

National Competition Council

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National Competition Council Public Interest Disclosure Act 2013 Procedures for Public Interest Disclosures

WHEREAS under subsection 59(3) of the *Public Interest Disclosure Act 2013* (Cth) (**PID Act**), the principal officer of an agency must, by instrument in writing, establish procedures for facilitating and dealing with public interest disclosures relating to the agency. The procedures must:

- (a) deal with the assessment of risks that reprisals may be taken in relation to those disclosures;
- (b) provide for confidentiality of investigative processes;
- (c) comply with any standards in force under subsection 74(1) of the PID Act.

I, Julie-Anne Schafer, of the National Competition Council:

- (a) REVOKE all previous procedures of the National Competition Council under the PID Act; and
- (b) ESTABLISH these Procedures.

A handwritten signature in black ink, appearing to read 'Julie-Anne Schafer', is written over a light grey circular stamp or watermark.

Julie-Anne Schafer
President and Accountable Authority
National Competition Council

29 April 2024



1. INTRODUCTION

This document constitutes the procedures for facilitating and dealing with public interest disclosures for the purposes of subsection 59(3) of the *Public Interest Disclosure Act 2013* (Cth) (**PID Act**) for the National Competition Council (**the NCC**).

The NCC is committed to the highest standards of ethical and accountable conduct. The NCC encourages the reporting of wrongdoing under the PID Act and will act on disclosures where appropriate and protect disclosers and others who provide, or are considering providing, assistance in relation to disclosures from any reprisals or threats of reprisals.

The operation of these procedures will be reviewed regularly to ensure their continued effectiveness.

In these procedures:

- a. all references to the President include references to her or his delegate,
- b. except as otherwise provided, all references to an Authorised Officer include reference to the President or an Authorised Officer appointed in writing by the President.

2. WHAT ARE PUBLIC INTEREST DISCLOSURES?

Not all disclosures of information that might be made to the NCC will be a 'public interest disclosure' (**PID**) for the purposes of the PID Act. A disclosure of information will only be a PID to which these procedures relate if it meets the requirements under the Act, including:

- it is made by a public official or a person who has been a public official
- the information tends to show, or the discloser believes on reasonable grounds that the information tends to show 'disclosable conduct' as defined by the PID Act
- the disclosure is made to an appropriate person. This includes an Authorised Officer or the supervisor of the discloser.

Only if each of the above requirements has been met will the disclosure be covered by the PID Act and the discloser have the benefit of the protections that it confers.



Accordingly, it is important that persons contemplating making a disclosure of information carefully review the contents of the PID Act and seek 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.

A summary of the Key Roles and Responsibilities in relation to PIDs is set out at **Attachment A**.

2.1 Authorised Officer

A list of Authorised Officers for the purposes of the PID Act who have been appointed by the President is on the department's website at <https://ncc.gov.au>.

A PID can be made to an Authorised Officer of the NCC, if the PID relates to the NCC or the discloser belongs, or last belonged, to the NCC.

2.2 Public official

A person must be a current or former 'public official' to make a PID. This includes Australian Public Service employees, members of the Defence Force, appointees of the Australian Federal Police, Parliamentary Service employees, directors or staff members of a Commonwealth company, statutory office holders or other persons who exercise powers under a Commonwealth law.

Individuals and organisations that provide goods or services under a Commonwealth contract are also included, for example, subcontractors who provide goods or services for the purposes of the Commonwealth contract.

An Authorised Officer can deem an individual to be a public official if they reasonably believe that the individual has information about wrongdoing and proposes to make a disclosure.

2.3 Disclosable conduct

A current or former public official can disclose information that they believe, on reasonable grounds, tends to show disclosable conduct.

'Disclosable conduct' is defined in section 29 of the PID Act. That definition applies for the purposes of these procedures.

Disclosable conduct is conduct by:

- an agency

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- a public official in connection with their position; or
- a contracted Commonwealth service provider in connection with entering into or giving effect to the contract.

if that conduct:

- (a) contravenes a law of the Commonwealth, a State or a Territory
- (b) occurs in a foreign country and contravenes a law in force in that country that applies to the agency, public official or contracted service provider and that corresponds to a law in force in the Australian Capital Territory
- (c) perverts, or attempts to pervert, the course of justice or involves corruption of any other kind
- (d) constitutes maladministration, including conduct that:
 - o is based, in whole or in part, on improper motives
 - o is unreasonable, unjust or oppressive
 - o is negligent
- (e) is an abuse of public trust
- (f) is fabrication, falsification, plagiarism or deception in relation to scientific research, or misconduct in relation to scientific work
- (g) results in the wastage of public money or public property or of the money or property of an authority covered by the PID Act
- (h) unreasonably results in a danger to the health and safety of a person, or unreasonably results in or increases the risk of a danger to the health and safety of a person
- (i) results in a danger to the environment, or results in or increases the risk of a danger to the environment
- (j) is prescribed by the PID Rules; or
- (k) is engaged in by a public official that
 - o involves abuse of the public official's position
 - o could, if proved, give reasonable grounds for disciplinary action resulting in the termination of the official's engagement or



appointment.

