds to believe that the person may be unaware of what the PID Act requires for the disclosure to be considered an internal disclosure, the Authorised Officer must:

- inform the discloser that the disclosure could be treated as an internal disclosure under the PID Act;
- explain to the discloser what the PID Act requires for a disclosure to be an internal disclosure;
- explain to the discloser the protections provided by the PID Act to persons who make disclosures under the Act;
- advise the discloser of any orders or directions that may affect disclosure of information; and
- advise the discloser that they should seek their own independent legal advice on the impact of the PID Act and their rights and responsibilities.

Step 3: Ask the discloser for consent

Where the Authorised Officer is aware of the contact details of the discloser, the Authorised Officer must, as soon as practicable after receiving the disclosure and before allocating the disclosure, ask the discloser whether he or she:

- consents to the Authorised Officer giving the discloser's name and contact detail to the Secretary and delegates under the PID Act.

The Authorised Officer must make a written record of the discloser's responses (if any) to these questions. Where a discloser does not respond within 7 days to the questions referred to above:

- in paragraph (a) – the discloser is taken not to have consented to the disclosure of their name and contact details to the Employee Conduct and Ethics Section.

Step 4: Allocate the disclosure

The Authorised Officer will use his or her best endeavours to decide the allocation within 14 days after the disclosure is made.

In deciding the agency or agencies to which a disclosure will be allocated, the Authorised Officer will have regard to:

- the principle that the Department should only deal with disclosures that relate to the Department (and not to other departments or agencies); and
- such other matters (if any) as the Authorised Officer considers relevant.

In addition, if the Authorised Officer is contemplating allocating the disclosure to the Ombudsman, the Inspector General of Intelligence and Security (IGIS) or an investigative agency, the Authorised Officer must have regard to additional matters set out in the PID Act.²

The Authorised Officer must not allocate a disclosure to another agency unless an Authorised Officer of that other agency has consented to the allocation.

Step 5: Inform relevant persons of the allocation

Where the Authorised Officer allocates the handling of a disclosure within the Department, the Authorised Officer must:

- inform the Secretary and delegates, as appropriate;
- once allocation is complete, inform the relevant contact officer in the Ombudsman's Office; and
- where the Authorised Officer is aware of the contact details of the discloser, inform the discloser of the allocation.

If the Authorised Officer allocates a disclosure to:

- an intelligence agency, the Authorised Officer will inform the IGIS of this in writing; or
- another agency, the Authorised Officer will inform the Ombudsman of this in writing.

Step 6: Make a record of the allocation decision

When an Authorised Officer allocates the handling of a disclosure to one or more agencies, the Authorised Officer must keep an appropriate record of:

- the decision (including the name of each agency to which the disclosure is to be allocated);
- the reasons for the decision; and
- the consent provided by the Authorised Officer of the agency to which the allocation is made.

In addition, the Authorised Officer must keep appropriate records of whether the discloser was informed of the allocation decision and, if so, of:

- the day and time the discloser was notified;
- the means by which the discloser was notified; and
- the content of the notification.

These records should be kept confidential.

Step 7: Conduct a risk assessment

Where an Authorised Officer allocates a disclosure, they must conduct a risk assessment based on a checklist of risk factors, and having regard to any assessment of risk provided under these procedures by the discloser's supervisor or manager. Information on how to carry out a risk assessment is at **Appendix 3**.

Step 8: If necessary, develop a risk mitigation strategy

Where the risk level is assessed as anything greater than low, the Department will develop a strategy to mitigate the risk of reprisals being taken against the discloser. This strategy may include some or all of the support measures set out in Step 9.

Step 9: Provide support for the discloser and the person against whom a disclosure has been made

Support for disclosers

Regardless of the outcome of the risk assessment, the Department will take all reasonable steps to protect public officials who have made a public interest disclosure from detriment or threats of detriment relating to the disclosure.

