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Public Interest Disclosure Policy and Procedures

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V1.7

Document Control

Version History

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v1.6	Oct 2021	Stan Ahn		Removed Mike Wallace as an Authorised Officer as he is no longer the Chief Operating

			Chris Leahy, Chief Operating Officer Deb Picone, Chief Executive Officer	Officer of the Commission. Added Chris Leahy as the Authorised Officer as the Commission's Chief Operating Officer. Endorsed 25 October 2021. Approved 25 October 2021.
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Enquiries regarding this document can be made to:

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Date for Next Review

12 months from adoption, then every 24 months

CEO Endorsement

I, Conjoint Professor Anne Duggan, endorse the Commission's Public Interest Disclosure Policy and Procedures. The Commission is committed to encouraging and facilitating the disclosure of suspected wrongdoing, supporting and protecting disclosers, and ensuring disclosures are effectively investigated and dealt with. As the Chief Executive Officer, I will ensure that appropriate action is taken in response to investigation reports and that all necessary information is provided to the Commonwealth Ombudsman.



13 September 2023

Conjoint Professor Anne Duggan

Chief Executive Officer

Australian Commission on Safety and Quality in Health Care

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Glossary

Authorised Officer	is a public official belonging to an agency, appointed in writing by the CEO (Principal Officer) as Authorised Officer for the purposes of the Act (as defined in Section 36 of the Public Interest Disclosure Act).
Chief Executive Officer (CEO)	is the head of a prescribed authority under the Act and is the Principal Officer as per section 73 of the Act.
Commission	means the Australian Commission on Safety and Quality in Health Care.
Contracted Service Provider	is an officer or employee of a contracted service provider for a Commission contract; and provides services for the purposes (whether direct or indirect) of the Commission contract.
Disclosable conduct	is suspected or probable illegal conduct or other wrongdoing (as defined in Section 26 of the Act).
Disclose	means to make new or secret information known.
Discloser	includes current and former Commonwealth public sector employees engaged, or were engaged, by the Commission, officers and employees of contracted service provider and other public officials including the Board and committee members, who engage or has engaged in the act of disclosing.
Identifying information	is information or details which could be used to discover the identity of the discloser.
Information	(in relation to a disclosure) includes an allegation made in conjunction with another disclosure of information.
Internal disclosure	means a public interest disclosure that has been made to the discloser's line manager, the CEO or an Authorised Officer.
National Anti-Corruption Commission	means the National Anti-Corruption Commission (NACC) established under the <i>National Anti-Corruption Act 2022</i> , and came into effect from 1 July 2023.
Ombudsman	means the Commonwealth Ombudsman.
Principal Officer	is the head of a prescribed agency (as defined under section 73 of the Act). The Commission's Principal Officer is the CEO.
Public Interest Disclosure (PID)	is the disclosure of information that tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of disclosable conduct.
Public Official	includes current or former Commonwealth public sector employees, contracted service provider and officers and employees of contracted service provider and other public officials including Board and committee members (as defined under Section 69 of the Act).

Line Manager	(in relation to a person who makes a disclosure) is a public official who supervises or manages the person making the disclosure.
The Act	is the Public Interest Disclosure Act 2013 (Cth).
Reprisal	is an act of retaliation against a person for making or being suspected of making a public interest disclosure. Under section 13 of the Act, reprisal may include dismissal, injury, and detriment to the person's position or discrimination.

Introduction

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

Policy

Policy Intent

The purpose of this Public Interest Disclosure and Procedures (the Policy) is to set out the framework adopted by the Australian Commission on Safety and Quality in Health Care (the Commission) in complying with the Act. The objectives of the Act are to:

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

Scope

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

Context

The Commission has prepared its Policy to comply with the requirements of the Act.

Background

The Public Interest Disclosure Scheme commenced on 15 January 2014. Under the Act, the scheme applies only to disclosures made from 15 January 2014, but can relate to disclosable

conduct that occurred at any time. The Act repealed the whistleblower provisions under the *Public Service Act 1999* (s16) for Australian Public Service employees.

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

Purpose

This policy sets out the procedures implemented by the Commission to deal with and report on PIDs. This policy also provides the Commission's employees and contractors with guidance regarding the Commission's PID procedures and protections offered under the Act.

