

PUBLIC INTEREST DISCLOSURE PROCEDURES

Governance Section, Corporate Branch

Policy Number: PCY14/001

I, Maureen Dupree, Chief Operating Officer of the National Library, being delegated with the power under the Public Interest Disclosure (National Library of Australia) Delegation 2021, issue the National Library's Public Interest Disclosure Procedures under s 59(1) of the *Public Interest Disclosure Act 2013*.

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1. Introduction

- 1.1. The objects of the *Public Interest Disclosure Act 2013* (PID Act) are to:
- promote the integrity and accountability of the Commonwealth public sector
 - encourage and facilitate the making of disclosures by public officials
 - ensure that public officials who make public interest disclosures are supported and protected from adverse consequences relating to the disclosures
 - ensure that disclosures by public officials are properly investigated and dealt with.
- 1.2. The National Library is committed to the objects outlined above. The National Library will act on disclosures and protect disclosers from any reprisals or threats of reprisals as a result of making a disclosure.
- 1.3. These Procedures outlines the National Library’s approach to matters arising under the PID Act.

2. Definitions

<p>Authorised officers</p>	<p>Section 36 of the PID Act provides an authorised officer is:</p> <ol style="list-style-type: none"> 1. the principal officer of the agency – in the National Library’s case, the Director-General (DG) 2. a public official who: <ol style="list-style-type: none"> a. belongs to the agency; and b. is appointed, in writing, by the principal officer of the agency as an authorised officer for the purposes of this Act. <p>The PID Act confers certain powers and functions on authorised officers. The DG has appointed authorised officers through the <i>Instrument of Appointment – Public Interest Disclosure Act 2013</i>, which is available on the National Library’s intranet (MyNLA). A list of authorised officers is also available on the National Library’s intranet.</p>
<p>Delegates of the principal officer</p>	<p>The principal officer can delegate any or all of their functions or powers under the PID Act to a public official who belongs the agency. The DG has done this via the <i>Public Interest Disclosure (National Library of Australia) Delegation 2021</i>.</p> <p>Public officials who have been delegated the principal officer’s powers may have responsibilities including investigating disclosable conduct, preparing a report of their investigation and providing a copy of that report to the principal officer and the discloser.</p>
<p>Disclosable conduct</p>	<p>Disclosable conduct is defined in s 29 of the PID Act. It is conduct engaged in by an agency, a public official (in connection with their position as a public official) or a contracted service provider for a Commonwealth contract (in connection with entering into, or giving effect to, the contract). Disclosable conduct is:</p>

- conduct that contravenes a law of the Commonwealth, State or Territory;
- conduct in a foreign country that contravenes a law that is in force in the foreign country and is applicable to the agency, public official or contracted service provider and corresponds to a law in force in the ACT;
- conduct that perverts, or is engaged in for the purpose of perverting, or attempting to pervert, the course of justice;
- conduct that involves, or is engaged in for the purpose of, corruption of any other kind;
- conduct that constitutes maladministration, including conduct that:
 - is based, in whole or in part, on improper motives, or
 - is unreasonable, unjust or oppressive
 - is negligent;
- conduct that is an abuse of public trust;
- conduct that is fabrication, falsification, plagiarism, or deception, in relation to:
 - proposing, carrying out, or reporting on the results of scientific research, or
 - misconduct relating to scientific analysis, evaluation or the giving of scientific advice.
- conduct that results in wastage of public money or property, or money or property of a prescribed authority (including the National Library)
- conduct that unreasonably results in a danger to the health or safety of one or more persons, or that unreasonably results in a risk (or increased risk) of such danger
- conduct that results in a danger to the environment or a risk (increased risk) of such a danger
- conduct of a kind prescribed by the PID Rules
- conduct engaged in by a public official that involves, or is engaged in for the purpose of, the public official abusing their position as a public official
- conduct engaged in by a public official that could, if proved, give reasonable grounds for disciplinary action against the public official.

Disclosable conduct does not include:

- a policy or proposed policy of the Commonwealth Government
- action that has been, is being, or is proposed to be taken by a minister, the Speaker of the House of Representatives or the President of the Senate
- amounts, purposes or priorities of expenditure or proposed expenditure relating to such a policy or proposed policy, or such action or proposed act

	with which a person disagrees.
Discloser	A current or former public official who reports disclosable conduct in accordance with the PID Act.
Principal officer	The agency head – for the National Library, this is the Director-General.
Public interest disclosure (disclosure)	There are four types of disclosures covered by the PID Act – internal, external, legal practitioner and emergency disclosures. Further information is provided at paragraph 3.5 below.
Public official	<p>The term public official is defined very broadly in s 69 of the PID Act. It includes:</p> <ul style="list-style-type: none"> • the principal officer of a prescribed authority – for the National Library, this is the Director-General • a member of the staff of a prescribed authority, including an APS employee in the prescribed authority • an individual who is employed by the Commonwealth otherwise than as an APS employee and performs duties for a prescribed authority • an individual who is a contracted service provider for a Commonwealth contract – this may include contractors.an individual who is an officer or employee of a contracted services provider for a Commonwealth contract who provides services for the purposes of that contract, <p>A person can also be deemed by an authorised officer to be a public official in accordance with s 70 of the PID Act.</p>
Reprisal Officer	The person who undertakes risk assessment of reprisal action and takes steps to mitigate the risk of reprisal action being taken against the discloser.

