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Public Interest Disclosure Policy

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# Introduction

1. The [*Public Interest Disclosure Act 2013*](http://www.comlaw.gov.au/Details/C2013A00133) (PID Act) prescribes a framework for the disclosure and investigation of wrongdoing and maladministration in the Australian Public Service (APS). The Australian Human Rights Commission (the Commission) encourages and supports the reporting of wrongdoings in the APS so that they can be investigated and addressed.
2. This Public Interest Disclosure Policy (Policy) sets out the policies that the Commission has in place in order to meet its obligations under the PID Act.
3. It is important that allegations of disclosable conduct are brought to the attention of the Commission and then investigated in a fair and timely manner. The Commission promotes integrity and accountability in the APS by encouraging disclosure of suspected wrongdoing in accordance with this Policy. The Commission aims to protect people who make Public Interest Disclosures (Disclosures) in accordance with the PID Act.
4. The Commission also has Procedures in relation to the PID Act, 'Public Interest Disclosure Procedures'. The procedures set out the process the Commission will follow if a disclosure under the PID Act is made. This Policy should be read in conjunction with the procedures.

# APS Values and Code of Conduct

1. APS employees' practices, actions and behaviours are expected to be of the highest ethical standards and represent the best value for the Australian community. The APS Values (the Values) and the Code of Conduct (the Code) provide the standard of behaviour expected of agency heads and APS employees.
2. The APS Commission considers that the duty to act with integrity and with the highest ethical standards imposes a reporting obligation on all employees with regard to suspected misconduct. In some circumstances, particularly for employees with managerial responsibilities, it could be a breach of the Code for an employee not to report suspected misconduct. APS employees therefore should report behaviour which is inconsistent with the APS Code of Conduct.
3. The APS Values and APS Employment Principles articulate the culture and operating ethos of the APS and provide the framework within which employment powers are exercised. The APS Code of Conduct and Values are provided at Attachment A. The Code is also set out in the Public Service Act 1999 (PS Act) and is available on the Human Resources intranet site.
4. On 15 January 2014, the PID Act commenced operation. The PID Act builds on practices established to protect public officials who report suspected breaches of the Code of Conduct. The Act is not intended to replace existing processes for dealing with workplace grievances and misconduct such as bullying and harassment. Rather, the aim is to supplement the existing process.

# Objectives of the PID Act

1. The PID Act:
	1. establishes a framework to encourage and facilitate the reporting of wrongdoing by public officials in the Commonwealth public sector (by replacing the whistleblowing provisions in the PS Act);
	2. ensures that Commonwealth agencies will properly investigate and respond to reports of serious wrongdoing by Commonwealth public officials; and
	3. provides protection (including civil and criminal immunity) to public officials who report, in accordance with the PID Act, allegations of wrongdoing in the Commonwealth public sector.

# Purpose of Policy

1. There is a legislative requirement for the Commission to establish a policy for facilitating and dealing with Disclosures relating to the Commission. The purpose of this Policy is to meet that statutory requirement and to promote the integrity and accountability of the Commission by:
	1. encouraging and facilitating the disclosure of information by Commission employees about suspected wrongdoing in the Commission;
	2. ensuring that Commission employees who make Disclosures are supported and protected from adverse consequences (including injury, dismissal or discrimination); and
	3. ensuring that Disclosures by Commission employees are properly investigated and dealt with.

# Application of Policy

1. This Policy applies to Disclosures made to the Commission's Authorised Officers as Internal Disclosures, or those Disclosures which are subsequently allocated to the Commission.
2. This Policy does not apply to External Disclosures, emergency Disclosures or legal practitioner Disclosures, unless subsequently allocated to the Commission. For more information on these types of Disclosures please refer to the [Agency Guide to the PID Act 2013](http://www.ombudsman.gov.au/docs/Agency_Guide_To_PID_Act_V1_Dec_2013.pdf) published by the Commonwealth Ombudsman.
3. This Policy must be applied and interpreted in a manner that is not inconsistent with the PID Act, the Rules, Ombudsman's Guides and Standards. All terms that are used in this Policy are taken to have the same meaning as in the PID Act.
4. A failure to apply this Policy to its full extent will not result in an allocation, investigation or decision being invalid.
5. This Policy will be reviewed periodically through established consultative processes.