Resources

The following resources were used for developing this policy:

- <https://www.ombudsman.gov.au/Our-responsibilities/making-a-disclosure>
- <https://www.nacc.gov.au/>

Review

To ensure the effectiveness of the Policy, a review will be conducted after 12 months from its adoption, then biennially thereafter. The review will assess the policy's alignment with the Act and the appropriateness of the procedures. After the initial review, the policy will then be reviewed at least every two years by the COO but may be reviewed more frequently if required.

Key Elements

What is a "Public Interest Disclosure"?

For the purposes of the Act, a PID includes:

1. internal disclosure
2. external disclosure
3. emergency disclosure
4. a legal practitioner disclosure

These disclosures can be made by a Commonwealth public sector employee, contracted Commonwealth service provider or other public official, including board and committee members, where the information tends to show, or the public official believes on reasonable grounds that the information tends to show, disclosable conduct, or the disclosure is not made in the course of performing the discloser's ordinary functions as a public official.

What types of “Disclosable Conduct” can be reported?

Under the Act, a discloser can disclose information that they believe on reasonable grounds demonstrates an act of wrongdoing or ‘disclosable conduct’. This means conduct by an agency, a public official or a contracted Commonwealth service provider (in connection with the Commonwealth or Commission contract) that:

- contravenes a Commonwealth, state or territory law
- occurred in a foreign country and contravenes a foreign law that applies to that agency, official or service provider
- is corrupt
- perverts the course of justice
- results in wastage of public funds or property
- is an abuse of public trust
- unreasonably endangers health and safety or endangers the environment
- involves fabrication, falsification, plagiarism or deception relating to scientific research, or misconduct relating to scientific research, analysis or advice
- is maladministration, including conduct that is based on improper motives or is unreasonable, unjust, oppressive or negligent.

Disagreement with government policy, action or expenditure does not amount to disclosable conduct.

To whom can a disclosure be made?

A disclosure must be made to an appropriate person in order to gain the protections available under the Act.

Agencies – internal disclosures

A discloser can report suspected wrongdoing either to their current supervisor, to the Principal Officer or an appointed Authorised Officer who has been delegated responsibility for facilitating and investigating internal PIDs.

If the discloser wishes to make a disclosure relating to an agency other than the Commission, they can make a disclosure directly to an Authorised Officer in that agency.

A public official can make a disclosure to Authorised Officers of the Commonwealth Ombudsman, if they believe on reasonable grounds that it would be appropriate for the Ombudsman to investigate. A public official can also make a complaint to the Ombudsman if they believe the agency that received their internal disclosure did not appropriately investigate and deal with the disclosure.

If disclosed to the Principal Officer or the Authorised Officer, and if the disclosed matter is suspected to be a serious or systemic corruption, the Principal Officer or the Authorised Officer must refer the matter to the NACC.

External disclosures

A public official can make a disclosure outside of the government in limited circumstances, provided that the information or the matter does not include intelligence or sensitive law enforcement information, and the disclosure is not made to a foreign public official.

A public official who has made an internal disclosure under the Act may make a disclosure to any person if:

- the internal investigation was not completed within 90 days and an extension has not been granted by the Commonwealth Ombudsman
- they believe on reasonable grounds that the investigation was inadequate, or the agency took inadequate action once the investigation was completed
- it is not, on balance, contrary to public interest for an external disclosure to be made.

Emergency disclosures

In exceptional circumstances, a discloser may make an emergency disclosure outside government, if the discloser reasonably believes there is a significant and imminent danger to public health or safety or to the environment. The extent of the information disclosed must only be what is necessary to alert the recipient of the substantial and imminent danger.

Legal practitioner disclosures

A public official may disclose information to an Australian legal practitioner for the purposes of seeking legal or professional advice in relation to making a disclosure.

Disclosures to the National Anti-Corruption Commission

A public official may make a disclosure directly to the NACC. The NACC Commissioner has discretion to investigate a corruption issue if they are of the opinion that the issue could involve serious or systemic corrupt conduct.

If the Commissioner decides not to investigate the disclosed matter, the Commissioner may refer the matter back to the relevant agency for consideration or investigation.