This may include taking one or more of the following actions:

- appointing a support person to assist the discloser, who is responsible for checking on the wellbeing of the discloser regularly;
- informing the discloser of the progress of the investigation;
- where there are any concerns about the health and wellbeing of the discloser, liaising with officers responsible for work health and safety in the Department; or
- transferring the discloser to a different area within the workplace or approving remote/teleworking (with the consent of the discloser). This is only likely to be appropriate in cases involving very major or extreme risk.

Support for person against whom disclosure has been made

The Department will also take steps to support any employee who is the subject of a PID.

This may include taking one or more of the following actions:

- advising the employee of his or her rights and obligations under the PID Act and about the Department's investigation procedures, including the employee's rights to procedural fairness;
- informing the employee of the progress of the investigation;
- ensuring that the identity of the employee is kept confidential as far as reasonably practicable; or
- where there are any concerns about the health and wellbeing of the employee, liaising with officers responsible for work health and safety in the Department;
- transferring the employee to a different area within the workplace or approving remote/teleworking (with the consent of the employee). This is only likely to be appropriate in cases involving very major or extreme risk; or
- advising the employee that they should seek their own independent legal advice on the impact of the PID Act and their rights and responsibilities.

6. Procedures for Investigators

The Secretary has delegated all functions under the PID Act to CPO CMG and has also delegated the investigative functions to a number of positions within the Department³. If an Authorised Officer allocates a matter for investigation, the Investigators must follow a number of steps under the PID Act.

Step 1: Provide initial information to disclosers

As soon as is reasonably practicable of the Department being allocated a PID, the Investigators will provide the discloser with the following information about his or her powers to:

- decide not to investigate the disclosure;
- decide not to investigate the disclosure further;
- decide to investigate the disclosure under a separate investigative power.

Step 2: Consider whether to investigate the disclosure

The Investigators must, as soon as practicable after receiving an allocation of a disclosure from an Authorised Officer (whether from within or outside the Department) consider whether to exercise the discretion under section 48 of the PID Act not to investigate the disclosure under the PID Act.

The Investigators may decide not to investigate (or may decide to discontinue an investigation already begun) if:

- the discloser is not a current or former public official (and a determination has not been made under section 70 of the PID Act);
- the information does not to any extent concern serious disclosable conduct;
- the disclosure is frivolous or vexatious;
- the disclosure is substantially the same as a disclosure that has been investigated under the PID Act;
- the disclosure is substantially the same as a disclosure that has already been investigated, or is currently being investigated, under another law of the Commonwealth, and
 - it would be inappropriate to conduct another investigation at the same time; or
 - the relevant delegate under the PID Act is reasonably satisfied that there are no matters that warrant further investigation;
- the discloser has informed a delegate under the PID Act that they do not wish the disclosure to be pursued and a delegate is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation; or
- it is impracticable to investigate the disclosure because:
 - the discloser has not revealed their name and contact details;
 - the discloser has refused or has failed or is unable to give the Investigators the information they requested; or
 - of the age of the information.

Guidance on the factors that might go towards the exercise of the power in section 48 is provided in the Ombudsman's "Agency Guide to the Public Interest Disclosure Act 2013", which can be found at www.ombudsman.gov.au.

Step 3: Notify the discloser and Ombudsman

If the Investigators decide not to investigate a disclosure, they will:

- inform the Ombudsman in writing of that decision and the reasons for that decision; and
- where they have been given the name and contact details of the discloser, inform the discloser of that decision, of the reasons for that decision and of other courses of action that may be available to the discloser under other laws of the Commonwealth.

If the Investigators decide to investigate the disclosure, they will inform the discloser as soon as reasonably practicable:

- that they are required to investigate the disclosure; and
- of the estimated length of the investigation.

If the Investigators decide to investigate the disclosure, start to investigate the disclosure but then decide not to investigate the disclosure further, they must inform:

- the discloser of that decision, or the reasons for the decision and of other courses of action that might be available to the discloser under other laws of the Commonwealth; and
- the Ombudsman of that decision and the reasons.

Step 4: Investigate the matter

If the Investigators decide to investigate, they will investigate whether there are one or more instances of disclosable conduct.