# What is a Public Interest Disclosure?

1. A Disclosure generally occurs when:
	1. a current or former public official (the discloser);
	2. discloses to their supervisor or manager, or an Authorised Officer;
	3. information which tends to show, or the discloser believes on reasonable grounds tends to show, one or more instances of disclosable conduct.
2. Disclosable conduct is wrongful conduct engaged in by: an agency, a public official in connection with their public sector role, or a contracted Commonwealth service provider in connection with entering into or giving effect to a contract.
3. In limited circumstances a discloser may disclose such information to a person outside government. For more information please refer to the [Agency Guide to the PID Act 2013](http://www.ombudsman.gov.au/docs/Agency_Guide_To_PID_Act_V1_Dec_2013.pdf).

# What kind of conduct may be the subject of a Public Interest Disclosure?

1. A public official can disclose information that they believe on reasonable grounds to be disclosable conduct.
2. Conduct that may be subject to a Disclosure includes (but is not limited to) conduct that:
	1. constitutes a contravention of a Commonwealth, State or Territory law;
	2. in a foreign country, contravenes a foreign law that applies to the agency, official or service provider;
	3. is corrupt;
	4. perverts the course of justice;
	5. unreasonably endangers health and safety or endangers the environment;
	6. involves fabrication, falsification, plagiarism or deception relating to scientific research, or other misconduct in relation to scientific research, analysis or advice;
	7. constitutes maladministration, including conduct that is based on improper motives or is unreasonable, unjust, oppressive or negligent;
	8. goes to disciplinary action against an official;
	9. is an abuse of public trust;
	10. results in a wastage of public money or property;
	11. could, if proved, give reasonable grounds for disciplinary action against the public official; or
	12. is proscribed by the PID rules.
3. Individual grievances or workplace conflicts should be dealt with through other existing mechanisms such as the harassment prevention policy rather than being the subject of an investigation under the PID Act. However, if it appears to the Authorised Officer that such a disclosure may represent a systemic issue within the Commission then it may be treated as a Disclosure under the PID Act.
4. Not all conduct is disclosable, for more information please refer to the [Agency Guide to the PID Act 2013](http://www.ombudsman.gov.au/docs/Agency_Guide_To_PID_Act_V1_Dec_2013.pdf).

# Making a Public Interest Disclosure

1. The Commonwealth Ombudsman is responsible for administering the PID Act. It has issued guidance material for the making of Disclosures. For detailed information and guidance on how to make a Disclosure please refer to the Agency Guide to the PID Act 2013.

# *Who can make a Disclosure?*

1. A person (a discloser) who is a current or former 'public official' may make a Disclosure. A public official includes:
	1. an APS employee (either current or former employees);
	2. a statutory office holder;
	3. another person who exercises power under a Commonwealth Law; or
	4. people or bodies providing services under a contract to the Commonwealth, including subcontractors.
2. An Authorised Officer can deem a person to be a public official to facilitate the making of a Disclosure.
3. If a person who intends to make a Disclosure was not a public official at the time they obtained the information they intend to disclose, they may be deemed to be a public official by an Authorised Officer who believes on reasonable grounds that the person has information that concerns disclosable conduct.
4. The Authorised Officer can determine a person to be a public official on the person's request or on their own initiative. If it is in response to a person's request, the Authorised Officer must either make the determination, or refuse to make the determination and advise the person of the reasons.
5. To make the determination, the Authorised Officer must issue a written notice to the person stating that the PID Act has effect, and is taken always to have had effect, in relation to the Disclosure of the information as if the individual had been a public official when they obtained the information.