Protection for Disclosers

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

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

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

Freedom of Information requests

Documents associated with a PID are not exempt from the operation of the *Freedom of Information Act 1982* (FOI Act). Requests for access to documents under the FOI Act should

be considered on a case-by-case basis. A range of exemptions may apply to individual documents or parts of documents, particularly in relation to material received in confidence, personal information, operation of agencies and law enforcement.

Procedure for making a Disclosure

Who can make a disclosure?

A current or former public official may make a disclosure and receive protection under the Act. 'Public official' is broadly defined, covering people in or with a relevant connection to the Commonwealth public sector, including board and committee members, and staff of contracted service providers.

How a public interest disclosure can be made

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

A person making a disclosure does not need to assert that the disclosure is made under the Act for it to be a PID.

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

Anonymous disclosures

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

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

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

- The Act requires agencies to keep a discloser's identity confidential, subject to limited exceptions including the discloser's consent.
- It will be difficult to ensure protection from reprisal if the agency does not know the discloser's identity.
- A discloser who does not provide a means of contact cannot be updated on the progress of the matter, including the outcome of the investigation.

A discloser who has made an anonymous disclosure may come forward at any stage to disclose their identity and seek protections under the Act.

Who can receive a public interest disclosure

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

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

The appointment of the Commission's Authorised Officers is at Appendix B.

A discloser may also disclose information to the Ombudsman, the Inspector General of Intelligence and Security (IGIS) if the matter concerns national security, or the NACC, who may investigate the matter or allocate the matter to the relevant agency for investigation.

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

What information should be provided

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

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

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

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

The discloser's own wrongdoing

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

False or misleading reports

A person who makes a disclosure that is intentionally false or misleading will not gain the protections under the Act, and disciplinary action may be taken by the Commission.

The discloser's obligations

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

Procedure for allocating a Disclosure

Confidentiality

The Commission will make every reasonable effort to protect the discloser's identity. It is a criminal offence for a public official who is handling a disclosure to reveal the discloser's identifying information to anyone else without their consent, or use it for another purpose.

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

Risk Assessment

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

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

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

Determining if the information is an internal disclosure

The Principal Officer or an Authorised Officer must examine the information received and decide whether it is an internal disclosure under the Act. If a person has disclosed information to their line manager and that person reasonably believes the information could contain

disclosable conduct, the manager must pass the information to an Authorised Officer as soon as reasonably practicable. Due to confidentiality requirements, the manager should obtain the discloser's consent before passing on their identifying information.

Preliminary inquiries

The Act gives Authorised Officers the power to make preliminary inquiries and obtain further information before making a decision about allocating the matter for investigation. Preliminary inquiries could include asking the discloser for further details. Making preliminary inquiries is not the same as conducting an investigation as the purpose of a preliminary inquiry is not to draw conclusions or reach an outcome.

If there is evidence of criminal conduct at the preliminary inquiry stage, the Authorised Officer may also need to consider referring that evidence to law enforcement agency.

Allocating a disclosure

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

What information should be given to a receiving agency

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

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

The Authorised Officer must also inform the Ombudsman by providing a brief outline of the disclosure and the allocation to the appropriate agency. A notification form is available on the Ombudsman website at <https://www.ombudsman.gov.au/industry-and-agency-oversight/public-interest-disclosure-whistleblowing/pid-reform-2023>.

Informing the discloser of the allocation

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

The Authorised Officer need not notify the person if it is not reasonably practicable. A person may be considered contactable where they have provided a mail, email address or telephone number.

The Authorised Officer should also consider whether the person has expressed any concerns about their need for support or protection in the workplace and whether the Commission needs to take further action.

Record of allocation

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

Procedure for investigating a Disclosure

Investigating a disclosure

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

Decision not to investigate

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

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

the decision. A notification form is made available on the Ombudsman website at <https://www.ombudsman.gov.au/industry-and-agency-oversight/public-interest-disclosure-whistleblowing/pid-reform-2023>.

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

Information for disclosers

- The Principal Officer must ensure that a discloser is given information about the Principal Officer's powers to:
 - decide not to investigate
 - decide not to investigate the disclosure further
 - decide to investigate the disclosure under a separate investigative power.
- The Principal Officer must ensure that, where it is practicable to do so, the discloser is given this information within 14 days after the disclosure is allocated to the Commission.