Note: the recent amendment to the PID Act (in effect from 1 July 2023) incorporated a new definition of 'personal work-related conduct' which is conduct (by act or omission) engaged in by a public official (the **first official**) in relation to another public official (the **second official**) that:

- occurs in relation to, or in the course of, either or both of the following:
 - o the second official's engagement or appointment as a public official;
 - o the second official's employment, or exercise of functions and powers, as a public official; and
- has, or would tend to have, personal implications for the second official.¹

The effect of this change is that 'personal work related conduct' (even if it fits the definition of a PID) is not disclosable conduct unless one of the following exceptions applies:

- the conduct would constitute taking a reprisal against another person, or an offence under section 19 of the PID Act; or
- the conduct:
 - o is of such a significant nature that it would undermine public confidence in an agency (or agencies); or
 - o has other significant implications for an agency (or agencies).

Note that if a disclosure includes information that tends to show (or that may tend to show) disclosable conduct, the disclosure is not prevented from being a PID only because:

- the disclosure includes other information; and
- the other information tends to show (or may tend to show) personal

¹ The following are examples of personal work-related conduct:

(a) conduct relating to an interpersonal conflict between the first official and the second official (including, but not limited to, bullying or harassment);
(b) conduct relating to the transfer or promotion of the second official;
(c) conduct relating to the terms and conditions of engagement or appointment of the second official;
(d) disciplinary action taken in relation to the second official;
(e) the suspension or termination of the second official's employment or appointment as a public official;
(f) conduct in relation to which the second official is, or would have been, entitled to review under section 33 of the Public Service Act 1999 or under any comparable review process that forms, or formed, part of the second official's terms or conditions of engagement or appointment



work- related conduct.

3. MAKING A DISCLOSURE UNDER THE PID ACT

3.1 How to make a disclosure under the PID Act

Where a public official is considering making a disclosure, they should, in the first instance, contact an Authorised Officer to get information about making a public interest disclosure under the PID Act.

NCC officials are encouraged to make a disclosure internally to their current supervisor or to one of the NCC's Authorised Officers. Making a disclosure internally to an Authorised Officer allows the opportunity for NCC to investigate the matter and remove any danger or correct any wrong practices as quickly as possible.

If a public official discloses information 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 Authorised Officer as soon as reasonably practicable.

If an official has information about suspected wrongdoing in another agency, they may choose to make a disclosure directly to an Authorised Officer in that agency.

A disclosure can also be made to Authorised Officers of the Commonwealth Ombudsman (Ombudsman) if the discloser believes on reasonable grounds that it would be appropriate for the Ombudsman to investigate. A disclosure can also be made to the NACC from 1 July 2023.

A PID may be made anonymously or openly and may be made orally or in writing. The discloser does not need to state or intend that they are doing so under the PID Act for the requirements of the PID Act to apply.

Officials should note that making a PID does not entitle them to protection from the consequences of their own wrongdoing. Additionally, a person who knowingly makes a false or misleading disclosure will not have any protections under the PID Act.

3.2 What information should be provided when making a PID?

The information contained in a disclosure should be clear and factual, and should, as far as possible, avoid speculation, personal attacks and emotive language. It



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

Depending on the circumstances, a discloser should consider providing as-many of the following matters as possible:

- their name and contact details
- the nature of the suspected wrongdoing
- who they think committed the suspected wrongdoing
- when and where the suspected wrongdoing occurred
- any relevant events surrounding the issue
- if they did anything in response to the suspected wrongdoing
- others who know about the suspected wrongdoing and have allowed it to continue
- whether they believe their information is a PID under the PID Act (it does not need to be described that way for it to be treated as a PID)
- if they are concerned about possible reprisal as a result of making a disclosure.

