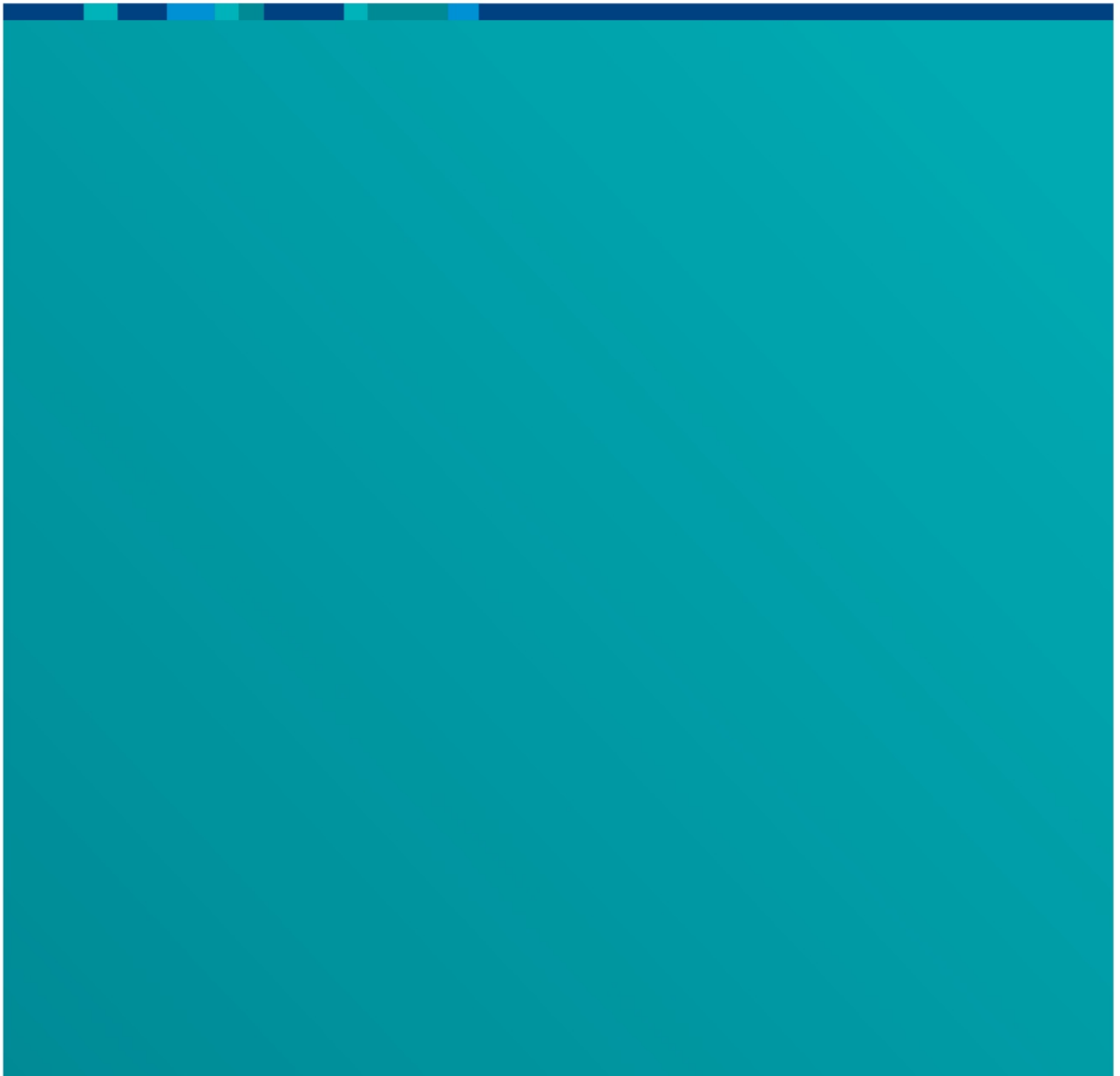




**Australian Government**  
**Department of Health**



# Public Interest Disclosure Procedures



# Procedures for facilitating and dealing with Public Interest Disclosures relating to the Department of Health

## Declaration pursuant to section 59 of the Public Interest Disclosure Act 2013

I, Brendan Murphy, Secretary and Principal Officer of the Department of Health ('the department'), make the following procedures under section 59 of the Public Interest Disclosure Act 2013 ('the Act').

These procedures support the department's commitment to:

- The highest standards of ethical and accountable conduct;
- Encouraging and investigating public interest disclosures; and
- Supporting and protecting persons who make public interest disclosures.

These procedures supersede any previous procedures and commence on 18 November 2020.

Brendan Murphy

Secretary

17 November 2020

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# 1 INTRODUCTION



## Purpose

- 1.1 The *Public Interest Disclosure Act 2013* ('the Act') promotes integrity and accountability in the Australian public sector by encouraging the disclosure of information about suspected wrongdoing, protecting people who make disclosures and requiring agencies to take action in relation to public interest disclosures.
- 1.2 The objectives of the Act are:
  - to promote the integrity and accountability of the Commonwealth public sector; and
  - to encourage and facilitate the making of public interest disclosures by public officials; and
  - to ensure that public officials who make public interest disclosures are supported and protected from adverse consequences relating to the disclosures; and
  - to ensure that disclosures by public officials are properly investigated and dealt with.
- 1.3 Section 59 of the Act requires the Secretary (as a Principal Officer under the Act) to establish procedures for facilitating and dealing with public interest disclosures relating to the department.

## Who to contact if you need help?

- 1.4 The PID Coordination Unit will provide help and assistance with these procedures, public interest disclosures and manages and maintains the department's PID Framework.