Conducting the investigation

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

An investigation of a PID should be conducted as the investigator best sees fit, obtaining information and making enquires as they believe to be most appropriate. When conducting the investigation, the investigator must comply with any standards issued by the Ombudsman.

The Ombudsman's guide for conducting an investigation is available on the website at https://www.ombudsman.gov.au/_data/assets/pdf_file/0028/299620/Chapter-7-Conducting-an-investigation.pdf.

Where the investigation relates to fraud against the Commonwealth, the investigator must also act in accordance with the Commonwealth Fraud Control Guidelines.

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

Time limit for investigations

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

If more time is required, the Commission must lodge an application to the Ombudsman for extension of time to investigate at least 10 days before the 90-day time period has expired. Such an application should include reasons why the investigation cannot be completed within the 90 days, the views of the discloser and an outline of the actions taken to progress the investigation. The notification form for time extension is made available on the Ombudsman website at <https://www.ombudsman.gov.au/industry-and-agency-oversight/public-interest-disclosure-whistleblowing/pid-reform-2023>.

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

Standard of proof

The Principal Officer must ensure that a disclosure is investigated on the basis that a decision whether evidence is sufficient to prove a fact must be determined on the balance of probabilities. A fact is taken to have been proven on the balance of probabilities if the Principal Officer is satisfied that it is more likely than not that the fact is true.

Evidence

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

Ensuring high standards during investigations

The Commission will ensure high ethical and administrative standards during investigations by:

- preventing significant delay in completing investigations
- ensuring good awareness of legislation, procedures and guidance material across the Commission
- maintaining confidentiality during investigations
- preventing conflicts of interest
- preventing giving witnesses opportunities to collude
- pursuing all lines of enquiry
- maintaining high quality of investigation reports, with findings based on substantiated evidence
- ensuring that investigators having good understanding of how to conduct investigations, and good support and guidance resources available to them.

Ensuring Confidentiality

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

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

The Commission will ensure that:

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

Conducting an interview

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

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

The Principal Officer must ensure that:

- audio or visual recording of the interview is not made without the interviewee's knowledge
- when an 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 recording of the interview.

Criminal matters

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

Keeping records

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

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

After an Investigation

Report of investigation

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

The investigator must prepare a report that details the following:

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

In preparing the report, the investigator must comply with any standards issued by the Ombudsman.

The investigation report must show that conclusions have been drawn based on sufficient substantiating evidence.

A template PID Reporting form is provided at Appendix D.

Copy of report for the discloser

The Principal Officer must provide a copy of the report to the discloser within a reasonable timeframe after the report is completed. This is not required where the discloser is unable to be contacted.

- The version given to the discloser may have certain information deleted if the information:
 - reveals, or is likely to reveal, the identity of the discloser or another person
 - will render the report as an exempted document for the purposes of Part 5 (Exemptions) of the FOI Act, or
 - has, or requires to have, a national security or other protective security classification.

Action to be taken by the Commission

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

- commencing Code of Conduct proceedings under the *Public Service Act 1999* or another disciplinary process
- referral of the matter to the police or another body that can take further action
- mediating or conciliating a workplace conflict
- an internal audit or other review of an issue or the operations of a particular unit
- implementing or changing policies, procedures or practices
- conducting training and awareness sessions for staff.

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

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

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

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

Support and Protection

Under the Act, current and former public officials are protected from adverse consequences when making a PID. These protections do not only apply to internal disclosures, but to external and emergency disclosures made in accordance with the Act.

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

In addition to the protections under the Act, the Commission will ensure that support is provided to a discloser where appropriate, and will be mindful of their responsibilities towards anyone against whom an allegation has been made.

Protecting the discloser's identity

It is an offense to disclose or use information that is likely to enable identification of a discloser, unless consent has been received from the discloser.

○ Balancing the need to protect the discloser's identity while conducting an effective investigation and protecting a discloser from reprisal can be challenging. In order to protect a discloser's identity the Commission will:

- limit the number of people who are aware of the discloser's identity or information that may identify them
- remind each person who has the information that they should keep it confidential and that unauthorised disclosure may be a criminal offense

- assess whether anyone who is aware of the discloser's identity may have a motive to take reprisals against them or impede the progress of the investigation, and monitor the situation
 - ensure that the discloser can communicate with an Authorised Officer or investigator without alerting other staff.
- A discloser may consent to their identifying information being released to certain individuals such as the Ombudsman. If so, the Commission will request the discloser to confirm this in writing. If they do not consent, it may not be practicable for the Commission to protect their identity, particularly if it is widely known that the person has made the disclosure, or if identifying information needs to be disclosed for the matter to be effectively investigated.