General principles

The following general principles will apply to the conduct of investigations:

- maintaining the confidentiality of the identity of the discloser will be paramount when conducting the investigation;
- the investigation will be conducted in accordance with the principles of procedural fairness;
- a person who is the subject of the investigation will have an opportunity to respond or provide information;
- in the event that an interview is to be conducted, it will be conducted in a manner consistent with the [Public Interest Disclosure Standard 2013](#) (or any other relevant standard made under the PID Act); and
- a decision on whether evidence is sufficient to prove a fact will be determined on the balance of probabilities.

Aside from compliance with these principles, the Investigators are free to conduct the investigation as they see fit. The way in which the investigation is conducted may vary depending on the alleged conduct which is being investigated. In particular, where the Investigators consider that the nature of the disclosure is such that the outcome of the investigation is likely to be referral of the matter for investigation under another process or procedure, the investigation will be conducted in accordance with those other established processes or procedures.

Additional procedures required in particular circumstances

In conducting an investigation under these procedures, the Investigators must also comply with:

- the [Public Interest Disclosure Standard 2013](#) or any other standard issued under section 74 of the PID Act; and
- to the extent they are relevant to the investigation:
 - the Commonwealth Fraud Control Guidelines;
 - these procedures;

- the procedures established under s 15(3) of the *Public Service Act 1999*; and
- any other of the Department's policies or procedures.

Obtaining information

Instances of disclosable conduct may relate to information that is disclosed or information obtained in the course of the investigation rather than information provided in the initial disclosure.

During the investigation, the Secretary or delegates may, for the purposes of the investigation, obtain information from such persons and make such inquiries as they see fit.

When being interviewed as part of an investigation, an interviewee will be informed of the following:

- the identity and function of each individual conducting the interview;
- the process of conducting an investigation;
- the authority of the Secretary (and relevant delegates) under the PID Act to conduct the investigation;
- the protections provided to witnesses under section 57 of the PID Act; and
- the person's duty:
 - if they are a public official – to use their best endeavours to assist the Investigators in the conduct of an investigation under the PID Act (subject to the public official's privilege against incriminating themselves or exposing themselves to a penalty);
 - not to take or threaten to take reprisal action against the discloser; and
 - subject to the PID Act, not to disclose the identity of the person who made the disclosure.

The Investigators will ensure:

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

In conducting the investigation, the Investigators may adopt findings set out in reports of investigations or inquiries under other Commonwealth laws or executive powers, or other investigations under the PID Act.

Referral of information to police

If, during the course of the investigation, the Investigators suspect on reasonable grounds that some of the information disclosed or obtained in the course of the investigation is evidence of the commission of an offence against a law, the Investigators may disclose the information to a member of an Australian police force. If the information relates to an

offence that is punishable for a period of at least two years, the Secretary or delegates must disclose the information to a member of an Australian police force.

The investigation may also include consideration of whether a different or further investigation should be conducted by the agency or another body under another law of the Commonwealth.

Procedural fairness

Procedural fairness does not require that a person, against whom allegations are made, must be advised as soon as the disclosure is received or as soon as an investigation is commenced.

Procedural fairness does require that the person, against whom allegations are made, is entitled to know the substance of allegations against them if an adverse finding is going to be made about their conduct.

Procedural fairness does not equate to a right to know the identity of the discloser who has alleged that the person has committed wrongdoing. However, the person may be able to guess the discloser's identity because the substance of the allegations makes it evident.

Where the Investigator, in preparing the report of their investigation, propose to:

- make a finding of fact; or
- express an opinion that is adverse to the discloser, to a public official who is the subject of the disclosure or to another person:

the Investigators must give the person who is the subject of that proposed finding or opinion a copy of the evidence that is relevant to that proposed finding or opinion and must give the person a reasonable opportunity to comment on it.

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

The Investigators must ensure that a finding of fact in a report of an investigation complies with the evidentiary requirements in the [Public Interest Disclosure Standards](#) (or any other standard issued under the PID Act).

Step 5: Prepare investigation report

Once the Investigators have completed the investigation, they will prepare a report of the investigation.