[PIDCoordination@health.gov.au](mailto:PIDCoordination@health.gov.au)  
[Public Internet Disclosures](#)

## What is a public interest disclosure?

- 1.5 There are four different types of disclosures that constitute a 'public interest disclosure' under the Act: an 'internal disclosure', an 'external disclosure', an 'emergency disclosure' and a 'legal practitioner disclosure'.
- 1.6 Internal disclosures are the focus of these procedures.
- 1.7 A disclosure will be an **internal disclosure** if it meets the following requirements:
  - it is made by a 'public official' or a person who has been a 'public official';
  - it is made to the discloser's supervisor or manager, or an Authorised Officer of the department; and
  - the information disclosed tends to show, or the discloser believes on reasonable grounds the information tends to show, one or more instances of 'disclosable conduct' as defined in the Act.

## Who is a public official?

- 1.8 The term 'public official' is defined in section 69 of the Act. The term includes, for example, a Commonwealth public servant, an individual who is a contracted service provider for a Commonwealth contract, and an officer or employee of a Commonwealth contracted service provider. Accordingly, the people who can make an 'internal disclosure' relating to the department include:
  - employees of the department and former employees of the department; and
  - contracted service providers and their employees who provide, or who have provided, services to the department under a contract with the department.

- 1.9 Generally, the fact that a person or organisation receives financial assistance from the Commonwealth pursuant to a grant arrangement will not make the person or a staff member of the organisation a 'public official' for the purposes of the Act.
- 1.10 An Authorised Officer can also determine, pursuant to section 70 of the Act, that an individual is deemed to be a public official for the purposes of the Act if they reasonably believe the individual has information that concerns disclosable conduct and the individual has disclosed, or proposes to disclose, the information to an Authorised Officer. If a person who is not, and has not been, a 'public official' wishes to make a disclosure relating to the department under the Act, they should contact an Authorised Officer of the department to request that the Authorised Officer consider making a determination under section 70 of the Act.
- 1.11 Where the discloser requests the Authorised Officer to make this determination, the Authorised Officer must make a decision on this request and must inform the discloser accordingly, and if the Authorised Officer's decision is to decline the request to make a determination under section 70, they must also give the discloser the reason(s) for their decision.

## Who are the department's Authorised Officers?

- 1.12 The following people are Authorised Officers of the department:
- the Secretary; and
  - any departmental officer appointed in writing by the Secretary (as the Principal Officer of the department) as an Authorised Officer for the purposes of the Act.
- 1.13 A list of Authorised Officers appointed by the Secretary can be found:
- on the department's external facing Internet site: <https://www.health.gov.au/about-us/corporate-reporting/public-interest-disclosure>
  - on the department's internal Intranet site: <http://intranet2.central.health/people/managing-our-people/performance-conduct-and-complaints/managing-conduct/public-interest-disclosure>

## What is disclosable conduct?

- 1.14 A full definition of disclosable conduct is set out in section 29 of the Act. That definition applies for the purposes of these procedures.
- 1.15 In summary, disclosable conduct is conduct:
- that is engaged in by:
    - an agency; or
    - a public official in connection with his or her position as a public official; or
    - a contracted service provider for a Commonwealth contract, in connection with entering into, or giving effect to, that contract; and
  - is conduct that:
    - a) contravenes a law of the Commonwealth, a State or a Territory, or
    - b) occurs in a foreign country and contravenes a law in force in that country that applies to the agency or public official and that corresponds to a law in force in the Australian Capital Territory, or
    - c) perverts, or attempts to pervert, the course of justice or involves corruption of any other kind, or
    - d) constitutes maladministration, including conduct that:
      - i. is based on improper motives
      - ii. is unreasonable, unjust or oppressive, or
      - iii. is negligent, or
    - e) is an abuse of public trust, or
    - f) is fabrication, falsification, plagiarism or deception in relation to scientific research, or misconduct in relation to scientific analysis, evaluation or advice, or

- g) results in the wastage of public money or public property or of the money or property of a prescribed authority, or
  - 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, or results in a danger to the environment or results in or increases the risk of a danger to the environment, or
  - i) is prescribed by the PID Rules, or
  - j) is conduct engaged in by a public official that:
    - i. involves abuse of the public official's position, or
    - ii. could, if proved, give reasonable grounds for disciplinary action against the public official.
- 1.16 It does not matter whether the disclosable conduct occurred before or after 15 January 2014 (which is the date of the commencement of section 29 of the Act).
- 1.17 It does not matter whether the public official who carried out the alleged conduct has ceased to be a public official since the time the conduct is alleged to have occurred, but it is necessary that they carried out the conduct in connection with their position as a public official.

## What is not disclosable conduct?

- 1.18 As set out in section 31 of the Act, conduct is not 'disclosable conduct' if it relates only to a disagreement with:
- a policy or proposed policy of the Commonwealth Government; or
  - action that has, or is being, or is proposed to be, taken by a Minister, the Speaker of the House of Representatives, or the President of the Senate; or
  - amounts, purposes or priorities of expenditure or proposed expenditure relating to such a policy or proposed policy, or such action or proposed action.