3. Procedures

3.1. DISCLOSURE TO AN AUTHORISED OFFICERS

Where possible, public officials should make their disclosure to an authorised officer. Authorised officers have been trained in how to receive and handle disclosures. The National Library maintains a list of authorised officers for the purposes of the PID Act who have been appointed by the Director-General. The list of authorised officers can be accessed from the National Library's internet and intranet.

Further information for authorised officers is at **Attachment A** to these Procedures.

3.2. DISCLOSURE TO A SUPERVISOR

If a public official discloses information to a supervisor and the supervisor has reasonable grounds to believe that the information could concern disclosable conduct, the supervisor must give the information to an authorised officer as soon as reasonably practicable.

Further information for supervisors is at **Attachment B** to these Procedures.

3.3. PROTECTING CONFIDENTIALITY

Any information that a person obtains while performing a function or exercising their powers under the PID Act must be kept confidential, unless certain exemptions apply. It is a criminal offence to breach this requirement. The exemptions, which are set out in s 65(2) of the PID Act, are:

- for the purposes of the PID Act
- for the purposes of, or in connection with, the performance of a function, or the exercise of a power, of a person under the PID Act
- for the purposes of, or in connection with, taking action in response to a disclosure investigation
- the protected information has previously been lawfully published and is not intelligence information
- the protected information has previously been lawfully published, and the disclosure or use occurs with the consent of the principal officer of the agency referred to in section 66 as the source agency for intelligence information.

3.4. INTERNAL DISCLOSURES - INITIAL CONSIDERATION AND ALLOCATION

Step 1: The authorised officer will consider whether the internal disclosure meets the requirements of the PID Act

Disclosures can be made by current or past public officials. The PID Act defines a public official broadly and includes a provision (s 70) for a person to be deemed to be a public official.

The conduct must be of a kind defined in s 29 of the PID Act and set out in the 'Definitions' section of this Procedure.

The conduct must have been engaged in by:

- an agency
- a public official, in connection with their position as a public official
- a contracted service provider for a Commonwealth contract, in connection with entering into or giving effect to that contract.

The disclosure must tend to show, or the discloser must have reasonable grounds for believing that the information they disclose tends to show, one or more instances of disclosable conduct.

An internal disclosure can be made to:

- an authorised officer of the agency to which the discloser belongs or of the agency to which the disclosable conduct relates
- a supervisor of the discloser
- the Commonwealth Ombudsman (Ombudsman) if the conduct disclosed does not relate to an intelligence agency and the discloser believes on reasonable grounds that it would be appropriate for the disclosure to be investigated by the Ombudsman)

- the Inspector General of Intelligence and Security (IGIS) (if the conduct disclosed relates to an intelligence agency and the discloser believes on reasonable grounds it would be appropriate for the disclosure to be investigated by IGIS).

A discloser may be made anonymously or using a pseudonym.

A disclosure can be made orally or in writing.

Further information for disclosers and potential disclosers is at **Attachment C** to these Procedures.

The disclosure will not be allocated if the 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.

If the authorised officer does not allocate the disclosure, and if it is reasonably practicable to contact the discloser, the authorised officer must inform the discloser of:

- the reasons why the disclosure has not been allocated
- any other courses of action that might be available the discloser under other laws of the Commonwealth.

Step 2: The authorised officer will allocate the disclosure

The authorised officer may obtain information and make such enquiries as they see 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.

The authorised officer must use their best endeavours to make the allocation decision within 14 days after the disclosure is made to the authorised officer.

In deciding which agency the disclosure will be allocated to, the authorised officer must have regard to the requirements of the PID Act, particularly s 43(3), and any other matters that the authorised officer considers relevant. The authorised officer cannot allocate the disclosure to another agency unless an authorised officer of that agency has consented to the allocation.

In making the allocation decision, the authorised officer will have regard to:

- the requirements of the PID Act, and other regulations and rules that apply (e.g. that agencies should generally only deal with disclosures that relate to themselves); and
- any other matters that the authorised officer considers relevant.

Step 3: The authorised officer will notify the relevant parties of the allocation decision, and of certain other information as required by the PID Act

When the authorised officer allocates the handling of a disclosure to an agency, the authorised officer 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 (if any)
- if the discloser's name and contact details are known to the authorised officer, and the discloser consents to the principal officer being informed, the discloser's name and contact details.