The Investigators must complete the investigation report within 90 days after the disclosure was allocated to the Department (either by an Authorised Officer within the Department or from a different department), unless this period is extended by the Ombudsman. If the

period is extended, the Investigators will inform the discloser of the progress of the investigation.

Content of the report

The report must set out:

- the matters considered in the course of the investigation;
- the duration of the investigation;
- the Investigators' findings (if any); and
- the action (if any) that has been, is being, or is recommended to be taken.

Where relevant, a report must:

- identify whether there have been one or more instances of disclosable conduct;
- identify any regulations rules, administrative requirements or similar matters to which the disclosable conduct (if any) relates;
- explain the steps taken to gather evidence;
- set out a summary of the evidence; and
- set out any recommendations made based on that evidence.

Where the Investigators have completed a report of an investigation under the PID Act, and where they have been given the discloser's contact details, the Investigators must, as soon as practicable, advise the discloser in writing:

- that the report has been completed; and
- whether the report was completed within the time limit provided for by the PID Act.

If the Investigators consider that information disclosed in the course of a public interest disclosure may be appropriately dealt with under another procedure or policy of the Department, they may recommend in the investigation report that this occur.

Step 6: Provide report to discloser

The Investigators must, within a reasonable time of preparing a report of an investigation under the PID Act, give a copy of the report to the discloser.

However, the Investigators may delete from the copy of the report given to the discloser any material:

- that is likely to enable the identification of the discloser to another person; or
- the inclusion of which would result in the copy being a document:
 - that is exempt for the purposes of Part IV of the *Freedom of Information Act 1982*; or
 - having, or requiring, a national security or other protective security classification; or
 - containing intelligence information.

The Investigators must delete from the copy of a report given to the discloser any material which would result in the report contravening a designated publication restriction.

7. Confidentiality

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. It is an offence for a person who has information obtained in the course of conducting a disclosure investigation, or in connection with their powers and functions under the PID Act, to disclose or use this information.

Any email correspondence between supervisors or managers, Authorised Officers and the Secretary or delegates should include in the subject line **For Addressee Eyes Only – Public Interest Disclosure**. This alerts any support staff who may have access to emails that this email is not to be opened.

Any interviews conducted by an Authorised Officer or delegate (including Investigators) should be conducted in private.

Any interviews with the discloser should be arranged so as to avoid the identification of the discloser by other staff of the agency.

Supervisors, managers and Authorised Officers who seek further advice from the Employee Conduct and Ethics Section regarding a disclosure must de-identify the information. When referring to involved parties they should be referred to as the 'discloser' and the 'subject person'.

8. Record-keeping

Where an Authorised Officer is required to keep a record under these procedures, the record may be kept in hard copy or in an electronic form or in both. Access to these records must be restricted to the Authorised Officers, Delegates (including Investigators) or other employees in the Department who require access in order to perform some function under the PID Act or for the purposes of another law of the Commonwealth (for example, under the Work Health and Safety Act 2011 or the Public Service Act 1999).

Where a form is required to be sent under these procedures, a copy of the form must be kept.

All records made for the purposes of the PID Act in accordance with these procedures must be marked as 'Sensitive – Personal' and hard copies stored in the appropriate storage container.

Any email messages sent by supervisors or managers, Authorised Officers or Delegates that contain identifying information must be clearly marked **For Addressee Eyes Only – Public Interest Disclosure**.

When a person ceases their role as an Authorised Officer in the Department (including because of resignation or movement to another agency), they must transfer all their PID records to another Authorised Officer in the Department.

9. Monitoring and evaluation

Each Authorised Officer must provide a six monthly report to CPO CMG specifying the number of public interest disclosures received by the Authorised Officer and the nature of the disclosable conduct for each disclosure (by reference to the relevant item or paragraph in the definition). The report must also include any disclosures that have been allocated to the agency by another agency's Authorised Officer.

CPO CMG will collate the Department's report to the Ombudsman on disclosures made during the financial year.

The Investigators must advise CPO CMG of every decision made by the Investigators to investigate a disclosure during the financial year.

Each delegate of the Secretary who takes action in response to a recommendation made in an investigation report must make a report of this action to CPO CMG.