## 2 MAKING A PUBLIC INTEREST DISCLOSURE

### Making an internal disclosure to the department

- 2.1 A public interest disclosure relating to the department may be made orally or in writing.
- 2.2 Employees in the department may make a disclosure of disclosable conduct to their manager or their supervisor, or to an Authorised Officer, or in certain circumstances, to the Commonwealth Ombudsman.
- 2.3 Department employees are encouraged to make public interest disclosures to an Authorised Officer in the first instance, rather than a supervisor or manager.
- 2.4 Where a disclosure is made to the discloser's supervisor, the supervisor is required to forward the disclosure to an Authorised Officer if the supervisor has reasonable grounds to believe that the information disclosed concerns, or could concern, disclosable conduct.
- 2.5 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.
- 2.6 To help the Authorised Officer to determine whether the disclosure is an internal disclosure, the information provided by a discloser should include:
  - the discloser's name and contact details (this is optional);
  - information that will assist the Authorised Officer to assess whether the discloser is a 'public official' (for example, that the discloser is an employee of the department);
  - details of the following matters:
    - the conduct the discloser believes amounts to the disclosable conduct identified;
    - who was involved in the conduct;
    - when and where the conduct occurred;
    - any relevant background information, including whether the conduct has been investigated in another forum;
    - whether anything has been done in relation to the described conduct; and
    - whether anyone else is aware of the described conduct; and
  - the type of 'disclosable conduct' the discloser wishes to disclose (that is, which of the categories of conduct set out in section 29 of the Act is relevant).
- 2.7 A potential discloser should not investigate a matter themselves before making a disclosure.
- 2.8 Once a public interest disclosure has been made, it cannot be "withdrawn". However, 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 Principal Officer and delegate. The department may nonetheless be required under the Act to investigate (or to continue investigating) the disclosure.
- 2.9 A person who has made a disclosure under the Act should not discuss the details of their disclosure with anyone who does not have a need to know about it.
- 2.10 A manager or supervisor or Authorised Officer who receives a disclosure of disclosable conduct from a public official must deal with the disclosure in accordance with the Act and in accordance with the PID Standard and these procedures.



## Anonymity

- 2.11 A person may choose to make a disclosure anonymously if they wish to do so.
- 2.12 A disclosure is considered anonymous if the identity of the discloser is not revealed and if no contact details for the discloser are provided. A disclosure may also be considered anonymous if the discloser does not disclose their name but does provide anonymous contact details.
- 2.13 In deciding whether or not to make a disclosure anonymously, a potential discloser should consider the following matters:
- it will be difficult for the department to protect the discloser from reprisals if the department does not know the discloser's identity.
  - if an Authorised Officer is satisfied on reasonable grounds that there is no reasonable basis on which the disclosure could be considered to be an internal disclosure, the Authorised Officer is not required to allocate the disclosure for handling under the Act. Accordingly, if the Authorised Officer cannot contact the discloser to seek further information about the disclosure, the matter may not proceed.
  - if an Authorised Officer is satisfied that the discloser is not a public official, they will consider exercising their discretion under section 70 of the Act to determine that the Act has effect as if the individual were a public official. If the discloser does not provide their contact details, no determination may be able to be made because the Authorised Officer must be able to give written notice of the determination to the individual.
  - an Authorised Officer will seek the discloser's consent prior to providing the discloser's name and contact details (if known) to the Principal Officer (or delegate). A discloser may choose to provide their name and contact details to the Authorised Officer but not to the delegate, in which case the disclosure will be handled as anonymous from the point of allocation.
  - once a disclosure has been allocated for handling by an agency, the Principal Officer (or delegate) may decide not investigate the disclosure if they consider it impracticable to do so because the discloser's name and contact details have not been disclosed.
  - if the discloser maintains anonymity, the department will be unable to update them on the progress and outcome of the investigation.
- 2.14 If a discloser does provide their name and contact details, the department will take all reasonable steps to maintain the confidentiality of that information. Further information on confidentiality and protecting the discloser's identity is set out at Part 3 of these procedures.
- 2.15 Where an Authorised Officer receives an anonymous disclosure and it is not clear whether the discloser is a public official, they must consider whether to exercise the power in section 70 of the Act to determine that a person who has disclosed information to them is a public official in relation to making the disclosure.

## Assistance with making a disclosure to the department

- 2.16 A public official can contact one of the department's Authorised Officers or the department's PID Coordination Unit to obtain further information on how to make an internal disclosure to the department.

## Other types of public interest disclosures

- 2.17 As set out above at paragraph 1.5, in addition to 'internal disclosures' the Act covers the following three types of disclosures: external disclosures, emergency disclosures and legal practitioner disclosures.
- 2.18 Strict limitations apply to the circumstances in which a person can make each of these disclosures. A person who is considering disclosing information about disclosable conduct that relates to the department to any person outside the department (including a lawyer) should review the provisions of the Act and carefully consider whether the disclosure can be made in a way that attracts the protections of the Act.

## 3 SUPPORT, PROTECTED INFORMATION AND REPRISALS

### Support for disclosers

- 3.1 The department encourages and supports the reporting of suspected wrongdoing by public officials in accordance with the Act.
- 3.2 The department will take steps to support persons who have made disclosures under the Act relating to the department, and to protect them 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 (with the consent of the discloser);
  - providing the discloser with information about their rights and obligations under the Act;
  - providing the discloser with information about the agency's investigation procedures and any other relevant matter;
  - informing the discloser of the progress of the investigation;
  - advising the discloser of the availability of the department's Employee Assistance Program;
  - where there are concerns about the health and wellbeing of the discloser, liaising with officers responsible for work health and safety in the department;
  - transferring the discloser to a different area within the workplace (with the consent of the discloser).

### Support for person against whom a disclosure has been made

- 3.3 Support may also be provided to any employee who is subject to an allegation of disclosable conduct. This may include taking one or more of the following actions:
  - providing the employee with information about their rights and obligations under the Act,
  - providing the employee with information about the agency's investigation procedures and any other relevant matter; including informing the employee of their right to procedural fairness;
  - informing the employee of the progress of any investigation;
  - ensuring the identity of the employee is kept confidential as far as reasonably practicable;
  - advising the employee of the availability of the department's Employee Assistance Program;
  - where there are concerns about the health and wellbeing of the employee, liaising with officers responsible for work health and safety in the department; and
  - transferring the employee to a different area within the workplace (with the consent of the employee).