# *Who can receive a Disclosure within the Commission?*

1. A Disclosure, internally within the Commission, is known as an Internal Disclosure and can be made to:
	1. the President (i.e. the principal officer of the Commission);
	2. a discloser's current supervisor or manager; or
	3. an Authorised Officer.
2. Authorised Officers in the Commission are:
	1. the Director of Legal; and
	2. the Director of Information and Conciliation Service.
3. In certain circumstances, a Disclosure may be made to an external body such as the Ombudsman. For more information please refer to [Agency Guide to the PID Act 2013](http://www.ombudsman.gov.au/docs/Agency_Guide_To_PID_Act_V1_Dec_2013.pdf).
4. To gain the protections the PID Act provides to disclosers, a public official must make a Disclosure to an appropriate person.

# *How can a Disclosure be made within the Commission?*

1. You can contact a person who is authorised to receive and deal with a Disclosure (Authorised Officers) by email PID@humanrights.gov.au.
2. A Disclosure may be made to an Authorised Officer either directly, or through the person's supervisor or manager. Disclosures may be made orally or in writing, and may be made anonymously and do not have to state that the Disclosure is being made under the PID Act.
3. Anonymous Disclosures will be acted upon wherever possible. However, one of the requirements for making a Disclosure is that the person is or was a public official. This does not mean that the person has to prove their status. The discloser may give information that supports that status, for example, by explaining how they know about the wrongdoing they are reporting. If they do not, the Authorised Officer may wish to ask questions along these lines (if the person has provided contact details).
4. There are reasons why disclosers should consider identifying themselves to an Authorised Officer, or at the very least providing a means of contact:
	1. the PID Act requires the Commission to keep a discloser's identity confidential, subject to limited exceptions including the discloser's consent. The person's identity may nonetheless become apparent if an investigation is commenced;
	2. it will be difficult to ensure protection from reprisal if the Commission does not know the discloser's identity;
	3. the Authorised Officer who receives an anonymous report must have reasonable grounds to suspect the disclosable conduct has occurred in order to allocate the matter for investigation. If they cannot contact the discloser to seek necessary further information, the matter may not proceed;
	4. it will be difficult to conduct an investigation if the discloser cannot be contacted for further information. An investigator has the discretion not to investigate, or investigate further, if the discloser does not provide their name and contact details or is unable to give the investigator further information or assistance if needed; and
	5. 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.
5. A person who has made an anonymous Disclosure may come forward at a later stage to disclose their identity and seek the protections of the PID Act.

# *Who can you make a Disclosure to outside the Commission?*

1. You must make your Disclosure to an appropriate person in order to gain the protections available under the PID Act. There is a range of options for making a Disclosure outside the Commission.

### Other government agencies - an Internal Disclosure

1. If you have information about suspected wrongdoing in another public sector agency, you can make a Disclosure to an Authorised Officer in that agency. This is also known as an Internal Disclosure. For example, you may report suspected wrongdoing to the agency to which you last belonged.

### Other people - external and emergency disclosures

1. You can make a Disclosure to other people, including people outside government, in limited circumstances set out below. In addition to the conditions outlined below, two restrictions apply to such Disclosures:
	1. the matter must not include intelligence information or sensitive law enforcement information (as defined in s 41 of the PID Act) or concern an intelligence agency; and
	2. you may not make a Disclosure to a foreign public official.

### External Disclosure

1. If you made an Internal Disclosure under the PID Act, you may later make an External Disclosure to any person if:
	1. the internal investigation under the PID Act was not completed within 90 days or within a timeframe approved by the Ombudsman or, where relevant, the Inspector-General of Intelligence and Security (IGIS) (an investigation is completed when the report of investigation is finalised); or
	2. you believe on reasonable grounds that the investigation under the PID Act was inadequate; or
	3. you believe on reasonable grounds that the agency took inadequate action after the investigation, whether under the PID Act or other legislation such as the Ombudsman Act 1976, was completed; and
	4. it is not on balance contrary to the public interest for an External Disclosure to be made (s 26 of the PID Act).