3.3 Anonymous disclosures

Disclosers may wish to make anonymous disclosures. A disclosure is anonymous if the identity of the discloser is not revealed and if no contact details for the discloser are provided. It is also anonymous if the discloser does not disclose their name but provides anonymous contact details. Receiving an anonymous disclosure does not mean that it cannot be treated as a disclosure for the purposes of the PID Act. Where a supervisor or manager receives a disclosure of one of these kinds they must refer it to an Authorised Officer as soon as is reasonably practicable.

Where an Authorised Officer receives a disclosure of one of these kinds they must consider whether to exercise the power in section 70 of the PID Act to determine on their own initiative that a person who has disclosed information to them is a public official in relation to the making of the disclosure. However, if the Authorised Officer cannot contact the discloser, no determination can be made because the Authorised Officer must be able to give written notice of the determination to the individual.



3.4 Confidentiality

The Authorised Officer and the President will take all reasonable steps to protect the identity of a public official who has made a PID from the time the disclosure is made.

Only individuals directly involved in dealing with the PID (such as the Authorised Officer and the President) may be advised of the details of the PID. These individuals must not disclose the identity of the discloser or any information which is likely to reveal the identity of the discloser without the consent of the discloser.

It is an offence for a public official to disclose or use information that is likely to enable the identification of a person as a person who has made a PID other than in accordance with the PID Act.

Identifying information about a discloser will not be disclosed to a court or tribunal except where necessary to give effect to the PID Act.

3.5 Recordkeeping

Details about how and when a PID was made should be recorded and kept in a secure place. If the disclosure was given verbally, consideration should be given to asking the discloser to sign a record of the disclosure. Subsequent conversations where the disclosure is discussed should also be documented.

3.6 Protections and support

(a) Protections for disclosers, witnesses and potential disclosers

The PID Act provides a number of protections where the disclosure meets the requirements of being a PID. Chief among these is protection from reprisals, including protection against conduct by a person that results in detriment, or consists of, or results in, a threat to cause detriment to the discloser, witness or potential discloser, in relation to a PID or potential PID.² This includes in relation to a disclosure made to the NACC in relation to NCC. The NACC Act similarly provides for protections for a disclosure that is a NACC disclosure.

It is an offence to engage in conduct of this nature. Prosecution can take place under the PID Act, and can carry a penalty of two years imprisonment. A discloser can also access the general protections provisions of the *Fair Work Act 2009*.

Protections under the PID Act remain in place even after any investigation has

² See section 13 of the PID Act for full details.



been completed and the matter concluded.

(b) Risk assessment

A reprisal risk assessment will be conducted for each PID (including a NACC disclosure). The risk assessment will be reviewed as required through the course of any PID investigation.

In most circumstances, the Authorised Officer will conduct the risk assessment for a PID. However, if the disclosure is first made to a manager or supervisor and the person wishes their identity to remain anonymous, the manager or supervisor should conduct a risk assessment.

A risk assessment should involve assessing the specific behaviour and circumstances that may result in reprisals, and then putting in place appropriate strategies to prevent or contain them. Inappropriate workplace behaviour, including harassment, intimidation, undermining of authority, ostracism, humiliation, questioning of motives and heavier scrutiny of work, or any other conduct that is detrimental or threatens detriment can greatly increase stress and can result in serious injury to someone who has made a disclosure, a potential discloser or someone who has provided supporting information (i.e. a witness).

The risk assessment can include the risk of direct reprisal against the discloser, potential discloser and/or witnesses and the risk of related workplace conflict or difficulties.

The discloser, potential discloser and/or witnesses will be informed of the protections and the proper channels for reporting victimisation or discrimination. As part of the risk assessment, any concerns of the discloser about the risks of reprisal will be discussed with them and addressed, taking into account all of the circumstances.

The following framework may be used in assessing the risk of reprisals being taken against a discloser:

- Identifying - are reprisals or related workplace conflict problems in the workplace, or do they have the potential to be problems?
- Assessing - what is the likelihood and consequence of reprisals or related workplace conflict?
- Controlling - what strategies should be put in place to prevent or contain reprisals or related workplace conflict?



- Monitoring and reviewing - have the strategies been implemented and were they effective?

(c) Support for disclosers, witnesses and potential disclosers

Regardless of the outcomes of the risk assessment, the NCC will take reasonable steps to protect disclosers, potential disclosers and witnesses from reprisal action, and will support those who make or may make disclosures, and who are otherwise involved in PID matters. This may include taking one or more of the following actions:

- with the discloser's, potential discloser's or witness's consent, appointing a support person to assist the discloser, potential discloser or witness, who is responsible for checking on their wellbeing regularly
- informing the discloser of the progress of the investigation
- advising the discloser, potential discloser or witness of the availability of the Employee Assistance Program and access to workplace harassment contact officers
- where there are any concerns about the health and wellbeing of the discloser, potential discloser or witness, liaising with officers responsible for work health and safety in the NCC
- transferring the discloser, potential discloser or witness to a different area within the workplace with their consent.