### Protection of information and confidentiality

- 3.4 Confidentiality will be maintained as far as reasonably possible in the handling of disclosures by the department.
- 3.5 Under the Act, a person commits an offence if they disclose or use information that is likely to enable the identification of the discloser as a person who has made a public interest disclosure (that is, 'identifying information') unless the discloser consents, the identifying information has already been lawfully published, or the disclosure or use:
  - is for the purposes of the Act;
  - is required under another Commonwealth law or a prescribed State or Territory law; or

- is in connection with the Ombudsman's functions under s 5A of the Ombudsman Act 1976 or the IGIS's functions under s 8A of the Inspector-General of Intelligence and Security Act 1986.
- 3.6 The steps that the department may take in order to protect a discloser's identity include:
- limiting the number of people who are aware of the discloser's identity or information that would tend to identify them;
  - reminding each person who has the information that they should keep it confidential and that unauthorised disclosure may be a criminal offence;
  - assessing whether anyone who is aware of the discloser's identity may have a motive to take reprisals against the discloser or impede the progress of the investigation, and monitor the situation; and
  - ensuring the discloser can communicate with a support person, the Authorised Officer or investigator without alerting other staff.
- 3.7 The Authorised Officer and delegates of the Principal Officer will take all reasonable steps to protect the identity of a public official who has made a public interest disclosure from the time the disclosure is made.
- 3.8 Any investigation of a disclosure must 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 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).
- 3.9 Any interviews conducted with the discloser should be conducted in private and should be arranged so as to avoid the identification of the discloser by other staff of the department.
- 3.10 The Act also protects against the unauthorised use and/or disclosure of other information by certain people. In particular, if a person discloses information to another person or uses information otherwise than in accordance with the Act, the person commits an offence if the information was obtained by the person:
- in the course of conducting a public interest disclosure investigation; or
  - in connection with the performance of a function or the exercise of a power by the person under the Act.
- 3.11 Disclosers should also refrain from discussing the details of their disclosure under the Act with anyone who does not have a need to know. Discussions with these people will not be protected by the Act.

## Immunity from liability

- 3.12 A person who makes a public interest disclosure is not subject to any civil, criminal or administrative liability (including disciplinary action) for making the disclosure. However, a discloser is not protected from liability (including disciplinary action) for knowingly making a false or misleading statement, or knowingly making a disclosure that contravenes a designated publication restriction without reasonable excuse (see sections 11 and 11A of the Act).
- 3.13 Making a disclosure does not entitle a discloser to protection from the consequences of their own wrongdoing (see section 12 of the Act).

## Protection against reprisal action

- 3.14 The Act provides a number of protections to a person who makes a disclosure if the disclosure meets the requirements of being a 'public interest disclosure'. A key protection is that it is an offence to take, or threaten to take, 'reprisal' action against a discloser.

### *What is a reprisal?*

- 3.15 A reprisal occurs when someone causes by an act or omission, detriment to another person because they believe or suspect that person, or anyone else, may have made or intends to make a PID. This could include an action or omission (or threat of action or omission), or detriment that results in:

- disadvantage to a person, including dismissal, injury in their employment, discrimination between them and other employees or alteration of their position to their disadvantage
  - a physical or psychological injury, including a stress-related injury
  - intimidation, harassment, victimisation, loss or damage to property
  - disadvantage to a person's career (for example, denying them a reference or a promotion without appropriate reasons).
- 3.16 The department will not tolerate any reprisal action against a person who makes a public interest disclosure.
- 3.17 Every allegation of reprisal will be taken seriously, recorded and responded to.
- 3.18 All those involved in handling the public interest disclosure and are aware of the discloser's identity for the purposes of the Act will monitor the work environment for signs of detriment and if necessary, take corrective action early.

### *What is not a reprisal?*

- 3.19 Reasonable administrative action taken to protect a discloser from detriment is not a reprisal.
- 3.20 In addition, managers and supervisors are not prevented from taking legitimate disciplinary or management action to address unsatisfactory performance in the workplace where that action is unrelated to the discloser having made a disclosure.

### *Managing the risk of reprisal*

- 3.21 A reprisal risk assessment will be conducted for each disclosure allocated to the department for handling. The assessment of reprisal risk assists in determining suitable strategies for controlling the risks and reasonable actions taken to protect public officials who belong to the department from detriment or the threat of detriment relating to the disclosure. Further information in relation to the risk assessment is included at Part 5 of these procedures.

## Role of Reprisal Manager

- 3.22 Where a reprisal risk assessment has been conducted or updated and it is assessed that the risk of reprisal is either a complex matter or that the risk needs close monitoring and control, it may be deemed appropriate to appoint a Reprisal Manager.
- 3.23 A Reprisal Manager will generally be independent to the assessment and investigation of the PID (i.e. not the Authorised Officer or Investigator) and will be available to provide support and assistance to those at risk of reprisal.
- 3.24 If a Reprisal Manager is appointed, their key functions will generally include:
- Assessing, on an ongoing basis, the risk of reprisal and workplace conflict in connection with a PID;
  - Identifying mitigation strategies and taking action to prevent harm;
  - Assessing whether any conduct that has caused, or is alleged to have caused, detriment to the discloser in fact constitutes a "reprisal" within the meaning in the Act; and
  - If necessary, taking action to address harm and/or respond to any claims of reprisal on behalf of the Department.
- 3.25 Please refer to the department's Guide to Managing Public Interest Disclosures, available on the dedicated PID intranet site, for further information on reprisal risk and risk assessments.