The authorised officer must also provide the information outlined above to:

- if the disclosure is allocated to an agency that is not the Ombudsman, the IGIS or an intelligence agency – the Ombudsman
- if the disclosure is allocated to an intelligence agency – the IGIS.

The authorised officer must inform the discloser of the allocation.

Step 4: The authorised officer will make a record of the allocation decision

The authorised officer must keep a confidential, written records of the allocation decision, including:

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

The authorised officer must also keep appropriate confidential records of whether the discloser was informed of the allocation decision including the day and time of notification, the means by which notification occurred and the content of the notification.

The Director-General will require authorised officers to report on the number of disclosures they have received and allocation decisions in respect of those disclosures at least once a year.

3.5. OTHER TYPES OF DISCLOSURES

External disclosures

An external disclosure can only be made where an internal disclosure of the same information has already been made. There are a number of requirements under the PID Act which must be met.

The PID Act provides that an external disclosure can be made to anyone other than a foreign public official. To be afforded the protections under the PID Act when making an external disclosure, the discloser must:

- have information which tends to show, or information which the discloser believes on reasonable grounds tends to show, one or more instances of disclosable conduct and
- first have made an internal disclosure of the information that comprises the external disclosure.

Where an investigation into an internal disclosure has commenced or was required, but the investigation was not completed within the statutory time limit or the discloser believes, on reasonable grounds, that the internal disclosure was handled inadequately, for example the investigation or the response to the investigation was inadequate, they may then make an external disclosure and be afforded the protections of the PID Act, provided that:

- the external disclosure is not contrary to the public interest

- the disclosure does not disclose any more information than: (i) was disclosed in the internal disclosure; and (ii) is reasonably necessary to identify one or more instances of disclosable conduct
- no intelligence information has been disclosed and
- the information must not relate to an intelligence agency.

Legal practitioner disclosures

A public official may make a disclosure to a legal practitioner for the purpose of obtaining legal advice, or professional assistance relevant to a public interest disclosure. For the purpose of the PID Act, a legal practitioner is an Australian lawyer who holds a practising certificate under legislation regulating the legal profession of each State or Territory. For example, in the ACT, this is the *Legal Profession Act 2006 (ACT)*.

The disclosure must not include intelligence information, and in circumstances where the discloser knows, or should know, that the information has a national security or other protective security clearance, the legal practitioner must hold the appropriate level of security clearance.

Emergency disclosures

A public official may make an emergency disclosure to any person, other than a foreign public official, where:

- the public official believes, on reasonable grounds, that the information poses a substantial and imminent danger to the health and safety of one or more persons or the environment
- the extent of the information disclosed is no greater than is necessary to alert the recipient to the substantial and imminent danger
- if the discloser has not previously made an internal disclosure of the same information, there are exceptional circumstances justifying the Discloser's failure to make such an internal disclosure
- if the discloser has previously made an internal disclosure of the same information, there are exceptional circumstances justifying the disclosure being made before a disclosure investigation of the internal disclosure is completed
- no intelligence information is disclosed.

Disclosures outside the PID Act

In the course of their duties, public officials are likely to come across private and sensitive information. Maintaining strict confidentiality is an important part of a public official's role and this obligation is often backed up by administrative and criminal penalties.

A public official will not receive any protection under the PID Act if they release information to someone outside of the Government, for example a journalist, Member of Parliament or a union representative, unless the conditions for an external, legal practitioner or emergency disclosure are met.

3.6. RISK ASSESSMENT OF REPRISAL ACTION

Conducting a risk assessment

Risk assessments will be required at various stages once a disclosure is made. The first risk assessment should be conducted by the authorised officer when they are allocating the disclosure. A further risk assessment can be carried out when a disclosure is allocated to the National Library. It is necessary to assess the risk that any reprisal action may be taken against the discloser, and this risk may change as the matter progresses.

The person conducting the risk assessment should take into account all relevant factors, including:

- the likelihood of the discloser being identified due to the size of the work area in which the discloser is located
- the number of people who are aware of the information leading to the disclosure or who are likely to become aware during an investigation
- the number of people implicated in the disclosure
- the subject matter of the disclosure and if it will be difficult for the discloser not to discuss the disclosure in the workplace
- the culture of the workplace and whether there is history of conflict in the work area
- whether any specific threats against the discloser have been made
- whether there are allegations about individuals in the disclosure
- whether the disclosure can be investigated while maintaining confidentiality
- the subject matter and significance of the issue being disclosed
- the likely outcome if the conduct disclosed is substantiated
- whether the discloser is isolated
- whether the alleged wrongdoing that is the subject of the disclosure was directed at the discloser
- the relative positions of the discloser and the person whose alleged wrongdoing is the subject of the disclosure (i.e. especially any vulnerability).