To avoid doubt, reasonable administrative action taken to protect a person from detriment (for instance transferring the discloser to another business line) is not reprisal action. A person making a PID is also still liable for their own conduct.

(d) Support for a person against whom a disclosure has been made

The NCC 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 NCC's investigation procedures, including the employee's rights to procedural fairness
- advising the employee of the availability of the Employee Assistance Program



- ensuring that the identity of the employee is kept confidential as far as reasonably practicable
- where there are any concerns about the health and wellbeing of the employee, liaising with officers responsible for work health and safety in the NCC
- transferring the employee to a different area within the workplace (with the consent of the employee).

3.7 Immunity from liability

Anyone who makes a PID, or who provides evidence as a witness in relation to a PID, is not subject to any civil, criminal or administrative liability (including disciplinary action) for making the disclosure or providing evidence as a witness in relation to a disclosure. This means that the discloser or witness would not be committing an offence against the secrecy provisions of the *Criminal Code Act 1995* (Cth) for making a disclosure in accordance with the PID Act or providing evidence as a witness, respectively. The discloser or witness also has absolute privilege in proceedings for defamation in respect of the PID.

No contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the discloser or witness on the basis of their involvement in a PID. A contract to which the discloser or witness is a party cannot be terminated because of the PID.

However, these immunities do not apply if the discloser or witness:

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

4. CONSIDERING AND ALLOCATING THE DISCLOSURE

4.1 Does the disclosure meet the requirements of a PID?

When an Authorised Officer receives a disclosure of information, that officer will consider the information disclosed and determine whether there are reasonable grounds on which the disclosure could be considered an internal disclosure made in accordance with the PID Act, or if it would be more appropriately investigated under another law or power.

Authorised Officers may obtain further information and may make such inquiries



as they think fit, only for the purposes of deciding the allocation of the disclosure, including for the purposes of deciding whether the disclosure is an internal disclosure made in accordance with the PID Act.

If the Authorised Officer determines that the disclosure meets the requirements of a PID, and after having regard to the relevant considerations, that officer will allocate the disclosure to one or more agencies for further handling and investigation in accordance with these Procedures. The Authorised Officer will use his or her best endeavours to decide the allocation with 14 days after the disclosure is made.

If the Authorised Officer is satisfied on reasonable grounds that it is not an internal disclosure or that the conduct disclosed would be more appropriately investigated under another law or power, the disclosure will not be allocated.

In these circumstances:

- if the Authorised Officer decides that the conduct would be most appropriately investigated under another law or power, they must as soon as is reasonably practicable, take reasonable steps to refer, or facilitate referral, of the conduct under that law or power.
- if the disclosure relates to conduct that may need to be addressed under:
 - o the NCC's fraud and corruption framework
 - o the NCC's procedures for managing and determining suspected breaches of the APS Code of Conduct
 - o the NCC's work health and safety policy
 - o any other of the NCC's policies or procedures

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

- if contacting the discloser is reasonably practicable, the Authorised Officer must inform the discloser in writing of the decision not to allocate the disclosure and the reasons for the decision, details of any action or proposed action to refer the conduct disclosed for investigation under another law or power, and of any other course of action that might be available to the discloser under other laws of the Commonwealth.

4.2 Allocation of the disclosure



(a) Determining the agency or agencies to which the disclosure will be allocated

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

- the principle that an agency should not handle the disclosure unless one or more of the following circumstances apply:
 - o in any case some or all of the conduct disclosed relates to the agency;
- any other matters the authorised officer considers relevant, including:
 - o whether subsection **43(8)** applies (which deals with the allocation of a disclosure within the same portfolio as the recipient agency, if the other agency would be better able to handle the disclosure); and
 - o any recommendation of the Ombudsman or the IGIS under section 55 about the allocation of the disclosure.