## 4 PROCEDURES FOR MANAGERS AND SUPERVISORS



### Role of Managers and Supervisors

- 4.1 Where a public official in the department discloses information to their manager or supervisor and that person has reasonable grounds to believe that the information concerns, or could concern, disclosable conduct, the manager or supervisor must, as soon as practicable, give the information to an Authorised Officer in the department.
- 4.2 Where such a disclosure is made to a manager or supervisor, that person must make a written record of the disclosure, and if the disclosure is not in writing, they must make a written record of the substance of the disclosure and of the time and date of the disclosure.
- 4.3 The person to whom the disclosure has been made must ask the discloser to sign the record of the disclosure, where this is practicable.
- 4.4 At the time the manager or supervisor gives information to the Authorised Officer they must also give the Authorised Officer their written assessment of any risks that reprisal action might be taken against the person who disclosed the information to the manager or supervisor. Further information on how to conduct a risk reprisal assessment is provided below under the heading 'Reprisal risk assessment'.
- 4.5 Where a manager or supervisor has given the information to the Authorised Officer, and where the manager or supervisor is able to contact the discloser, they must inform the discloser that they have given the information to an Authorised Officer in the department and advise the discloser of the name and contact details of that Authorised Officer.

## 5 PROCEDURES FOR AUTHORISED OFFICERS

### Authorised Officer must advise disclosers and potential disclosers about the Act

#### 5.1 Where:

- a person discloses, or is proposing to disclose, information to an Authorised Officer which the Authorised Officer has reasonable grounds to believe may be disclosable conduct, and
- the Authorised Officer has reasonable grounds to believe that the person may be unaware of what the Act requires for the disclosure to be an internal disclosure, and
- the Authorised Officer is aware of the contact details of the person,

the Authorised Officer must:

- inform the person that the disclosure could be treated as an internal disclosure for the purposes of the Act; and
- explain to the person what the Act requires for a disclosure to be an internal disclosure; and
- advise the person of any orders or directions that may affect disclosure of the information.

### Receipt of disclosure from discloser

#### 5.2 Where a person makes a disclosure directly to an Authorised Officer, the Authorised Officer must make a written record of the disclosure including:

- the substance of the disclosure if the disclosure is not in writing, and
- the time and date of the disclosure

#### 5.3 The Authorised Officer must ask the discloser to sign the written record of the disclosure, where this is practicable.

#### 5.4 The Authorised Officer is required to contact the PID Coordination Unit upon receiving a potential PID. The PID Coordination Unit will, provide relevant TRIM references for storing PID records, track the progress of the PID and the department's compliance with the Act.

#### 5.5 Please refer to the department's Guide to Managing Public Interest Disclosures, available on the dedicated PID intranet site, for further information on what information can be provided to the PID Coordination Unit under the privacy and secrecy provisions of the Act.

### Initial consideration and allocation

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

#### 5.7 The Authorised Officer must use their best endeavours to decide on the allocation of the disclosure **within 14 days** after the disclosure is received by the Authorised Officer. 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.



## Deciding not to allocate a disclosure

- 5.8 This could be because the Authorised Officer is satisfied, for example, that:
- the disclosure has not been made by a person who is, or was, a public official;
  - the disclosure was not made to an authorised internal recipient or the discloser's supervisor; and/or
  - the information disclosed does not tend to show, and the discloser does not have reasonable grounds to believe that the information tends to show, one or more instances of disclosable conduct.
- 5.9 Where an Authorised Officer decides that a disclosure is not to be allocated, they must as soon as reasonably practicable, advise the discloser (where it is reasonably practicable to do so) in writing of:
- the reasons why the disclosure has not been allocated; and
  - any other course of action that may be available under other laws of the Commonwealth.
- 5.10 The Authorised Officer must keep appropriate records of whether the discloser was informed of the decision not to allocate the disclosure and, if so, of:
- the day and time the discloser was notified; and
  - the means by which the discloser was notified; and
  - the content of the notification.
- 5.11 If it is not reasonably practicable to provide the notification to the discloser, the Authorised Officer must keep a record of the matters set out above at paragraph 5.8.

## Deciding to allocate a disclosure

- 5.12 If the Authorised Officer is satisfied that there is a reasonable basis on which the disclosure could be considered to be an internal disclosure under the Act, they must allocate the disclosure for handling by an agency.
- 5.13 The Authorised Officer must decide whether to allocate all or part of the disclosure to either the department and/or another agency, having regard to the matters set out in section 43(3) of the Act.
- 5.14 An Authorised Officer must obtain the consent of an Authorised Officer in another agency before allocating an internal disclosure for handling by that agency.

### *Requesting consent from discloser*

- 5.15 Where the Authorised Officer is aware of the contact details of the discloser, they must ask the discloser to advise in writing **within 7 days** whether the discloser consents to the Authorised Officer giving the discloser's name and contact details to the Principal Officer and to the Principal Officer's delegate.
- 5.16 The Authorised Officer must make a written record of the discloser's response (if any) to these questions. Where a discloser does not respond within 7 days, the discloser is taken not to have consented to the disclosure of their name and contact details to the Principal Officer and their delegate.

## *Informing relevant persons of allocation*

### **Informing the receiving agency**

- 5.17 Where an Authorised Officer in the department allocates a disclosure to an agency (including to the department) they must inform the Principal Officer of that agency of:
- the allocation to the agency;
  - the information that was disclosed to the Authorised Officer;
  - the suspected disclosable conduct; and
  - if the discloser's name and contact details are known to the Authorised Officer, and the discloser has consented to the Principal Officer being informed – the discloser's name and contact details.

### **Informing other relevant bodies**

- 5.18 If the Authorised Officer allocates a disclosure to an agency (including the department itself), that is not the Ombudsman, the IGIS or an intelligence agency, he or she must inform the Ombudsman of the allocation in writing. If the disclosure is allocated to an intelligence agency, the Authorised Officer must inform the IGIS of this in writing.