The following risk assessment matrix can be used when assessing risks of reprisals:

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

What constitutes reprisal action?

A person (the first person) takes a reprisal against another person (the second person) if:

- the first person causes (by act or omission) any detriment to the second person and

- when the act or omission occurs, the first person believes or suspects that the second person or any other person made, may have made or proposes to make a disclosure and
- that belief or suspicion is the reason, or part of the reason, for the act or omission.

Detriment includes any disadvantage, such as:

- dismissal of an employee
- injury of an employee in his or her employment
- alteration of an employee's position to his or her detriment
- discrimination between an employee and other employees of the same employer.

It is a criminal offence to take reprisal action or cause detriment to a person because they have, or are suspected to have, made a disclosure. Threatening reprisal action is also a criminal offence.

Examples of reprisals

- Occasional or one-off action that is likely to have a relatively minor adverse effect on the person (e.g. a singular exclusion of the person from a social activity)
- Repeated action which is likely to have an adverse effect on the person (e.g. routinely failing to "CC" the person on relevant work-related emails)
- Sustained or one-off action which has a significant impact on the person (e.g. consistently excluding the person from team discussions or imposing a negative performance assessment on the person)
- Action which is likely to have a very severe impact on the person (e.g. physical violence or the denial of a promotion opportunity).

Taking steps to minimise risks

The person conducting the risk assessment will need to take steps to mitigate the risk of reprisals being taken against the discloser. These steps may include some or all of the support measures set out below and could include raising the matter with employees or reminding staff that taking or threatening to take a reprisal against a discloser is a criminal offence.

The person conducting the risk assessment should monitor the risks throughout the investigation process and adjust the mitigation steps if necessary.

Where appropriate, the person conducting the risk assessment may consult with the Director, Governance or Assistant Director – Legal, to support the conduct of the risk assessment.

3.7. PROTECTION FOR DISCLOSERS AND OTHERS

The PID Act provides strong protection for disclosers, including:

- protection of their identity (subject to limited exceptions)
- immunity from civil, criminal or administrative liability for making the disclosure

- support and protection from reprisal
- recourse to court for remedies for any reprisal action.

Protecting the identity of a discloser

It is a criminal offence to use or disclose information that may identify that a person has made a disclosure, unless certain exemptions apply. These exemptions are set out in s 20(3) of the PID Act:

- the use or disclosure is for the purposes of the PID Act
- the use or disclosure is in connection with the performance of a function conferred on the Ombudsman or the IGIS by their enabling legislation
- the use or disclosure is for the purposes of a Commonwealth law or a prescribed State or Territory law
- the discloser consents to the use or disclosure
- the identifying information has previously been lawfully published.

Protecting disclosure information

A person must not use or disclose information that they obtain in the course of a disclosure investigation or while exercising their powers under the PID Act must be kept confidential, unless certain exemptions apply. It is a criminal offence to breach this requirement. The exemptions are set out in section 65(2) of the PID Act:

- the use or disclosure is for the purposes of the PID Act
- the use or disclosure is for the purposes of, or in connection with, the performance of a function, or the exercise of a power, of a person under the PID Act
- the use or disclosure is for the purposes of, or in connection with, taking action in response to a disclosure investigation
- the protected information has previously been lawfully published and is not intelligence information
- the protected information has previously been lawfully published, and the disclosure or use occurs with the consent of the principal officer of the agency referred to in section 66 as the source agency for intelligence information.

Immunity from civil, criminal or administrative liability

A person who makes a public interest disclosure will not be liable to have any civil, criminal or administrative action (including disciplinary action) taken against them for making the disclosure. Contractual or other rights also cannot be enforced against a person because they made a disclosure.

However, there are three exceptions to this. Immunity will not apply:

- where the discloser makes a statement which they know is false or misleading
- to protect a person from liability for specific offences under the *Criminal Code Act 1995*, namely giving false or misleading information or documents, making a false document, or using a forged document

- for making a disclosure that contravenes a designated publication restriction, except in certain circumstances.

In addition, if a public official makes a disclosure about their own conduct, the making of the disclosure does not protect them from liability for that conduct.

Protection for witnesses

Public officials are obliged to use their best endeavours to assist with a PID investigation.

A person will not be subject to any criminal or civil liability because the person, voluntarily or otherwise, gives information, produces a document or answers a question where:

- they have done so where requested by a person conducting a disclosure investigation
- the information, document or answer is relevant to the investigation.

There are some limited exceptions to the protection available to witnesses. For example, there is no protection from liability for an offence against section 137.1, 137.2, 144.1 or 145.1 of the *Criminal Code Act 1995* that relate to the information, document or answer.

There is also a common law privilege against self-incrimination. This means a person may refuse to answer any question, or to produce any document or thing, if to do so may expose the person to conviction for a crime.