CPO CMG must prepare the agency's report for the Secretary's consideration within the time specified by the Secretary.

The Secretary will send the Agency's report to the Ombudsman within the time requested by the Ombudsman or as otherwise agreed with the Ombudsman.

10. Resources

More advice concerning these procedures and other workplace conflict and ethical dilemma situations can be obtained by contacting the Employee Conduct and Ethics Section on:

- their phone number: 6261 2456
- via email at: conduct@dfat.gov.au

Useful websites:

Commonwealth Ombudsman www.ombudsman.gov.au

Australian Public Service Commission www.apsc.gov.au

- ¹ The positions occupied by Authorised Officers in the Department are listed on the intranet.
- ² See sub-section 43(3)(a)(ii)-(iv) of the PID Act.
- ³ A list of these positions is available in the Secretary's delegations on the intranet.

APPENDIX 1: What is a Public Interest Disclosure?

What is a public interest disclosure?

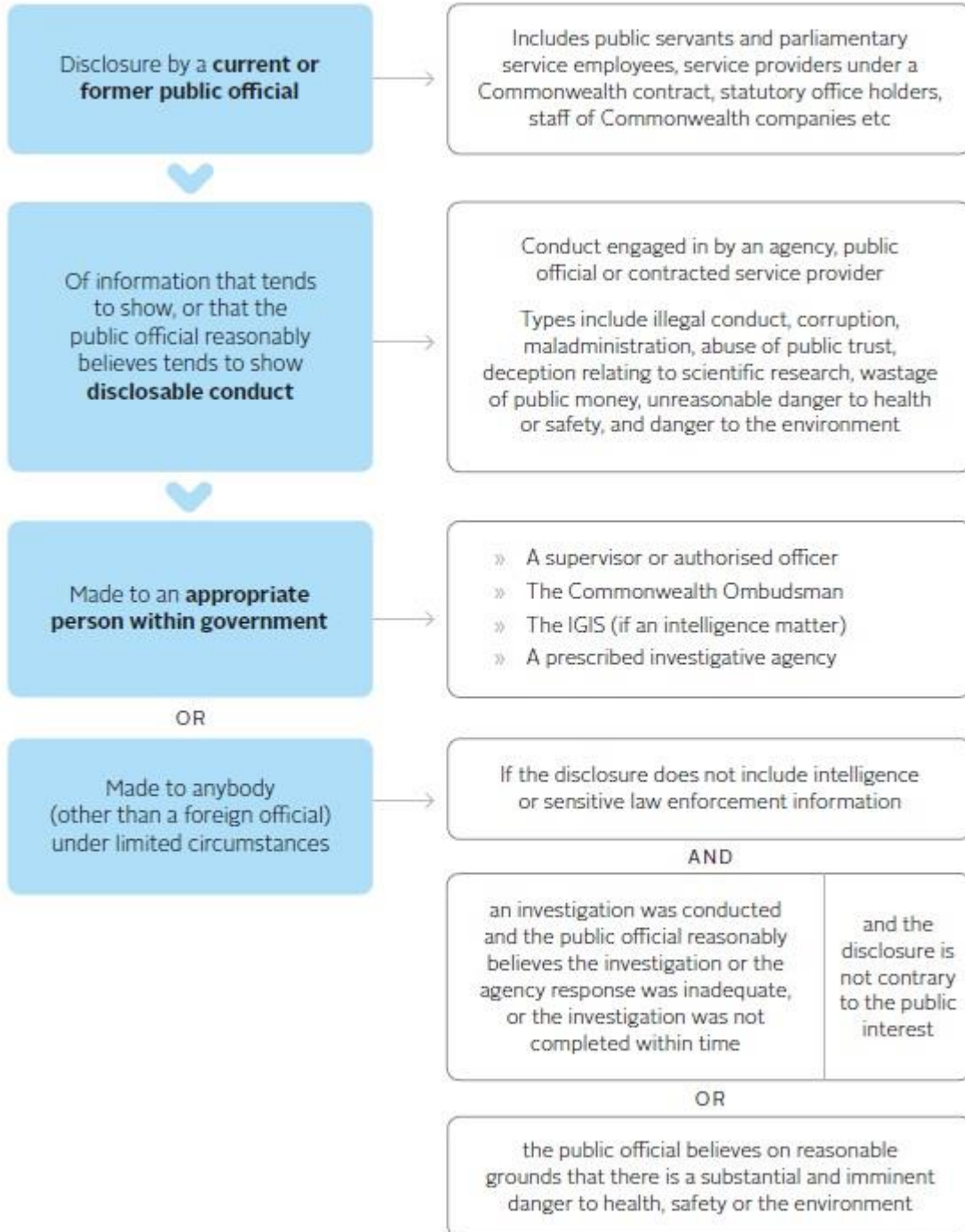


Figure 1 – What is a public interest disclosure?

