



National Australia Day Council

Public Interest Disclosure Procedures

Declaration pursuant to section 59 of the *Public Interest Disclosure Act 2013 (Cth)*

The National Australia Day Council Limited (**NADC**) is committed to:

- upholding the highest standards of integrity and accountability; and
- providing support for officials who report wrongdoing.

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

The procedures must:

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

I, Mark Fraser, Chief Executive Officer of the NADC, hereby:

- REVOKE all previous procedures of the NADC under the PID Act; and
- ESTABLISH these procedures to take effect upon execution.



Mark Fraser AO CVO
Chief Executive Officer
National Australia Day Council

7 December 2023

Public Interest Disclosure Procedures

Table of contents

1. Introduction	5
2. About Public Interest Disclosures	5
2.1 What is a public interest disclosure?.....	5
2.2 The PID legislative framework	5
2.3 The NADC’s Authorised Officers	6
2.4 Public officials	6
2.5 Disclosable conduct	6
2.6 Exception for ‘personal work-related conduct’	7
3. Making a Public Interest Disclosure	8
3.1 Making a disclosure under the PID Act.....	8
3.2 Form of disclosure.....	9
3.3 Advice for disclosers in making a disclosure	9
4. Procedures for supervisors	9
4.1 Application.....	9
4.2 Responsibilities of supervisors.....	10
5. Procedures for Authorised Officers	11
5.1 Role of Authorised Officers	11
5.2 Responsibilities of Authorised Officers	11
5.3 Providing initial information to discloser.....	11
5.4 Considering whether or not a disclosure should be allocated	11
5.5 Where the Authorised Officer decides to not allocate the disclosure	12
5.6 Stop action directions under the NACC Act.....	13
5.7 Where the Authorised Officer decides to allocate the disclosure	13
6. Procedures for Principal Officers	14
6.1 Role of Principal Officers.....	14
6.2 Responsibilities of Principal Officers.....	15
6.3 Notifying the discloser	15
6.4 Considering whether an investigation is required	15
6.5 If the Principal Officer decides not to investigate or further investigate disclosure.....	16
6.6 If the disclosure cannot be investigated because of a stop action direction.....	17
6.7 If the Principal Officer decides to investigate the disclosure.....	17
7. Investigations	18
7.1 Notification of investigation	18
7.2 Conducting an investigation	18
7.3 General principles for investigations	18
7.4 Suspicion of criminal offences and/or fraud	19
7.5 The PID investigation report	20
7.6 Copies of the PID investigation report	21
8. Confidentiality and authorised information sharing	21
8.1 Confidentiality.....	21
8.2 Authorised information sharing between agencies	22
9. Support for public officials in the PID process	22
9.1 Protection for the discloser	22
9.2 Protection for witnesses in a PID investigation	23
9.3 Protection for officials exercising powers or performing functions under the PID Act.....	23
9.4 Protecting from detriment and reprisal.....	24
9.5 Supporting and protecting disclosers and witnesses.....	24
9.6 Supporting an employee who is the subject of a PID	25

10. Persons who are the subject of a PID	25
11. Risk assessments	26
11.1 Conducting a risk assessment.....	26
11.2 Development of a risk mitigation strategy.....	26
11.3 Risk assessments for anonymous disclosers	27
12. Interaction with the National Anti-Corruption Commission.....	27
12.1 Mandatory referral to the NACC	27
12.2 Stop action direction under the NACC Act	28
12.3 Informing the NACC.....	29
12.4 Exceptions to notification requirements	29
12.5 Notifying the discloser.....	29
13. Other disclosures	29
13.1 External disclosures.....	30
13.2 Emergency disclosures.....	30
13.3 Legal practitioner disclosures	31
14. Records management.....	31
15. Review	31
Schedule 1 – Risk assessment information	32
1. Risk matrix	32
1.1 Overview	32
1.2 Examples of the seriousness of reprisals	32
1.3 Criteria for assessment of the likelihood of potential reprisals and their likely seriousness	32
1.4 Indicators of a higher risk of reprisals or workplace conflict	33
1.5 Risk assessment matrix	34

Public Interest Disclosure Procedures

1. Introduction

- (a) This document sets out the National Australia Day Council (**NADC**)'s procedures for facilitating and dealing with public interest disclosures (**PIDs**) for the purpose of section 59(3) of the *Public Interest Disclosure Act 2013* (Cth) (**PID Act**) (hereafter referred to as **these Procedures**).
- (b) As a Commonwealth company, the NADC falls within the section 72 definition of a 'prescribed authority' under the PID Act and is therefore considered an 'agency' that is subject to the PID Act.¹
- (c) The NADC is committed to the highest standards of ethical and accountable conduct. The NADC encourages and supports the reporting of wrongdoing by public officials in accordance with the PID Act and will take active steps to support and protect persons who make disclosures under the PID Act from any reprisals or threats of reprisals.
- (d) The operation of these Procedures will be reviewed regularly to ensure their continued effectiveness.