### **Informing the discloser**

- 5.19 As soon as reasonably practicable after allocation, the Authorised Officer must inform the discloser (where it is reasonably practicable to do so), in writing, of:
- the allocation;
  - the information that has been provided to the Principal Officer of the relevant agency; and
  - if the disclosure has been allocated to the department—that the Principal Officer (or their delegate) has the power, in certain circumstances, to decide:
    - not to investigate the disclosure; or
    - not to investigate the disclosure further.

## *Record of allocating the handling of a disclosure*

- 5.20 When an Authorised Officer allocates the handling of a disclosure to one or more agencies, he or she 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.
- 5.21 The Authorised Officer must also 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; and
  - the means by which the discloser was notified; and
  - the content of the notification.
- 5.22 Further information on record keeping is at Section 7: Records Management, Monitoring and Evaluation.

## **Reprisal risk assessment**

### *Conducting a risk assessment*

- 5.23 Where an Authorised Officer allocates a disclosure for handling by the department, they must conduct a risk assessment on the likelihood that reprisals may be taken against the discloser.
- 5.24 The risk assessment must be undertaken 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. A checklist of relevant risk factors includes:

- the likelihood of the discloser being identified;
- the number of people implicated in the disclosure;
- the subject matter of the disclosure;
- the number of people who are aware, or likely to become aware, of the disclosure;
- the culture of the workplace;
- whether any specific threats against the discloser have been received;
- whether there is a history of conflict between the parties;
- whether the disclosure can be investigated while maintaining confidentiality;
- the likely outcome if the conduct disclosed is substantiated;
- whether the discloser is isolated;
- whether the discloser is employed on a full time, part time or casual basis; and
- the positions of the parties.

5.25 In conducting the risk assessment, Authorised Officers will adopt the following framework which entails four steps:

- 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?

5.26 Further information on how the risk assessment should be conducted is available in the department's Guide to Managing Public Interest Disclosures, available on the dedicated PID intranet site.

### *Developing a risk mitigation plan*

5.27 Where the risk level is assessed as anything greater than low, a risk management strategy must be developed for mitigating the risk of reprisals being taken against the discloser.

5.28 Generally, the risk management strategy would be developed by the Authorised Officer who made the allocation decision. However, an Authorised Officer may consider it more appropriate for a strategy to be developed by a separate Reprisal Manager, having regard to the assessed risk rating.

5.29 This strategy may include some or all of the support measures set out at paragraph 3.2 of these procedures. In some cases, where there is a serious risk of reprisal action, it may be appropriate to adjust the working and supervision arrangements to protect the discloser or other persons who are at risk of reprisal action.

### *Monitoring and reviewing risks*

5.30 The Authorised Officer or Reprisal Manager (as applicable) should monitor and review the risk assessment and any mitigation plan as necessary throughout the investigation process.

5.31 The investigator may be able to provide useful information about the risk environment over the course of the investigation.

## 6 PROCEDURES FOR THE PRINCIPAL OFFICER (AND DELEGATES)

### Deciding whether or not to investigate

- 6.1 The Principal Officer or delegate must, where it is reasonably practicable to do so, within 14 days after a disclosure is allocated to the department, inform the discloser in writing that, under section 48 of the Act, the Principal Officer or delegate may decide:
- not to investigate the disclosure; or
  - not to investigate the disclosure further.
- 6.2 The discloser must also be informed of the grounds on which that decision can be taken. Ordinarily, this information will have been provided to the discloser by the Authorised Officer at the time of allocation.
- 6.3 The Principal Officer or delegate must, as soon as practicable after receiving an allocation of a disclosure from an Authorised Officer consider whether to exercise the discretion under s 48 of the Act not to investigate the disclosure under the Act.
- 6.4 In broad terms, the Principal Officer or delegate may decide not to investigate if:
- the discloser is not a current or former public official (and a determination has not been made under section 70 of the Act); or
  - the information does not to any extent concern serious disclosable conduct; or
  - the disclosure is frivolous or vexatious; or
  - the information is the same or substantially the same as a disclosure that has been investigated under the Act; or
  - the information concerns disclosable conduct that is the same or substantially the same as disclosable conduct that has already been investigated, or is currently being investigated, under another law of the Commonwealth or the executive power of the Commonwealth; and
    - it would be inappropriate to conduct another investigation at the same time; or
    - the Principal Officer is reasonably satisfied that there are no matters that warrant further investigation; or
  - the discloser has informed the Principal Officer that they do not wish the disclosure to be pursued and the Principal Officer 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's name and contact details have not been disclosed; or
    - the discloser has refused or has failed or is unable to give the investigator the information or assistance the investigator has requested; or
    - of the age of the information.
- 6.5 If none of the above grounds apply, the Principal Officer (or delegate) is required to conduct an investigation.

### Notifying the discloser and the Ombudsman

#### *Decision not to investigate*

- 6.6 Where the Principal Officer or delegate decides under section 48 of the Act not to investigate a disclosure, they must:
- if it is reasonably practicable to contact the discloser—as soon as reasonably practicable, inform the discloser that they have decided not to investigate the disclosure, and identify the reasons for that decision (other than those reasons that may be deleted pursuant to

section 50(3) of the Act) and any other courses of action that may be available to the discloser under other laws of the Commonwealth; and

- inform the Ombudsman of the decision not to investigate and the reasons for that decision.