In addition, if the Authorised Officer is contemplating allocating the disclosure to the Ombudsman, the IGIS or an investigative agency that has been prescribed by the PID Rules, the Authorised Officer must have regard to additional matters set out in the PID Act.³

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

The Authorised Officer must not allocate all or part of a disclosure if a stop action has been issued under the NACC Act with respect to that element or all of the disclosure. The Authorised Officer must notify the Ombudsman of this circumstance

(b) Informing relevant persons of the allocation

Informing the receiving agency

When the Authorised Officer allocates the handling of a disclosure to an agency, the Authorised Officer will inform the principal officer of that agency of:

- the allocation to the agency
- the information that was disclosed to the Authorised Officer

³ See section s 43(2)(a)(ii)-(iv) of the PID Act.



- the conduct disclosed; and
- if the discloser's name and contact details are known to the Authorised Officer, and the discloser consents to the principal officer being informed - the discloser's name and contact details.

Informing the discloser

If contacting the discloser is reasonably practicable, as soon as reasonably practicable after the allocation has occurred, the Authorised Officer will also inform the discloser in writing of the allocation and of the information that has been provided to the principal officer of that agency.

Informing other relevant bodies

If the Authorised Officer allocated a disclosure to an agency, including NCC itself, other than the Ombudsman, the IGIS or an intelligence agency, that officer will inform the Ombudsman of this in writing. If the disclosure is allocated to an intelligence agency, the Authorised Officer will inform the IGIS of this in writing.

(c) Recording the allocation decision

When an Authorised Officer allocates the handling of a disclosure to one or more agencies, that 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
- 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
- the content of the notification.

These records should be kept confidential.

5. INVESTIGATING THE DISCLOSURE



(a) President to decide whether to investigate the disclosure

The President must, as soon as reasonably practicable after being allocated a PID, decide whether to:

- investigate the disclosure
- not to investigate the disclosure further
- investigate the disclosure under a separate investigative power
- refer the disclosure to the appropriate area in NCC or another body for investigation under another law or power.

The President must not investigate or refer a disclosure for investigation if a stop action has been issued under the NACC Act with respect to that element or all of the disclosure. The President must notify the Ombudsman of this circumstance.

The President 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
- information is the same, or substantially the same, as information previously disclosed under the PID Act and
 - o a decision was previously made under subsection 48(1) of the PID Act not to investigate the earlier disclosure, or not to investigate the earlier disclosure further; or
 - o the earlier disclosure has been, or is being, investigated as a disclosure investigation;
- the conduct disclosed, or substantially the same conduct, is being investigated under another law or power, and the President is satisfied, on reasonable grounds, that it would be inappropriate to conduct an investigation under the PID Act
- at the same time the conduct disclosed, or substantially the same conduct, has been investigated under another law or power, and the President is



satisfied, on reasonable grounds, that there are no further matters concerning the conduct that warrant investigation

- the President is satisfied, on reasonable grounds, that the conduct disclosed would be more appropriately investigated under another law or power; or both:
 - o the President has been informed by the discloser, an authorised officer of NCC or a principal officer or authorised officer of another agency that the discloser does not wish the investigation of the disclosure to be pursued, and
 - o the President is satisfied, on reasonable grounds, that there are no matters concerning the disclosure that warrant investigation
- it is impracticable to investigate the disclosure because:
 - o the discloser has not revealed their name and contact details
 - o the discloser has refused or has failed or is unable to give the investigator the information they requested
 - o - of the age of the information.

Decision not to investigate

Where the President decides not to investigate a disclosure, the President will, as soon as reasonably practicable, give written notice to the Ombudsman of that decision, and of the reasons for that decision. If the President decides (or proposes) to refer the disclosure to NCC or another body for investigation under another law or power, then the notice to the Ombudsman must include information about

- the other law or power;
- the agency or other person or body to which the conduct has been, or is to be, referred;
- the steps taken, or proposed to be taken, for the conduct to be referred or to facilitate its referral.

If the President has been given the name and contact details of the discloser, the President must inform the discloser of that decision and the reasons for that decision. This includes advising of any referral for investigation under another law or power, inclusive of:

- the other law or power;



- the agency or other person or body to which the conduct has been, or is to be, referred;
- the steps taken, or proposed to be taken, for the conduct to be referred or to facilitate its referral.

The President must also provide information to the discloser about other courses of action that might be available to the discloser under other laws of the Commonwealth.

Decision to investigate

Where the President has decided that they are required to investigate the disclosure, and where the President has been given the name and contact details of the discloser, the President will, as soon as practicable, inform the discloser that they are required to investigate the disclosure, the investigator's name and contact details and inform the discloser of the estimated length of the investigation.