2. About Public Interest Disclosures

2.1 What is a public interest disclosure?

- (a) A disclosure of information will only be a PID to which these Procedures relate if it meets the following requirements:
 - (i) it is made by a current or former public official (or a person deemed to be a public official);
 - (ii) the information tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of 'disclosable conduct' as defined by the PID Act; and
 - (iii) the disclosure is made to an appropriate person, including an Authorised Officer or the supervisor of the discloser.
- (b) Only if each of the above requirements has been met will the disclosure be covered by the PID Act and the discloser have the benefit of the protections that it confers.
- (c) Anyone contemplating making a disclosure should carefully review the PID Act and seek legal advice where appropriate in order to determine whether the disclosure can be made in a way that attracts the protections of the PID Act.

2.2 The PID legislative framework

- (a) The PID framework promotes the integrity and accountability of the Commonwealth public sector alongside existing schemes related to notifications, investigations, complaint handling and corruption. The PID framework consists of the following:
 - (i) the PID Act;²
 - (ii) the *Public Interest Disclosure Rules 2019* (Cth) made under section 83 of the PID Act (**PID Rules**);³ and

¹ PID Act, section 71(1)(b).

² Available at <https://www.legislation.gov.au/Current/C2023C00211>.

³ Available at <https://www.legislation.gov.au/Current/F2019L01322>.

- (iii) the *Public Interest Disclosure Standard 2013* (Cth) determined by the Commonwealth Ombudsman (**Ombudsman**) under section 74(1) of the PID Act (**PID Standard**).⁴
- (b) This legislative framework is supported by the [Agency Guide to the Public Interest Disclosure Act 2013 \(Cth\)](#) issued by the Ombudsman (**Ombudsman's Agency Guide**).⁵

2.3 The NADC's Authorised Officers

- (a) Under the PID Act, an agency's Principal Officer is also an Authorised Officer. The NADC's Principal Officer is Mark Fraser, Chief Executive Officer (**CEO**).
- (b) The Principal Officer may also appoint in writing additional Authorised Officers. A list of Authorised Officers for the purposes of the PID Act who have been appointed by the CEO is available on the NADC's website at <https://australiaday.org.au/about/nadc/public-interest-disclosures>.
- (c) A PID can be made to an Authorised Officer of the NADC if the PID relates to the NADC or if the discloser belongs, or last belonged, to the NADC.

2.4 Public officials

- (a) To make a PID, a person must be a current or former 'public official'.⁶ Relevantly for the NADC, this includes current and former directors and staff of the NADC, APS employees of other entities, any person who exercises or exercised powers under a Commonwealth law, and contracted service providers (including their officers, employees and subcontractors).⁷
- (b) An Authorised Officer may also deem an individual is a public official if they reasonably believe the individual has information about wrongdoing and proposes to make a PID.⁸

2.5 Disclosable conduct

- (a) A current or former public official can disclose information that they believe, on reasonable grounds, tends to show disclosable conduct.
- (b) Sections 29 and 29A of the PID Act define 'disclosable conduct'. That definition applies for the purposes of these Procedures.
- (c) Disclosable conduct is conduct of a kind mentioned in paragraphs (d) or (e) below that is engaged in by:
 - (i) an agency;
 - (ii) a public official in connection with their position; or
 - (iii) a contracted Commonwealth service provider in connection with entering into or giving effect to that contract.
- (d) Disclosable conduct is conduct that:
 - (i) contravenes a law of the Commonwealth, a State, or a Territory;
 - (ii) occurs in a foreign country and contravenes a law in force in that country that applies to the agency or public official and that corresponds to a law in force in the Australian Capital Territory;

⁴ Available at <https://www.legislation.gov.au/Current/F2023C00673>.