### *Where the disclosure is to be investigated*

- 6.7 Where a matter is required to be investigated, the Principal Officer or delegate must inform the discloser as soon as reasonably practicable (and where it is reasonably practicable to do so) that they are required to investigate the disclosure, and inform the discloser of the estimated length of the investigation.
- 6.8 If during the course of the investigation the Principal Officer or delegate decides not to investigate the disclosure further under section 48 of the Act, the Principal Officer or delegate must:
- if it is reasonably practicable to contact the discloser—as soon as reasonably practicable, inform the discloser that they have decided not to investigate the disclosure further, and identify the reasons for the decision (other than those reasons that may be deleted pursuant to section 50(3) of the Act) and any other courses of action that might be available to the discloser under other laws of the Commonwealth; and
  - inform the Ombudsman of the decision not to investigate the disclosure further and the reasons for that decision.

## **Conducting the investigation**

- 6.9 If the Principal Officer (or delegate) decides to investigate, the Principal Officer (or delegate) will investigate whether one or more instances of disclosable conduct has occurred.
- 6.10 The Principal Officer (or delegate) may conduct the investigation as they see fit. This may include appointing an investigator to assist them to conduct the investigation.

### *General principles*

- 6.11 The following general principles apply to the conduct of investigations:
- maintaining the confidentiality of the identity of the discloser will be paramount when conducting the investigation (see part 3 of these procedures for further information on confidentiality);
  - a decision whether evidence is sufficient to prove a fact must be determined on the balance of probabilities;<sup>1</sup>
  - the Principal Officer or delegate must be independent and unbiased in investigating the matter. They must ensure that they do not have an actual or perceived conflict of interest;
  - the Principal Officer or delegate may, for the purposes of the investigation, obtain information from such persons, and make such inquiries, as they think fit.

### *Additional procedures required in particular circumstances*

- 6.12 The Principal Officer or delegate, in conducting an investigation under these procedures, must also comply with:
- these procedures;
  - the PID Standard;
  - any rules relating to fraud that are made for the purposes of the Public Governance, Performance and Accountability Act 2013 and the Australian Government Investigation Standards (AGIS) (if relevant to the matter being investigated);
  - the department's procedures for determining breaches of the APS Code of Conduct, established under s 15(3) of the Public Service Act 1999 (if relevant to the matter being investigated).

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<sup>1</sup> Note: This is the standard applied in civil proceedings. Summarised broadly, a fact is taken to have been proved on the balance of probabilities if the Principal Officer is satisfied it is more likely than not that the fact is true.

- 6.13 As part of the investigation, the Principal Officer (or delegate) may consider whether a different investigation should be conducted by the department or another body under another law of the Commonwealth.
- 6.14 In circumstances where the Principal Officer (or delegate) considers that the nature of the disclosure is such that the outcome of the investigation is likely to be referral of the matter for a separate investigation under another process or procedure, the investigation under these procedures may appropriately be conducted in a circumscribed way. Once the Principal Officer is satisfied that one or more instances of disclosable conduct may have occurred, the Principal Officer may conclude their investigation and recommend in their investigation report that the information disclosed be referred to another part of the department for investigation under another process or procedure. In particular:
- If the suspected disclosable conduct relates to fraud, the disclosure should be referred to the department's Fraud Investigation Section for investigation pursuant to the Commonwealth Fraud Control Policy; and/or
  - If the suspected disclosable conduct relates to alleged breaches of the APS Code of Conduct, the disclosure should be referred to the department's People Branch for investigation pursuant to the department's Code of Conduct procedures.

### *Interviewing witnesses*

- 6.15 Subject to any restrictions imposed by a law of the Commonwealth other than the Act, the investigator must ensure that, if a person is interviewed as part of the investigation of a public interest disclosure, that person is informed of the following matters:
- the identity and function of each person conducting the interview, and
  - the process of conducting an investigation, and
  - the authority of the investigator under the Act to conduct an investigation, and
  - the protections provided to the witnesses under section 57 of the Act, and
  - the interviewee's duty as follows:
    - if they are a public official, to use their best endeavours to assist the investigator in the conduct of an investigation under the Act (subject to the public official's privilege against self-incrimination or exposing themselves to a penalty); and
    - not to take or threaten to take reprisal action against the discloser; and
    - subject to the Act, not to disclose the identity of the person who made the disclosure.
- 6.16 At the end of any interview, the interviewee must be given an opportunity to make a final statement or comment or express an opinion. The investigator must include any final statement, comment or position in the record of interview.
- 6.17 Any interviews conducted with the discloser should be conducted in private and should be arranged so as to avoid the identification of the discloser by other staff of the department.

### *Procedural fairness*

- 6.18 Procedural fairness does not require that a person against whom allegations are made be advised as soon as the disclosure is received or as soon as an investigation is commenced.
- 6.19 Procedural fairness may require that the discloser's identity be revealed to the person who is subject of the disclosure so that the subject can meaningfully understand the allegations being made against them.
- 6.20 Where the investigator proposes to make a finding of fact or express an opinion that is adverse to the discloser, or to a public official who is a subject of the disclosure, the investigator must advise the person who is the subject of the proposed finding or opinion of the adverse material that is relevant to that proposed finding or opinion and must give the person a reasonable opportunity to respond to it.<sup>2</sup>

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<sup>2</sup> This paragraph does not apply where the investigator does not make substantive findings or express adverse opinions but instead simply recommends that further investigation action should or should not be taken.

- 6.21 If it appears that the proposed finding or opinion would affect adversely the rights or interests of someone other than the discloser or a public official who is subject of the disclosure, then the investigator should consider (including by consulting with Legal) whether that person should be given the opportunity to comment.

### *Timeframe*

- 6.22 The investigator has 90 days from the date the disclosure was allocated in which to complete the investigation. The investigation is completed when the Principal Officer (or delegate) has prepared the report of the investigation.
- 6.23 It is possible to seek one or more extensions of time from the Ombudsman.
- 6.24 Extension applications must be made at least 10 days before the 90 day period expires. The Ombudsman cannot grant an extension after the 90 day deadline has passed.