Protection from reprisal

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

The Commission will take seriously, record and respond to all allegations of reprisal. The Commission will monitor the work environment of a discloser for signs of detriment, harassment or victimisation and will take corrective action if necessary.

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

Conduct amounting to a reprisal may be a breach of the APS Code of Conduct and any such instances will be dealt with under the Commission's disciplinary system.

Support for disclosers

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

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

The Commission also provides access to the Employee Assistance Program (EAP) to disclosers to access professional counseling services, if required. Contact details for the EAP are provided in Appendix A.

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

Keeping the discloser informed

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

- when the disclosure is either allocated for investigation, or not allocated because it has been determined not to be an internal disclosure
- of information about the Principal Officer's discretionary powers not to investigate within 14 days of the disclosure being allocated
- if the agency decides to investigate
- of the estimated length of the investigation

- if the agency decides not to investigate, the reasons for the decision and any action that might be available to the discloser under other Commonwealth laws
- if an extension of time is granted by the Ombudsman, the progress of the investigation
- after the investigation report is completed.

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

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

Any questions or concerns the discloser raises should be addressed honestly and as soon as possible. The discloser can also be referred to:

- the Policy
- support networks or services
- the guide for disclosers, available at <https://www.ombudsman.gov.au/Our-responsibilities/making-a-disclosure>

Stop action direction under the NACC Act

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

Protection for witnesses

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

This does not apply if the information obtained relates to the Commission staff member or contractor's own behaviour or conduct.

Support and protection for a person subject to an allegation

A person who is subject to allegations of wrongdoing will be given information about their rights and obligations under the Act, the Commission's investigation procedures and any other relevant matter such as Code of Conduct proceedings. Anyone who is subject to an allegation is innocent of any wrongdoing until proven otherwise. The Commission will ensure that the person is accorded procedural fairness, but this does not mean they need to be immediately informed about the disclosure or the investigation.

The identity of a person who is the subject of allegations or an investigation should be protected as much as practicable.

Information and assistance required by the Ombudsman

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

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

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

Roles and Responsibilities

The roles and responsibilities under the Policy are as follows:

Principal Officer (Chief Executive Officer)

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

- Take reasonable steps to protect public officials who belong to the Commission against reprisals in relation to PIDs that have been, may have been, are proposed to be, or could be made to the Commission
- Take reasonable steps to encourage and support disclosers, including potential disclosers, and those who provide assistance in relation to PIDs
- Take reasonable steps to provide ongoing training and education to public officials about the Act, and any training necessary to support officials to carry out their functions under the Act
- Ensure that there are sufficient Authorised Officers readily accessible to public officials who belong to the agency and public officials are aware of their identity
- Establish internal PID procedures for facilitating and dealing with PIDs relating to the Commission. Procedures must comply with the Ombudsman's requirements. Procedures must deal with assessment of the risks that reprisals may be taken in relation to disclosures that relate to the Commission
- Ensure disclosures are properly investigated
- Prepare an investigation report and take appropriate action, as soon as reasonably practicable, in response to recommendations made in the report
- Notify the discloser and the Ombudsman (or the IGIS) of the completion of an investigation under the Act and provide a copy of the investigation report. Ombudsman or IGIS may review handling of a disclosure and recommend an agency take particular action. In response, they must provide notice to the Commission of action taken or proposed to be taken in response. If no action is proposed to be taken, the notice must provide a reason why