There is also a common law penalty privilege. Natural persons (as distinct from corporations) can rely on the privilege against exposure to penalties in some contexts.

Limitations

Making a public interest disclosure does not prevent supervisors and managers from addressing any unrelated unsatisfactory performance or misconduct by the discloser in the workplace.

Support for disclosers

Regardless of the outcome of the risk assessment, the principal officer is obliged to take all reasonable steps to protect public officials who have made a disclosure from real, or threats of, detriment arising from the disclosure. This may include:

- appointing a support person to assist the discloser and/or advising of the National Library's Employee Assistance Program;
- informing the discloser of the progress of the investigation; and/or
- transferring the discloser to a different work area within the National Library (with the consent of the discloser).

Support for a person against whom a disclosure has been made

The person conducting the risk assessment will also take steps to support any employee who is the subject of a disclosure allegation and/or investigation. This may include:

- advising the employee of their rights and obligations under the PID Act and about the National Library's investigation procedures, including the employee's rights to procedural fairness
- advising the employee of the availability of the National Library's Employee Assistance Program
- ensuring that the identity of the employee is kept confidential as far as reasonably practicable
- re-assigning the employee to a different work area within the National Library.

3.8. **INVESTIGATING DISCLOSURES**

Provide initial information to disclosers

Where a disclosure is allocated to the National Library, the principal officer (or delegate) must provide the discloser with information about their power to:

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

Where it is reasonably practicable, the principal officer (or delegate) should give the discloser this information within 14 days of the allocation of the disclosure.

The obligation to investigate disclosures

Section 47 of the PID Act requires the principal officer to investigate a disclosure, which can include considering whether a different investigation should be conducted under another Commonwealth law. The investigation must be completed within 90 days from the date of allocation, but the principal officer can request an extension of time to complete the investigation from the Ombudsman. The Ombudsman can only grant an extension before the 90 days expires and requires a request to be made 21 days prior to the due date.

The discretion to not investigate a disclosure

Section 48 of the PID Act provides a discretion to not investigate a disclosure, or to not investigate a disclosure further in certain circumstances, namely where:

- the discloser is not and has never been a public official
- the information does not, to any extent, concern serious disclosable conduct
- the disclosure is frivolous or vexatious
- the information is the same, or substantially the same, as information which has been, or is being, investigated under the PID Act
- the information is the same, or substantially the same, as information which is being investigated under another law or the executive power of the Commonwealth and it would be inappropriate to conduct another investigation at the same time

- the information is the same, or substantially the same, as information which has been investigated under another law or the executive power of the Commonwealth and the principal officer is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation
- the discloser has informed the principal officer of an agency that they do not wish an investigation to be pursued, and the principal officer is reasonably satisfied that there are no other matters concerning the disclosure that warrant investigation
- the investigation is impractical because:
 - the discloser's name and contact details have not been disclosed
 - the discloser refuses or fails to provide the information or assistance that the investigator asks for
 - of the age of the information.

Notify the discloser and Ombudsman

If the principal officer (or delegate) decides to exercise their discretion to not investigate the disclosure

Where it is reasonably practicable to contact the discloser, the principal officer (or delegate) will inform the discloser of:

- the decision to not investigate the disclosure
- the reasons for the decision not to investigate
- any courses of action that might be available under other laws of the Commonwealth.

The principal officer (or delegate) must also inform the Ombudsman of the decision to not investigate and the reasons for that decision. The Ombudsman has a [notification form](#) for this purpose.

Where the disclosure is to be investigated

Otherwise, the principal officer (or delegate) will inform the discloser (as soon as practicable) of:

- the decision to investigate the disclosure and
- the estimated length of the investigation.

Conduct the investigation

The principal officer may delegate their power to investigate the disclosure to an investigator. The investigation may be conducted by an internal investigator or an independent person (i.e. external to the Library) as long as the investigator has been delegated the principal officer's relevant powers.

Where the principal officer (or delegate) commences an investigation but then decides not to investigate the disclosure further pursuant to s 48 of the PID Act, the principal officer (or

delegate) must inform the discloser of the decision and reasons, and any other courses of action that may be available to the discloser under other laws of the Commonwealth. This does not apply if the principal officer (or delegate) is not able to contact the discloser. The principal officer (or delegate) must also advise the Ombudsman of the decision and reasons.

The investigation must be completed within 90 days of the allocation of the disclosure.

It is possible to seek an extension of time to complete the investigation from the Ombudsman. Any application for an extension of time must be made to the Ombudsman before the 90 day deadline expires.

General principles of the investigation

The purpose of the investigation is to investigate whether there are one or more instances of disclosable conduct.

The investigator is expected to keep the principal officer informed of the progress of the investigation, including for the purposes of satisfying time limits.