## **Report of investigation**

- 6.25 In preparing a report of a public interest disclosure investigation, the investigator must comply with the Act, the PID Standard and these procedures. A report of an investigation conducted under the Act must set out:
- the matters considered in the course of the investigation;
  - the duration of the investigation;
  - the Principal Officer's findings (if any);
  - the action (if any) that has been, is being or is recommended to be taken; and
  - any claims made about, and any evidence of, detrimental action taken against the discloser, and the department's response to those claims and that evidence.
- 6.26 The report must also:
- identify, where relevant, whether there have been one or more instances of disclosable conduct;
  - identify, where relevant, any regulations, rules, administrative requirements or similar matters to which the disclosable conduct (if any) relates;
  - explain the steps taken to gather evidence; and
  - set out a summary of the evidence used to make a finding or recommendation, as well as any findings and recommendations made based on that evidence.
- 6.27 Where the Principal Officer (or delegate) has completed a report of an investigation under the Act, within a reasonable time after preparing the report, the Principal Officer (or delegate) must give a copy of the report to the discloser (where reasonably practicable).

6.28 The investigator 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, 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
  - result in the copy being a document having, or being required to have, a national security or other protective security classification; or
  - result in the copy being a document containing intelligence information; or
  - contravene a designated publication restriction.



## 7 RECORDS MANAGEMENT, MONITORING AND EVALUATION

### Records management

- 7.1 The PID Coordination Unit maintains the PID Records Management structure in TRIM including digital containers for Authorised Officers and Principal Officers.
- 7.2 Authorised Officers and Principal Officers are to contact the PID Coordination Unit when dealing with a PID. A TRIM Digital Container will be allocated for the storing of records relating to the PID.
- 7.3 Where an Authorised Officer is required to keep a record under these procedures, the record is to be in an electronic form and stored in TRIM.
- 7.4 Access to these records must be restricted to the Authorised Officer, delegates of the Principal Officer and other employees in the department who require access in order to perform some function under the 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).
- 7.5 Where a form or notification is required to be sent under these procedures, a copy of the form or notification must be kept.
- 7.6 Any email messages sent by Authorised Officers or delegates that contain identifying information must be clearly marked 'for addressees eyes only'.
- 7.7 Where a person will cease being an Authorised Officer in the department (including because of resignation or movement to another agency), their PID records must be transferred to another Authorised Officer in the department.
- 7.8 Authorised Officers and delegates of the Principal Officer should, where they are aware of the fact, ensure they maintain records of:
  - any claims made about, and evidence of, reprisal or threatened reprisal; and
  - any actions taken by the department to address such claims.

### Monitoring and Evaluation

- 7.9 For the purposes of assurance and tracking that the department is complying with its obligations under the Act, regular updates on the progress of PIDs will be provided to the FAS, Legal and Assurance Division, Corporate Operations Officer (COO), Associate Secretary and/or Secretary.
- 7.10 Investigators and Authorised Officers are required to provide regular updates on the progress of their assessments or PID investigations, to the PID Coordination Unit.
- 7.11 Authorised Officers are required to inform the PID Coordination Unit, as soon as reasonably practicable, when they receive a potential PID. Due to the secrecy provisions of the Act, the PID Coordination Unit is only to be notified of the date the potential PID was received, not of the contents of the disclosure or the identity of the discloser.
- 7.12 Authorised Officers are also required to notify the PID Coordination Unit when they make a decision regarding the PID and the outcome of that decision.
- 7.13 The Principal Officer and section 44 delegated Principal Officers are required to inform the PID Coordination Unit when they are notified that a PID has been allocated to the department.

### Information and assistance to the Ombudsman

- 7.14 The Principal Officer must provide a report on disclosures received by the department for the purpose of preparing the Ombudsman's annual report under the Act.
- 7.15 The PID Coordination Unit will prepare a report on behalf of the department on all disclosures made during the financial year. For this purpose:

- 7.15.1 Authorised Officers must provide a report to the PID Coordination Unit 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 in section 29 of the Act).
- 7.15.2 The report must also include any disclosures that have been allocated to the department by another agency's Authorised Officer.
- 7.15.3 Delegates within the department must advise the PID Coordination Unit of all decisions made to not investigate a disclosure or not investigate a disclosure further under section 48 of the Act during the financial year.
- 7.15.4 Investigators must provide a report to the PID Coordination Unit specifying the number of investigations they have completed, or are in the process of conducting. For completed investigations, the report must include whether a finding of disclosable conduct was made and what recommendations were made, if any, in response to such findings.
- 7.15.5 Reports, upon request, must also be made to the PID Coordination Unit by each delegate of the Principal Officer who takes action in response to a recommendation made in an investigation report.
- 7.15.6 The Principal Officer or their delegate will give the Ombudsman such information and assistance as the Ombudsman reasonably requires in order to prepare the annual report under section 76 of the Act.

## Key Legislation and Policy

The following documents directly relate these procedures and must be reviewed in context to this document:

- [Commonwealth Ombudsman's Agency Guide to the PID Act](#)
- [Public Interest Disclosure Act 2013](#)
- [Public Interest Disclosure Standard 2013](#)
- [Public Governance, Performance and Accountability Act 2013](#)
- [Public Governance, Performance and Accountability Act Rule 2014](#)
- [Commonwealth Fraud Control Framework 2017](#)
- [Australian Government Investigation Standards 2011](#)
- [Public Service Act 1999](#)
- [Department of Health Procedures for Determining Breaches of the APS Code of Conduct](#)
- [Department's SharePoint: Public Internet Disclosures](#)

## PID Coordination Unit

For more information on these Procedures contact:

PID Coordination Unit

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