Authorised Officer

- The Authorised Officer is responsible for the following in relation to PIDs:
 - Take reasonable steps to protect public officials who belong to the agency from reprisal if the Authorised Officer suspects a relevant PID has been, may have been, is proposed to be, or could be made or given to the Authorised Officer
 - Refer suspected systemic or serious corrupt conduct to the NACC
 - When explaining the requirements of the Act to disclosers, explain the circumstances in which a PID must be referred to another agency, person, or body, under another law (e.g. referral to the NACC if the disclosure could involve serious or systemic corrupt conduct)
 - Notify the Ombudsman of the reallocation of a disclosure
 - Notify the Ombudsman when a disclosure is not allocated for investigation under the Act
 - Notify the Ombudsman when a stop action direction from the NACC prevents allocation of all or part of a disclosure
 - Determine whether personal work-related conduct included in a disclosure may be disclosable conduct (it will only be disclosable conduct if it concerns reprisal or has significant implications for an agency)

Investigator

- The investigator is responsible for the following in relation to PIDs:
 - Ensure investigation complies with requirements of the Act, the Ombudsman's requirements and the Policy
 - Check that the investigation report set out claims of reprisal taken against the discloser or any other person (together with related evidence), and the Commission's response to those claims or evidence. If remedial action is required, ensure relevant recommendations are made
 - Complete investigation within 90 days of allocation unless an extension has been granted. The time will start counting again on reallocation, a decision to reinvestigate, or the day the Principal Officer becomes aware a NACC stop action direction no longer applies
 - Notify discloser and Ombudsman (or IGIS if relevant) of the completion of an investigation under the Act and provide a copy of the investigation report
 - Ensure referral of suspected serious or systemic corruption uncovered in a PID investigation to the NACC.

Line Manager

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

- inform the discloser that their disclosure could be treated as an internal disclosure
- explain to the discloser the next steps in the PID process (i.e. referring their disclosure to the Authorised Officer, the potential allocation of the PID, and investigation of the PID)

- advise the individual about the circumstances in which a PID must be referred to an agency, or other person or body, under another law of the Commonwealth
- explain the civil and criminal protections the Act provides to disclosers, and those assisting with the handling of a PID.

Discloser

Disclosers must make endeavours to assist the Principal Officer, the Authorised Officers and the investigator in relation to the disclosure.

Disclosers must make endeavours to assist the Ombudsman and the NACC in the performance of their functions under their respective legislation.

Commission staff and contractors

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

Appendix A – Contact details

Principal Officer (Chief Executive Officer)

Conjoint Professor Anne Duggan
Chief Executive Officer
Postal Address: MDP 114 GPO Box 5480 Sydney NSW 2001
Telephone: 02 9126 3519
Email: anne.duggan@safetyandquality.gov.au

Authorised Officer

Chris Leahy
Chief Operating Officer
Postal Address: MDP 114 GPO Box 5480 Sydney NSW 2001
Telephone: 02 9126 3600
Email: christopher.leahy@safetyandquality.gov.au

Commonwealth Ombudsman

Complaints to the Commonwealth Ombudsman can be made in writing, by phone, in person. Details can be found on the Ombudsman's website at <http://www.ombudsman.gov.au/>.

Telephone: 1300 362 072 (9am - 5pm [AEST] Monday to Friday)
E-mail: ombudsman@ombudsman.gov.au
Postal address: GPO Box 442 Canberra ACT 2601

Employee Assistance Program

The Commission, through Converge International, provides a range of services under its Employee Assistance Program (EAP). These services include personal and professional support for staff, managers and their families. EAP services are free and completely confidential.

Telephone: 1300 687 327
Email: eap@convergeintl.com.au

Details of Converge International's office locations around Australia are available on their website: www.convergeinternational.com.au

Appendix B - Written appointment of the Commission's Authorised Officers

I, **Conjoint Professor Anne Duggan**, Chief Executive Officer of the Australian Commission on Safety and Quality in Health Care, appoint **Chris Leahy** as the Commission's Authorised Officer and delegate these public officials the functions and powers of the Principal Officer under the *Public Interest Disclosure Act 2013 (Cth)*.



Conjoint Professor Anne Duggan
Chief Executive Officer
Australian Commission on Safety and Quality in Health Care

13 September 2023

Appendix C – Template Risk of Reprisal Assessment Checklist

Risk Identification

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

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

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

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

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

Risk Assessment

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

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

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

Controlling Risks

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

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

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

Monitoring and Reviewing Risks

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

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

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

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

Risk Assessment Checklist

Threats or past experience

- ☐ Has a specific threat against the discloser been received?
- ☐ Is there a history of conflict between the discloser and the subjects of the disclosure, management, supervisors or colleagues?
- ☐ Is there a history of reprisals or other conflict in the workplace?
- ☐ Is it likely that an investigation will exacerbate this?