If the President decides to investigate the disclosure and starts to investigate the disclosure but then decides not to investigate the disclosure further, the President will provide written notice to the discloser of that decision, and of the reasons for the decision. This includes advising of any referral for investigation under another law or power, inclusive of:

- the other law or power;
- the agency or other person or body to which the conduct has been, or is to be, referred;
- the steps taken, or proposed to be taken, for the conduct to be referred or to facilitate its referral.

The President must also provide information about other courses of action that might be available to the discloser under other laws of the Commonwealth.

Under these circumstances the President must also give written notice to the Ombudsman of that decision, and of the reasons for that decision. If the President decides (or proposes) to refer the disclosure to NCC or another body for investigation under another law or power, then the notice to the Ombudsman must include information about:

- the other law or power;
- the agency or other person or body to which the conduct has been, or is to be, referred;
- the steps taken, or proposed to be taken, for the conduct to be referred or to facilitate its referral.



(b) Conducting the investigation

An internal disclosure may be investigated in one of two ways:

- under the PID Act
- under other legislation applying to the Ombudsman, IGIS and prescribed investigative agencies.

If the President decides to investigate, the President 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 and observed
- the principles of natural justice will be observed, including that a person who is the subject of the investigation will be provided with an opportunity to respond to allegations
- a decision whether evidence is sufficient to prove a fact will be determined on the balance of probabilities

Aside from compliance with these principles and any additional procedural requirements that may apply in the circumstances (see further below), the President is free to conduct the investigation as the President sees fit. The way in which the investigation is conducted may vary depending on the alleged conduct which is being investigated. In particular, in circumstances where the President considers 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 under these procedures may appropriately be conducted in a circumscribed way.

Additional procedures required in particular circumstances

If a disclosure relates to conduct that would require the NCC to take steps under its:

- fraud and corruption framework
- procedures for managing and determining suspected breaches of the APS



Code of Conduct

- work health and safety policy
- any other of the NCC's policies or procedures

the processes set out in those procedures and policies must be complied with in the conduct of an investigation under these procedures.

If the President considers that information disclosed in the course of a PID may be appropriately dealt with under another procedure or policy of the NCC, the President may recommend in the investigation report that this occur and refer the matter to the relevant part of the NCC.

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 President may, for the purposes of the investigation, obtain information from such persons and make such inquiries as President sees 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 President under the PID Act to conduct the investigation
- the protections provided to witnesses under section 57 of the PID Act.

The President 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
- any final statement, comment or position by the interviewee is included in the record of the interview.

In conducting the investigation, the President may adopt findings set out in



reports of investigations or inquiries under another law or power, or other investigations under the PID Act.

Confidentiality

The investigation of the disclosure should be conducted in as confidential a manner as is possible. In particular, the identity of both the discloser and the person alleged to have engaged in the disclosable conduct should not be revealed except where this is reasonably necessary for the effective investigation of the disclosure (including because of the need to afford procedural fairness).

Any interviews conducted by an Authorised Officer or delegates (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 officials.

Referral of information to police and others

If, during the course of the investigation, the President suspects 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 President may disclose the information to a member of an Australian police force. If the information relates to an offence that is punishable by imprisonment for a period of at least two years, the President must disclose the information to a member of an Australian police force, unless the offence forms part of a corruption issue that has been referred to the NACC Commissioner.

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 or power.

(c) Preparing the investigation report

Once the President has completed the investigation, the President will prepare a report of the investigation. The report must set out:

- the matters considered in the course of the investigation
- the duration of the investigation
- the President's findings (if any)
- any regulations, rules, administrative requirements or similar matters to which the disclosable conduct relates



- the action (if any) that has been, is being or is recommended to be

taken to the extent relevant:

- the steps taken to gather evidence
- a summary of the evidence
- claims of any reprisal taken against the discloser, or any other person, that relates to the matters considered in the course of the investigation, together with any related evidence; and
- NCC's response to any claims or evidence mentioned in the paragraph above.

(d) Providing the investigation report to the discloser

If it is reasonably practicable, the President will provide the discloser with written notice of the completion of the investigation, together with a copy of the report, within a reasonable time after preparing the report.

The President may delete from the copy of the report given to the discloser any material:

- that is likely to enable the identification of the discloser or another person
- would be exempt for the purposes of Part IV of the *Freedom of Information Act 1982* (FOI Act), would require a national security or other protective security clearance, contains intelligence information or contravenes a designated publication restriction as defined in the PID Act.

(e) Providing the investigation report to the Ombudsman

The President will provide the Ombudsman with written notice of the completion of the investigation, together with a copy of the report, within a reasonable time after preparing the report.