⁵ Available at <https://www.ombudsman.gov.au/industry-and-agency-oversight/public-interest-disclosure-whistleblowing/pid-reform-2023>, noting that as at October 2023 some chapters are still being drafted.

⁶ PID Act, section 26(1)(a).

⁷ Section 69 of the PID Act contains a complete list of who is considered a public official.

⁸ PID Act, section 70. Examples of this may be where an individual is not a public official but they have 'inside information' about an agency's wrongdoing, such as current or former volunteers, employees of an organisation that receives grant funding from the Australian Government, or state and territory department officials who work alongside Commonwealth officials.

- (iii) perverts, or attempts to pervert, the course of justice or involves corruption of any other kind;
 - (iv) constitutes maladministration, including conduct that is based on improper motives, is unreasonable, unjust, or oppressive, or is negligent;
 - (v) is an abuse of public trust;
 - (vi) is fabrication, falsification, or deception in relation to scientific research, or misconduct in relation to scientific work;
 - (vii) results in the wastage of public money or public property or of the money or property of an authority covered by the PID Act;
 - (viii) unreasonably results in a danger to the health and safety of a person or unreasonably results in or increases the risk of a danger to the health and safety of a person;
 - (ix) results in a danger to the environment or results in or increases the risk of a danger to the environment;
 - (x) is prescribed by the PID Rules; or
 - (xi) is engaged in by a public official that:
 - (A) involved abuse of the public official's position, or
 - (B) could, if proved, give reasonable grounds for disciplinary action resulting in the termination of the public official's engagement or appointment.
- (e) Disclosable conduct also includes conduct by a public official that:
- (i) involved abuse of the public official's position; or
 - (ii) could, if proved, give reasonable grounds for disciplinary action resulting in the termination of the public official's engagement or appointment.⁹

2.6 Exception for 'personal work-related conduct'

- (a) Since 1 July 2023, the PID Act has incorporated a definition of 'personal work-related conduct', being conduct (by act or omission) engaged in by a public official (the **first official**) in relation to another public official (the **second official**) that:
- (i) occurs in relation to, or in the course of, the second official's engagement or appointment as a public official and/or their official employment, or exercise of functions as powers, as a public official; and
 - (ii) has, or would tend to have, personal implications for the second official.¹⁰
- (b) Despite sections 2.5(d) and (e) above, the PID Act provides that personal work-related conduct is not disclosable conduct unless one of the following exceptions applies:

⁹ PID Act, section 29(2).

¹⁰ PID Act, section 29A. The following are examples of personal work-related conduct:

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

- (i) the conduct would constitute taking a reprisal against another person, or an offence under section 19 of the PID Act; or
 - (ii) the conduct is of such a significant nature that it would undermine public confidence in an agency or agencies or has other significant implications for an agency or agencies.¹¹
- (c) To avoid doubt, if a disclosure includes information that tends to show (or that may tend to show) disclosable conduct, the disclosure is not prevented from being a PID only because:
- (i) the disclosure includes other information; and
 - (ii) the other information tends to show (or may tend to show) personal work-related conduct.¹²

3. Making a Public Interest Disclosure

3.1 Making a disclosure under the PID Act

- (a) A PID can be made to the relevant Authorised Officer of the NADC if the PID relates to the NADC or if the discloser belongs, or last belonged to, the NADC.
- (b) Generally, to constitute a PID, the disclosure must first be made to an "authorised internal recipient" or to a supervisor of the discloser. An authorised internal recipient is generally an Authorised Officer of the NADC (see section 2.3 above).
- (c) However, a disclosure may instead be made to an authorised officer of the Ombudsman if the discloser believes on reasonable grounds that it would be appropriate for the disclosure to be investigated by the Ombudsman.¹³
- (d) In some limited circumstances, a disclosure can be made to an external party, however strict requirements must be met for such external disclosures to be afforded the protections contained in the PID Act.¹⁴ See section 13 of these Procedures.
- (e) Information conveyed in the course of a public official's ordinary functions is not a PID,¹⁵ for example information that arises in the course of routine discussions about suspected fraud incidents by members of an agency's fraud team. In that situation, the public official would need to make it clear that they intend that the disclosure be a PID.
- (f) If the recipient is unsure whether the information disclosed is a PID, they should err on the side of caution and refer the information to an Authorised Officer to determine whether it is indeed a PID. For example, this may arise where the information disclosed contains conduct that could be personal work-related conduct but may also include disclosable conduct.¹⁶ The recipient should in all cases let the public official know that the information will be referred to an Authorised Officer for assessment, and must comply with the requirements set out in sections 4, 5 and 6 of these Procedures (as applicable).