The following principles will apply to the conduct of a PID investigation:

- maintaining the confidentiality of the identity of the discloser as much as possible
- due regard for the privacy of all parties
- conducting the investigation in accordance with the principles of procedural fairness
- a person who is the subject of the investigation will have an opportunity to respond or provide information
- any evidence relied upon must be credible, relevant and significant
- findings of fact will be based on logically probative evidence
- decisions will be made on the balance of probabilities
- compliance with the PID Act
- complying with the restrictions on use and disclosure of information that are contained in ss 20 and 65 of the PID Act
- compliance with the *Public Interest Disclosure Standard 2013*
- where the matter involves fraud or possible fraud, compliance with the *Commonwealth Fraud Control Framework*, the *Australian Government Investigations Standards* and the *Commonwealth Fraud Control Policy*
- where the matter involves a possible breach of the Code of Conduct (Code), as specified in the *Public Service Act 1999*, compliance with the OAIIC's *APS Code of Conduct Procedures* if an investigation is conducted under the PID Act (rather than deciding under s 47(3) that a Code of Conduct process should be conducted instead of a PID investigation).

The investigation can be undertaken as the investigator sees fit. This may include:

- initial review of the disclosure

- deciding whether it is necessary to interview or obtain additional evidence from the discloser
- reviewing existing records held by the National Library
- interviewing other employees of the National Library.

Public officials are obliged to use their best endeavours to assist a PID investigation.

The investigator must determine whether the evidence gathered is sufficient to prove a fact. The standard of proof for determining whether evidence is sufficient to prove a fact is the balance of probabilities. A fact is taken to have been proven on the balance of probabilities if the investigator is satisfied it is more likely than not that the fact is true.

The investigator must ensure that the evidence relied upon in an investigation is credible, relevant and significant.

Additional procedures required in particular circumstances

If a disclosure relates to conduct that would require the National Library to take steps under the National Library's:

- *Fraud Control Plan*;
- *Managing Misconduct Procedures*; or
- any other of the National Library's policies or procedures,

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

If the investigator considers that information disclosed in the course of a disclosure investigation may be appropriately dealt with under another procedure or policy of the National Library, the investigator may recommend in the investigation report that this occur and the principal officer may refer the matter to the relevant officer of the National Library.

Obtain information during the investigation

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

When conducting interviews, the investigator will inform the interviewee of:

- the identity and function of each individual conducting an interview;
- the process of conducting an investigation;
- the authority of the investigator under the PID Act to conduct an investigation; and
- the protections provided to witnesses under section 57 of the PID Act.

The investigator will ensure:

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

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

Finalise the investigation

The principal officer (or delegate) can decide to stop an investigation after it has commenced in the same circumstances as the principal officer (or delegate) can exercise their discretion to not investigate a disclosure under s 48 of the PID Act.

The principal officer must take appropriate action in response to the recommendations and any other information in the investigation report, which may include:

- referral for a misconduct or grievance process
- referral to the police or another body for further action
- mediation or another form of conflict resolution
- internal audit or other review of the activities or operations of the National Library
- changing or implementing new policies, procedures or practices
- conducting training and awareness sessions for staff.

Referral of information to police and others

If, during the course of an investigation, the investigator suspects on reasonable grounds that some of the information disclosed or obtained in the course of the investigation is evidence of a crime, the investigator may disclose the information to a member of an Australian police force. If the information relates to an offence that is punishable for a period of at least two years, the delegate must disclose the information to a member of an Australian police force.

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

Prepare an investigation report

The principal officer (or delegate) is responsible for preparing an investigation report. The investigation must be completed, and the report prepared, within 90 days after the disclosure was allocated, unless this period is extended by the Ombudsman. Any request for an extension of time should be made using the Ombudsman's request for extension of time

[form](#). If the period is extended, the principal officer (or delegate) will inform the discloser of the progress of the investigation.

Content of the report

The investigation report must set out:

- whether there have been one or more instances of disclosable conduct
- the matters considered in the course of the investigation
- the duration of the investigation
- steps taken to gather evidence
- a summary of the evidence, as well as any findings and recommendations based on that evidence
- the investigator's findings (if any)
- any regulations, rules, administrative requirements or similar matters to which the disclosable conduct relates
- the action (if any) that has been, or is being, recommended to be taken
- any claims made about, and evidence of, detrimental action taken against the discloser and the National Library's response to those claims and that evidence.

Provision of the report to principal officer

A copy of the report must be provided to the Director-General.

Provision of the report to the discloser

If it is reasonably practicable to contact the discloser, the principal officer (or delegate) must provide the discloser with a copy of the report within a reasonable time after preparing the report. However, the following material may be deleted from the copy of the report given to the discloser:

- material that is likely to enable the identity of the discloser or another person
- material which would generally be exempt for the purposes of Part IV of the *Freedom of Information Act 1982*
- material which would result in the document having, or being required to have, a national security or other protective security classification
- intelligence information
- Information which would contravene a designated publication restriction.