(f) Timeframes for completion of an investigation under the PID Act

Investigations under the PID Act must be completed (that is, an investigation report must be completed) within 90 days of the date the matter was allocated for investigations. While a straightforward matter may be completed quickly, more complex issues, where significant evidence needs to be gathered, may take much longer.



The Ombudsman may grant one or more extensions of time. If an extension is granted, the Ombudsman will inform the discloser and give reasons for the extension. This does not apply if contacting the discloser is not reasonably practicable. In cases where the Ombudsman doesn't have the discloser's identity or contact details, the agency handling the disclosure will be asked to notify the discloser.

If an extension is granted, the President will also let the discloser know about the progress of the investigation.

6. WHAT IF THE DISCLOSER IS NOT SATISFIED WITH THE AGENCY'S ACTIONS?

A person who has made an internal disclosure may be unhappy with the agency's decision not to investigate a matter. If the disclosure is investigated, they may believe that the investigation or the agency's response to the investigation was inadequate. A reasonable belief that an investigation under the PID Act was inadequate or that the agency's response was inadequate is one of the conditions for making an external disclosure.

A discloser who is unhappy with the process or how they have been treated may also complain to the Ombudsman. For more information regarding external disclosures, please visit the Ombudsman's [Public Interest Disclosure scheme](#) internet page.

7. FREEDOM OF INFORMATION REQUESTS

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

For more information please refer to the NCC's [Freedom of Information](#) internet page.

8. MONITORING AND EVALUATION

Authorised Officers will provide a monthly report to the President specifying the number of PIDs that they have received and the nature of the disclosable conduct for each disclosure.

The Director, Integrity will report to the Ombudsman on disclosures made during



the financial year.

9. INTERACTION WITH THE NATIONAL ANTI-CORRUPTION COMMISSION ACT 2022

From 1 July 2023, the National Anti-Corruption Commission will begin operating. The *National Anti-Corruption Commission Act 2022* will impose new obligations on PID Officers (including Authorised Officers and other officials that are performing functions under the PID Act) that this section of the Procedures set out.

9.1 Mandatory referral to the National Anti-Corruption Commission (NACC)

From 1 July 2023, in considering a disclosure, the PID Officer who is either:

- allocating an internal disclosure under Division 1 of Part 3 of the PID Act (i.e. an Authorised Officer); or
- investigating an internal disclosure under Division 2 of Part 3 of the PID Act,

must consider whether the mandatory referral obligation under the *National Anti-Corruption Commission Act 2022* (NACC Act) to the NACC applies. The mandatory referral obligation applies from 29 July 2023 (inclusive of disclosures made from 1 July 2023).

In exercising these functions, the PID Officer must consider whether:

- the internal disclosure raises a corruption issue⁴ under the NACC Act;
- the corruption issue concerns the conduct of a person who is, or was, a staff member of NCC while that person is, or was, a staff member of NCC, and
- the PID Officer suspects the issue could involve serious or systemic⁵ corrupt conduct⁶

⁴ A corruption issue is information, or an allegation, that raises a question of whether a person:

- has engaged in corrupt conduct in the past
- is currently engaging in corrupt conduct, or
- will engage in corrupt conduct in the future.

⁵ Serious or systemic corrupt conduct is not a defined term. However, more guidance may be provided by the NACC in time

⁶ While corrupt conduct can take many forms, the NACC Act defines it as situations where a public official:

- does something that breaches the public trust
- abuses their office as a public official, or
- misuses information they have access to in their capacity as a public official.

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

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If these criteria are met, the PID Officer must refer the corruption issue to the NACC as soon as reasonably practicable after becoming aware of it.

This occurs in parallel with actions undertaken under these procedures. In effect this means that the PID investigation must continue unless the NACC Commissioner directs the NCC to stop action under section 43 of the NACC Act.

Informing the NACC

In making a mandatory referral to the NACC, the PID Officer must include the following information in the referral to the NACC

- all information relevant to the corruption issue in their possession or control when they make the referral
- the reason why they suspect the issue could involve corrupt conduct that is serious or systemic.

Information relevant to a corruption issue may include (but is not limited to):

- the names of any public officials who the PID Officer suspects has engaged in serious or systemic corrupt conduct
- the names of any private individual or entities involved
- a description of the conduct
- the dates and timeframes of when the alleged corrupt conduct occurred or may occur
- how and when the PID Officer became aware of the issue
- any supporting documents or evidence
- any other relevant information.