# *Details to include in a Disclosure*

1. 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. A Disclosure may be made in any way (orally or in writing) or anonymously. Where possible, a person making a Disclosure should cover as many of the following matters as possible in their disclosure so as to help the Commission determine how to proceed:
	1. the name and job title of the person/people who is/are who engaged in the conduct that is the subject matter of the Disclosure being made;
	2. the nature of the conduct that is the subject matter of the Disclosure being made (e.g. corrupt conduct);
	3. information about relevant events, dates and places surrounding the issues being disclosed;
	4. whether anything was done in response to the conduct that is the subject matter of the Disclosure;
	5. the names of people who may be able to provide additional information;
	6. the names of people who knew about the conduct that is the subject matter of the Disclosure and have allowed it to continue;
	7. whether the discloser is concerned about possible reprisal as a result of making the Disclosure; and
	8. the discloser's contact details (for communication about the Disclosure assessment and outcome).
3. When making the Disclosure, the discloser should clearly advise the person receiving the Disclosure that they are intending to make a 'PID Disclosure' in order to ensure that their Disclosure is treated with strict confidentiality and can be assessed for PID status and appropriate protection.
4. Once a Disclosure has been made, it cannot be withdrawn. But a discloser may state that they do not wish the Disclosure to be investigated and they may refuse to consent to their name and contact details being provided to the President and/or Authorised Officer. If the discloser requests that a matter not be investigated, this should be a consideration that is taken into account in determining whether to exercise discretion not to investigate at all or not to investigate further. It should be noted, however, that the Commission may still investigate.

# Protections for disclosers

1. The following protections exist under the PID Act where a Disclosure is made by a public official:
	1. an individual is immune from any civil, criminal or administrative liability for making a Disclosure;
	2. it is an offence to take a reprisal, or to threaten to take a reprisal, against a person because of a Disclosure, a proposed Disclosure, or a suspected Disclosure (including injury, dismissal, or discrimination between the discloser and other employees);
	3. subject to certain limited exceptions in the PID Act, it is an offence to disclose the identity of an individual who makes a Disclosure unless that individual has consented to the disclosure of their identity. However, there may be circumstances where an individual is not protected, for example where the individual knowingly makes a statement that is false or misleading;
	4. a person is not subject to any criminal or civil liability because the person (voluntarily or otherwise) gives information, produces a document or answers a question if:
		1. the person does so when requested to do so by a person conducting a Disclosure investigation; and
		2. the information, document or answer is relevant to the investigation. However, if the information, document or answer relates to the person's own conduct, the person may be liable for their own conduct where that conduct is in breach of the PID Act; and

a person can take action for reinstatement if their employment was terminated because of their Disclosure.

# Responsibilities of Commission personnel

# *The President*

1. The President is the Principal Officer and must take reasonable steps:
	1. to protect public officials who belong to the Commission from detriment, or threats of detriment, relating to Disclosures by those public officials;
	2. to ensure that the number of Authorised Officers of the Commission is sufficient to ensure that they are readily accessible by public officials who belong to the Commission; and
	3. to ensure that public officials who belong to the Commission are aware of the identity of each Authorised Officer of the Commission. Authorised Officers of the Commission are listed at item 8.2 of this Policy.

# *Authorised Officers*

1. If:
	1. an individual discloses, or proposes to disclose, information to an Authorised Officer; and
	2. the Authorised Officer has reasonable grounds to believe that:
		1. the information concerns, or could concern, disclosable conduct; and
		2. the individual may be unaware of what the PID Act requires in order for the Disclosure to be an Internal Disclosure;
2. The Authorised Officer must:
	1. inform the individual that the Disclosure could be treated as an Internal Disclosure for the purposes of this Policy and the PID Act; and
	2. explain what the PID Act requires in order for the Disclosure to be an Internal Disclosure;
	3. explain the protections provided by the PID Act to persons who make Disclosures under the PID Act;
	4. advise the individual of any orders or directions of which the Authorised Officer is aware that are designated publication restrictions that may affect disclosure of the information;
	5. ask the discloser if they wish the Disclosure to be investigated, prior to making an allocation decision. However, the discloser's view will not be the substantive factor taken into consideration when making a decision whether or not to allocate a Disclosure for investigation. If the discloser does not give their response within 7 calendar days, the discloser is deemed to wish the Disclosure to be investigated;
	6. where practicable and relevant, ask the discloser whether they consent to the Authorised Officer giving the discloser's name and contact details to the Principal Officer or their delegate for the purpose of the investigation. If the discloser does not respond within 7 calendar days, the discloser is deemed not to consent to their name and contact details being provided to the allocated Authorised Officer performing the investigation;
	7. make an appropriate written record, including the time and date of the Disclosure and include the information that is advised to the discloser under this item of the Policy. All practicable steps should be taken for this record to be signed by the discloser as being correct; and
	8. retain a copy of all records, file notes or information provided as part of the Disclosure on the official file, as set out in the Public Interest Disclosure Procedures.