4. Review

These procedure will be reviewed every 3 years to ensure that they remained aligned with legislation.

5. References and related documents

The following documents and/or legislation were considered when developing this policy:

- *Public Interest Disclosure Act 2013*
- *Commonwealth Fraud Control Framework*
- *Australian Government Investigations Standards*
- *Commonwealth Fraud Control Policy*
- *Public Service Act 1999*
- Office of the Australian Information Commissioner's (OAIC) *APS Code of Conduct Procedures*
- the Library's *Fraud Control Plan*
- the Library's *Managing Misconduct Procedures*

Further guidance material is available on the Ombudsman's [website](#). In particular, the Ombudsman's 'Handling a PID Flowchart' is provided for reference at **Attachment E** to these Procedures.

Attachment A**Information for authorised officers**

Authorised officers in the National Library have a range of responsibilities and functions. These include:

- explaining the requirements of the PID Act and protections available to disclosers and potential disclosers
- receiving disclosures
- where appropriate, deeming a person to be a public official for the purposes of the PID Act
- making and processing decisions about whether or not to allocate disclosures in accordance with these Procedures, the PID Act and the PID Standard
- assessing risks of reprisal
- keeping information confidential and making required records
- consenting to receive disclosures from another agency, where appropriate.

When a public official or former public official makes a disclosure to an authorised officer, the authorised officer will make a written record.

The authorised officer may obtain information and make such enquiries as they see 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.

See section 3.4 of these Procedures for further information on allocating disclosures.

Information for supervisors

Where a disclosure is made to a supervisor, the supervisor must make a written record of the disclosure, including the substance of the disclosure and the time and date of the disclosure.

The supervisor should ask the discloser to sign the record of the disclosure, where this is practicable.

Where a public official discloses information to their supervisor and the supervisor has reasonable grounds to believe that the information could concern disclosable conduct, the supervisor must, as soon as practicable, give the information to an authorised officer in the National Library.

The supervisor must not undertake an investigation of the disclosure in order to decide whether or not to give the information to an authorised officer.

At the time a supervisor gives information to an authorised officer, they should also give the authorised officer their assessment of any risks of reprisal action that might be taken against the person who disclosed the information to the supervisor.

Where a supervisor has given information to an authorised officer, and where the supervisor is able to contact the discloser, they should inform the discloser that they have given the information to an authorised officer and advise the discloser of the name and contact details of that authorised officer.

Information for disclosers and potential disclosers

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

The disclosure can be made anonymously, or the discloser may use a pseudonym. The discloser does not have to consent to their name and contact details being provided to the Principal Officer (or delegate).

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

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

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. The Principal Officer (or delegate) may have regard to the discloser's wishes.

Rights of disclosers

A discloser has rights to the protections set out in the PID Act, including protection from reprisals, from civil and criminal liability, and from the disclosure of their identity where the disclosure is made anonymously. However, a disclosure does not protect the discloser from the consequences of their own wrongdoing, including where they have been involved in the misconduct that they are reporting.

During the disclosure process (including the investigation), and where it is reasonably practicable to contact the discloser, the discloser will be updated on the progress of the matter, including:

- any decision that a disclosure does not meet the requirements of the PID Act and therefore will not be allocated
- the allocation of the disclosure
- any decision to exercise the discretion to not investigate the disclosure, as well as reasons for the decision and any other avenues which may be available to the discloser under other Commonwealth laws
- any decision to investigate the disclosure
- the estimated duration of the investigation into their disclosure
- if an investigation is conducted under the PID Act and an extension of time is granted by the Ombudsman or IGIS, the progress of the investigation

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

The discloser will be supported, including as outlined at part 3.7 of these Procedures.

Responsibilities of disclosers

The discloser must:

- comply with the PID Act requirements and these Procedures when making a disclosure
- use their best endeavours to assist the principal officer of any agency in the conduct of an investigation
- use their best endeavours to assist the Ombudsman in the performance of the Ombudsman's functions under the PID Act
- use their best endeavours to assist the IGIS in the performance of the IGIS's functions under the PID Act
- report to the Director-General any detriment the discloser believes they have been subjected to as a result of making the disclosure.

Rights and responsibilities of persons who are the subject of a disclosure

Rights

A National Library employee who is the subject of a disclosure will be:

- given support in accordance with these Procedures
- able to seek assistance from the Ombudsman in relation to the operation of the PID Act
- entitled to procedural fairness in the course of any investigation.

A person will not be subject to any criminal or civil liability because the person, voluntarily or otherwise, gives information, produces a document or answers a question where:

- they have done so where requested by a person conducting a disclosure investigation
- the information, document or answer is relevant to the investigation.

There are some limited exceptions to the protection available to witnesses. For example, there is no protection from liability for an offence against section 137.1, 137.2, 144.1 or 145.1 of the *Criminal Code Act 1995* that relate to the information, document or answer (e.g. false and misleading information or documents, forgery).