APPENDIX 2: Internal Disclosure Process

Dealing with an internal disclosure

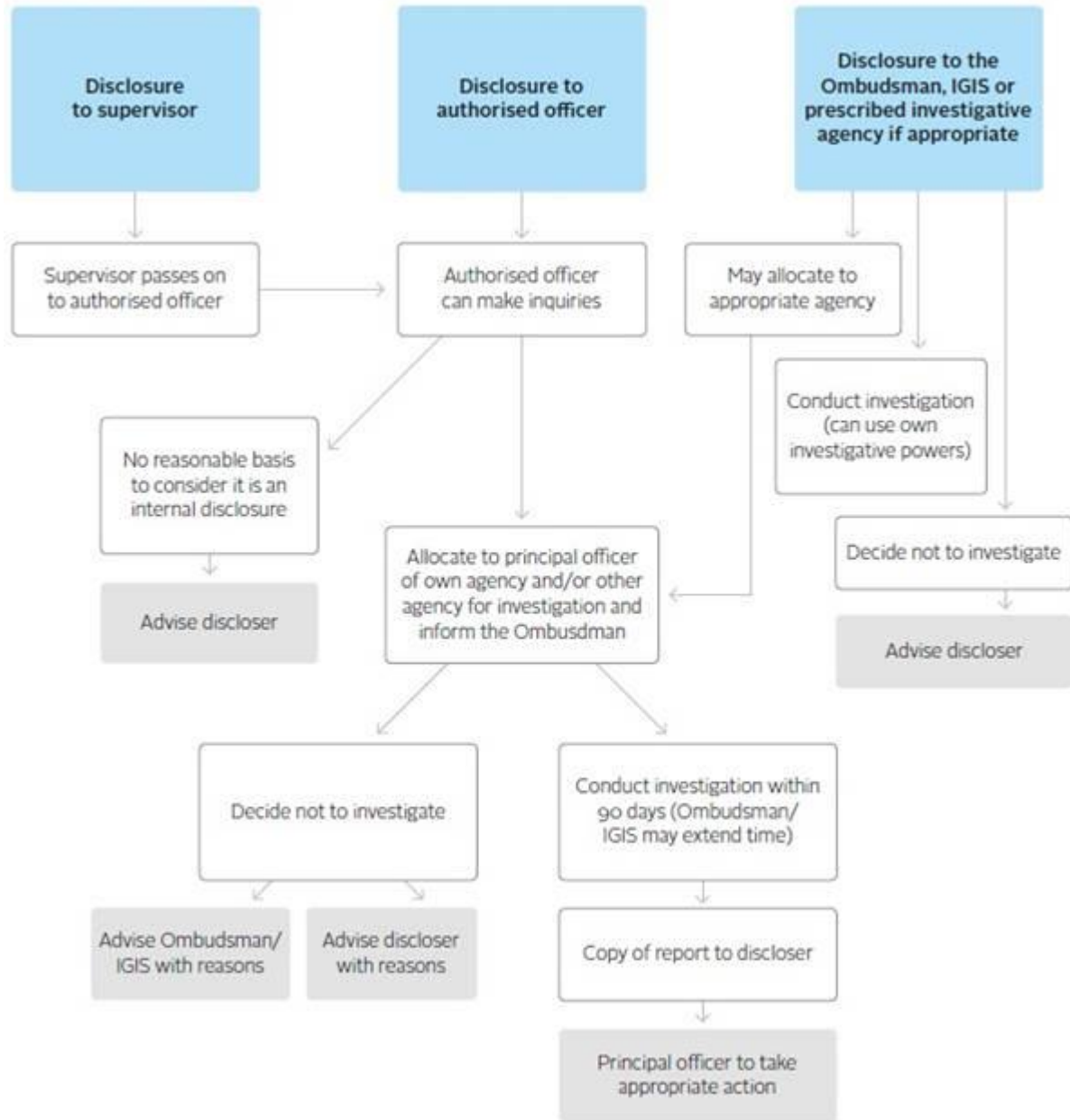


Figure 2 – Dealing with an internal disclosure

APPENDIX 3: Risk Assessment

When a supervisor receives an anonymous disclosure, they must assess the risk that reprisals will be taken against the discloser. When an Authorised Officer receives a disclosure from supervisor (whether the discloser is anonymous or not), the Authorised Officer must assess the risk that reprisals will be taken against the discloser.

In assessing the risk of reprisals, the relevant officer should use the following risk matrix:

		Likely seriousness of reprisal			
		Minor	Moderate	Major	Extreme
Likelihood of reprisal being taken against a discloser	Almost certain	Medium	High	High	High
	Likely	Medium	Medium	High	High
	Unlikely	Low	Low	Medium	Medium
	Highly unlikely	Low	Low	Low	Medium

Examples of seriousness of reprisals

- Minor: Occasional or one-off action that is likely to have a relatively minor adverse effect on the person (for example, occasional exclusion of the person from a social activity).
- Moderate: Repeated action which is likely to have an adverse effect on the person (for example, routinely failing to “CC” the person on work-related emails which the person has a genuine business need to know).
- Major: Sustained or one-off action which has a significant impact on the person (for example, consistently excluding the person from team discussions or imposing a negative performance assessment on the person without reasonable cause and supporting evidence).
- Extreme: Action which is likely to have a very severe impact on the person (for example, physical violence or the denial of a promotion opportunity without reasonable cause).

Criteria for assessing likelihood of potential reprisals

When considering the likelihood of a reprisal being taken against a discloser, the supervisor/manager or Authorised Officer should take into account all relevant factors. Factors the Authorised Officer may take into account, to the extent relevant, are:

- the likelihood of the discloser being identified, which may involve a consideration of:
 - the size of the work area in which the discloser is located; and
 - the number of people who are aware of the information leading to the disclosure;
- the number of people implicated in the disclosure;

- the subject matter of the disclosure;
- the number of people who are aware of the disclosure or are likely to become aware of the disclosure (for example, through participation in the investigation as witnesses);
- the culture of the workplace;
- whether any specific threats against the discloser have been received;
- whether there are allegations about individuals in the disclosure;
- whether there is a history of conflict between the discloser and the subject of the disclosure;
- whether there is a history of conflict between the discloser and the subject of the disclosure;
- whether the disclosure can be investigated while maintaining confidentiality; and
- any other relevant matters.

Criteria for assessing likely seriousness of potential reprisals

When considering the likely seriousness of any potential reprisals against a discloser, the supervisor/manager or Authorised Officer should take into account all relevant factors. Factors the Authorised Officer may take into account, to the extent relevant, are:

- the significance of the issue being disclosed;
- the likely outcome if the conduct disclosed is substantiated;
- the subject matter of the disclosure;
- whether the discloser is isolated;
- whether the discloser is employed on a full-time, part-time or casual basis;
- whether the alleged wrongdoing that is the subject of the disclosure was directed at the discloser; and
- the relative positions of the discloser and the person whose alleged wrongdoing is the subject of the disclosure.

When conducting the risk assessment, where consistent with protecting the discloser's confidentiality, the Authorised Officer may ask the discloser why they are reporting the wrongdoing and who they might fear a reprisal from, and may also speak to the discloser's supervisor or manager.