If the PID Officer becomes aware of new information after making the referral, they must provide it to the NACC (as soon as reasonably practicable).

Exceptions to information requirements

A PID Officer is not required to provide information about a corruption issue if any of the following apply:

- the PID Officer believes on reasonable grounds that the NACC Commissioner is already aware of the information
- the NACC Commissioner has advised the information is not required
- the information is subject to an exempt secrecy provision, or
- the Attorney-General has certified that disclosing the information would be contrary to the public interest because it would harm Australia's international relations.

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9.2 Informing the discloser

The PID Officer will also inform the discloser where mandatory referral has been made to the NACC, as soon as reasonably practicable. This requirement applies irrespective of whether the referral was made at the allocation or investigation stage.

9.3 Power of the NACC to require NCC to stop action

The NACC Commissioner may direct the President to stop taking action in relation to a corruption issue. This may include to stop investigating a PID.

The President must notify the Ombudsman in writing if a stop action direction prevents allocation or investigation of the disclosure.



Attachment A

Key Roles and Responsibilities

1. SUPERVISORS AND MANAGERS

A public official may make a disclosure to their supervisor. A supervisor includes any public official who supervises or manages the discloser.

If the supervisor or manager believes that the information given to them concerns, or could concern, disclosable conduct, they must give that information to an Authorised Officer of the agency as soon as reasonably practicable.

Upon receipt of a disclosure, supervisors are required to:

- inform the discloser that the disclosure could be treated as an internal disclosure for the purposes of the PID Act; and
- explain to the discloser the procedures under the PID Act for such a disclosure to be:
 - given to an authorised officer; and
 - allocated to the NCC or another agency; and
 - investigated by the principal officer of that agency; and
- advise the individual 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
- explain to the discloser the civil and criminal protections the PID Act provides to protect disclosers, and those providing assistance in relation to such disclosures, from reprisals.

Supervisors and managers also have a key role in ensuring that the workplace culture supports the making of PIDs. They can help to do so by:

- being knowledgeable about the PID Act and agency procedures, particularly in relation to confidentiality requirements
- being approachable to officials who wish to raise concerns
- supporting officials who they know have made a PID and ensuring they



are protected from reprisal

- providing a written assessment of any risks that reprisal action might be taken against the discloser when reporting a disclosure to an Authorised Officer
- increasing management supervision of the workplace if necessary (for example, if workplace conflict occurs because a disclosure has been made or an investigation is under way)
- ensuring identified problems in the workplace are corrected
- setting an example for officials.

2. AUTHORISED OFFICERS

NCC's Authorised Officers are provided on its website.

Authorised officers have a range of decision-making, notification and other responsibilities under the PID Act, including:

- receiving disclosures from current or former public officials about disclosable conduct
- deeming a person to be a public official to facilitate the making of a PID
- informing a person who may be unaware of the PID Act requirements that information that the Authorised Officer reasonably believes could concern disclosable conduct could be treated as an-internal disclosure, explaining the requirements of the PID Act and advising the person of any designated publication restrictions that may affect disclosure
- assessing reported information to determine if there are no reasonable grounds to believe the information could be considered to be a PID
- making any preliminary inquiries necessary to make an allocation decision
- referring a disclosure to the NACC if the criteria are met for mandatory referral
- allocating all or part of the disclosure to the principal officer of their agency and/or another agency, with that agency's consent
- informing the principal officer of each relevant agency, and the Ombudsman (or the Inspector-General of Intelligence and Security (IGIS)) as appropriate, of allocation decisions and associated information



- informing the discloser of the allocation decision
- consenting to the allocation of a disclosure by an Authorised Officer of another agency
- take reasonable steps to protect public officials belonging to NCC against reprisals
- advising the discloser of a decision not to allocate, the reasons why and any other course of action that may be available under Commonwealth law.

3. ALL OFFICIALS

If requested, officials must use their best endeavours to assist another public official to perform a function or duty under the PID Act, including the conduct of an investigation under the PID Act. Officials must also use their best endeavours to assist the Ombudsman in their functions under the PID Act.

Beyond those specific responsibilities, all officials share the responsibility of ensuring the PID Act works effectively, this includes:

- reporting matters where there is evidence that shows or tends to show disclosable conduct
- identifying areas where there may be opportunities for wrongdoing to occur because of inadequate systems or procedures, and proactively raising those with management
- supporting officials who they know have made PIDs
- keeping confidential the identity of a discloser and anyone against whom an allegation has been made, if they become aware of those matters.