There is also a common law privilege against self-incrimination. This means a person may refuse to answer any question, or to produce any document or thing, if to do so may expose the person to conviction for a crime.

There is also a common law penalty privilege. Natural persons (as distinct from corporations) can rely on the privilege against exposure to penalties in some contexts.

Responsibilities

A National Library employee who is the subject of a disclosure must:

- use their best endeavours to assist the principal officer of any agency in the conduct of an investigation
- use their best endeavours to assist the Ombudsman in the performance of the Ombudsman's functions under the PID Act
- use their best endeavours to assist the IGIS in the performance of the IGIS's functions under the PID Act

- comply with action taken by the National Library to address risks or concerns in relation to the PID
- ensure their behaviour does not constitute reprisal action, or threats of reprisal action, against any person that they know or suspect may have made the disclosure

An employee who is the subject of a disclosure should also be aware that the outcome of an investigation under the Procedures set out in this document may result in another, different investigation (for example, a Code of Conduct investigation) taking place.

Receiving a potential internal PID

(referred to below as a PID)

Upon receipt of a potential PID, the **authorised officer** should:

- » advise the person making the disclosure of the process and available support (s 7 PID Standard)
- » seek their consent to identify them to the principal officer (PID Act s 44(1)(d))
- » make preliminary inquiries, where necessary (PID Act s 43(4))
- » if verbal, make a written record of the disclosed information

Assessing the potential PID

The **authorised officer** assesses the potential PID to establish:

- » is the person making the disclosure a current or former public official (PID Act s 26(1)(a) & s 69) (if not is it appropriate to deem them a public official (PID Act s 70))
- » was the information received by an authorised internal recipient (PID Act s 26 (Item 1, Column 2) & s 34)
- » does the disclosed information (PID Act s 26 (Item 1, Column 3) & s 29):
 - reasonably tend to show disclosable conduct, or
 - does the person making the disclosure reasonably believe that it tends to show disclosable conduct

Yes, it is a PID

The **authorised officer** must:

- » consider where to allocate the internal PID (PID Act s 43(3) & s 43(6))
- » allocate the PID (PID Act s 43(1))
- » where practicable, notify the discloser (PID Act s 44(2) & s 44(4))
- » notify the principal officer (PID Act s 44(1))
- » notify the Ombudsman (PID Act s 44(1A))
- » make a record (s 6 PID Standard)
- » refer to reprisal officer for a risk assessment

No, it is not a PID

The **authorised officer** must:

- » where practicable, notify the person who made the disclosure and refer to other relevant processes (PID Act s 44(3), s 44(4) & s 43(2))
- » make a record (s 6 PID Standard)

Conducting a risk assessment

The **reprisal officer** should:

- » conduct a risk assessment following the agency's reprisal risk management procedures (PID Act s 59(1)(a))
- » assess the risk of reprisal and workplace conflict and identify mitigation strategies (PID Act ss 13, 19)
- » take action to prevent or address harm (PID Act s 59(3)(a))
- » monitor and review the assessment and actions, keeping appropriate records

Investigating a PID

The **principal officer (or their delegate)** should:

- » consider how to investigate and whether there are grounds to not investigate (PID Act ss 47(3) & 48)

Yes, investigate

The **principal officer (or their delegate)** must:

- » notify the discloser (PID Act s 50(1)(a), s 50(1A), s 50(5) & s 9 PID Standard)
- » conduct the investigation (PID Act s 47(2), s 47(3), s 52, s 53, s 54, Part 3, PID Standard)
- » seek an extension of time if required (PID Act s 52(3))
- » consider whether there are grounds to cease investigating (PID Act s 48)

No, do not investigate under the PID Act

The **principal officer (or their delegate)** must:

- » consider whether other action is appropriate to investigate or respond to the disclosed information (PID Act s 48(2))
- » notify the discloser (PID Act ss 50(1)(b), 50(2) & s 50(5))
- » notify the Ombudsman (PID Act s 50A(1))

Finalising the investigation and taking action

The **principal officer (or their delegate)** must:

- » finalise a report of the investigation (PID Act s 51, s 13 PID Standard)
- » make redactions if appropriate (PID Act s 51(5))
- » provide a copy to the discloser (PID Act s 51(4), s 51(6))
- » take action in relation to any recommendations

! REMEMBER!

A person who has made a disclosure can complain to the Ombudsman if they are unhappy with the agency's handling of the PID.

A public official who has already made an internal PID may be able to make an external disclosure about the same matter if that is not on balance contrary to the public interest and (PID Act s 26 Item 2):

- » the PID investigation is not completed within the allowed time under the PID Act, or
- » the discloser reasonably believes that:
 - the PID investigation was inadequate, or
 - the response to the PID investigation was inadequate.

14 DAYS

90 DAYS