Confidentiality unlikely to be maintained

- ☐ Who knows that the disclosure has been made or was going to be made?
- ☐ Has the discloser already raised the substance of the disclosure or disclosed their identity within the workplace?
- ☐ Who in the workplace knows the identity of the discloser?
- ☐ Is the size of the discloser's immediate work unit small?
- ☐ Are there circumstances such as the stress level of the discloser that will make it difficult for them to not discuss the matter with those in their workplace?
- ☐ Will the discloser become identified or suspected when the existence or substance of the disclosure is made known or investigated?
- ☐ Can the disclosure be investigated while maintaining confidentiality?

Significant reported wrongdoing

- ☐ Are allegations made about individuals in the disclosure?
- ☐ Who are their close professional and social associates within the workplace?
- ☐ Is there more than one wrongdoer involved in the matter?
- ☐ Is the reported wrongdoing serious?
- ☐ Is the disclosure particularly sensitive or embarrassing for any subjects of the disclosure, senior management, the organisation or government?

- ☐ Do these people have the intent to take reprisals – for example, because they have a lot to lose?
- ☐ Do these people have the opportunity to take reprisals – for example, because they have power over the discloser?

Vulnerable discloser

- ☐ Is or was the reported wrongdoing directed at the discloser?
- ☐ Are there multiple subjects of the disclosure?
- ☐ Is the disclosure about a more senior officer than the discloser?
- ☐ Is the discloser employed part-time or on a casual basis?
- ☐ Is the discloser isolated – for example, geographically or due to shift work?
- ☐ Are the allegations in the disclosure unlikely to be substantiated – for example, because there is a lack of evidence?
- ☐ Is the disclosure being investigated outside of the organisation?

Appendix D – Public Interest Disclosure Report Template

Below is a sample Public Interest Disclosure Report. Refer to TRIM D18-1938 for a report template for use.

PUBLIC INTEREST DISCLOSURE REPORT

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

Preliminary Investigation	
Phone:	
Email:	
When and where did the wrongdoing occur: (Include all relevant circumstances and events surrounding the issue)	
What did the discloser do at the time of the wrong doing?	
Were there any other witnesses to the wrongdoing or has the incident been discussed with anyone else? (Provide contact details if possible). YES / NO	
Name:	Contact details (if known):
Preliminary actions taken by Authorised Officer (include any action to protect the discloser if risk of reprisal identified).	

Preliminary Investigation	
If the issue is deemed by the Authorised Officer not to be an internal disclosure under the PID Act, provide rationale for decision and any alternative action if appropriate.	
If the issue is deemed by the Authorised officer as an internal disclosure requiring further investigation briefly summarise the course of action to be taken.	
_____ Signature of Authorised Officer	Date: ____ / ____ / ____ ____

Date decision reported to Principal Officer:	____ / ____ / ____
*Date Ombudsman notified (if required)	____ / ____ / ____
Date discloser informed of decision	____ / ____ / ____

FORMAL INVESTIGATION REPORT

Formal Investigation Report		
Date formal investigation commenced	____ / ____ / ____	
Date formal investigation completed	____ / ____ / ____	
External receiving agency managing investigation (applicable if the disclosure is not related to the Agency).		
Authorisation of consent to receive the allocation from external Agency (if applicable).	Date consent provided	____ / ____ / ____
Contact details of person in external agency.	Name	
	Phone	
	Email	
Consent received from discloser to forward investigation to an external agency (if applicable).	Date consent provided	____ / ____ / ____
Details of how consent was provided (provide reference to document)		
Internal investigation officer:		
Position and contact details of investigation officer	Position	
	Phone	
	Email	
Conflict of interest and confidentiality forms signed	Date signed	____ / ____ / ____
Person against whom allegations are made is notified and provided information of their rights	Date of meeting	____ / ____ / ____
File note on initial meeting (provide reference to document).		

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

Formal Investigation Report			
Name and signature of investigating officer		Date signed	____ / ____ / ____
Name and signature of Authorised Officer		Date signed	____ / ____ / ____
Name and signature of Principal Officer		Date Report Approved	____ / ____ / ____

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