# *Supervisors*

1. If:
	1. a public official discloses information to a supervisor; and
	2. the supervisor has reasonable grounds to believe that the information concerns, or could concern, one or more instances of disclosable conduct; and
	3. the supervisor is not an Authorised Officer or the President;

the supervisor must refer the individual to an Authorised Officer as soon as possible.

# *Public Officials*

1. A public official must use their best endeavours to assist:
	1. the Principal Officer or their delegate in the conduct of an investigation; and
	2. the Ombudsman in the performance of the Ombudsman's functions.

# Responsibilities of the Commonwealth Ombudsman

1. The responsibilities of the Ombudsman include:
	1. assisting the principal officer of an investigating agency, authorised officers and public officials in relation to the operation of their legislative obligations under the PID Act; and
	2. conducting educational and awareness programs relating to the PID Act to the extent to which it relates to the Commission and public officials.

# Attachment A

**Australian Public Service and Australian Human Rights Commission
Code of Conduct and Values**

## Code of Conduct

The Code of Conduct requires that an employee must:

* behave honestly and with integrity in connection with APS employment;
* act with care and diligence in connection with APS employment;
* when acting in connection with APS employment, treat everyone with respect and courtesy, and without harassment;
* when acting in connection with APS employment, comply with all applicable Australian laws;
* comply with any lawful and reasonable direction given by someone in the employee's Agency who has authority to give the direction;
* maintain appropriate confidentiality about dealings that the employee has with any Minister or Minister's member of staff;
* disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment;
* use Commonwealth resources in a proper manner;
* not provide false or misleading information in response to a request for information that is made for official purposes in connection with the employee's APS employment;
* not make improper use of:
	1. inside information; or
	2. the employee's duties, status, power or authority;

in order to gain, a benefit or advantage for the employee or for any other person;

* at all times behave in a way that upholds the APS Values and Employment Principles, and the integrity and good reputation of the employee's Agency and the APS;
* while on duty overseas, at all times behave in a way that upholds the good reputation of Australia;
* except in the course of his or her duties as an APS employee or with the President's express authority, not give or disclose, directly or indirectly, any information about public business or anything of which the employee has official knowledge;
* when participating in a private capacity in public discussions, ensure that the audience is clear that the public comment is being made in a private capacity and that the employee is not speaking on behalf of the Commission or the Government;
* ensure that any public comment cannot be seen as compromising the employee’s ability to continue to carry out his or her official duties in an unbiased and apolitical manner;
* not make public comment in circumstances where the employee's status or other reasons will make it difficult for the audience to believe that the comments are being made in a private capacity; and
* comply with any other conduct requirement that is prescribed by the regulations.

## Employment Principles

The APS is a career based service that:

* makes fair employment decisions with a fair system of review;
* recognizes that the usual basis for engagement is as an ongoing APS employee;
* makes decisions relating to engagement and promotion that are based on merit;
* requires effective performance from each employee;
* provides flexible, safe and rewarding workplaces where communication, consultation, cooperation and input from employees on matters that affect their workplaces are valued;
* provides workplaces that are free from discrimination, patronage and favouritism; and
* recognises the diversity of the Australian community and fosters diversity in the workplace.

## Values

**Impartial** - The APS is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence.

**Committed to Service** - The APS is professional, objective, innovative and efficient, and works collaboratively to achieve the best results for the Australian community and the Government.

**Accountable** - The APS is open and accountable to the Australian community under the law and within the framework of Ministerial responsibility.

**Respectful** - The APS respects all people, including their rights and their heritage.

**Ethical** - The APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.

*Agency Heads are bound by the Code of Conduct in the same way as APS employees and have an additional duty to promote the APS values*