¹¹ PID Act, section 29(2A).

¹² PID Act, section 29(2B).

¹³ A disclosure can also be made to an intelligence agency or to the Inspector-General of Intelligence and Security (IGIS) where it the discloser believes on reasonable grounds that it would be appropriate to do so: PID Act, section 34.

¹⁴ PID Act, section 26, Item 2.

¹⁵ PID Act, section 26(1), Item 1, column 3, paragraph (b).

¹⁶ See sections 2.5 and 2.6 of these Procedures for more information on what constitutes personal work-related conduct.

3.2 Form of disclosure

- (a) A person can make a PID orally or in writing.¹⁷ If a PID is made orally, the Authorised Officer or supervisor receiving it should make a record of what was said. Best practice is to ask the disclosure to sign or confirm in writing the record to acknowledge that it is correct.
- (b) A disclosure can be made anonymously or openly.¹⁸ A discloser choosing to remain anonymous does not have to identify themselves to anyone, including to the Authorised Officer receiving the disclosure. Disclosures made from an email address without an identifiable identity should be treated as anonymous. Disclosers may also choose to use a pseudonym where they do not wish others to know their identity but where it is already known/identifiable to the recipient.
- (c) Generally, the person making the disclosure does not need to expressly state – or even intend – the disclosure is made under the PID Act. The simple act of conveying information about possible disclosable conduct (per section 2.5 above) to a person entitled to receive a PID Act disclosure is sufficient.

3.3 Advice for disclosers in making a disclosure

- (a) Disclosers should be aware that the sooner a concern is raised, the easier it is for the NADC to take action.
- (b) It is not the role of the discloser to ‘investigate’ the matter themselves before making a disclosure as this may hinder a future investigation.
- (c) A disclosure should contain information that is clear, factual and as far as possible devoid of speculation, personal attacks, unrelated events and emotive language. Where available, it should contain supporting evidence and identify any witnesses to the disclosable conduct.
- (d) A discloser should consider covering as many of the following matters as possible in the disclosure:
 - (i) their name and contact details (unless they choose to exercise their right to remain anonymous);
 - (ii) the nature of the suspected wrongdoing;
 - (iii) who they believe committed the suspected wrongdoing;
 - (iv) when and where the suspected wrongdoing occurred;
 - (v) how they became aware of the suspected wrongdoing;
 - (vi) whether the suspected wrongdoing has been reported to anyone else;
 - (vii) if so, what that person has done to fix, stop or prevent it; and
 - (viii) whether they are concerned about possible reprisal as a result of making a disclosure.

4. Procedures for supervisors

4.1 Application

- (a) Under the PID Act, supervisors are public officials who supervise or manage individuals who make PIDs.
- (b) This section 4 applies to supervisors who are *not* Authorised Officers.

¹⁷ PID Act, section 28(1).

¹⁸ PID Act, section 28(2).

4.2 Responsibilities of supervisors

- (a) Where a public official in the NADC discloses information to their supervisor and that supervisor has reasonable grounds to believe that the information concerns, or could concern, disclosable conduct, the supervisor is required to do the following in accordance with section 60A(2) of the PID Act:
 - (i) inform the discloser that their disclosure could be treated as an internal disclosure;
 - (ii) explain to the discloser the next steps in the public interest disclosure process, including the referral of the disclosure to an Authorised Officer, and its potential allocation and investigation under the PID Act;
 - (iii) advise the discloser about the circumstances in which a disclosure must be referred to an agency, or other person or body, under another law of the Commonwealth, including referral to the National Anti- Corruption Commission (**NACC**) if the disclosure appears to involve serious or systemic corrupt conduct;
 - (iv) explain to the discloser the civil and criminal protections the PID Act provides to disclosers, and people assisting with the handling of a disclosure;
 - (v) as soon as practicable after receiving the disclosure, give the information to an Authorised Officer of the NADC; and
 - (vi) where the information has been given to an Authorised Officer, advise the discloser of the name and contact details of that Authorised Officer (if the discloser is able to be identified and contacted).
- (b) In providing the information to an Authorised Officer, the supervisor must also make a written risk assessment of any reprisal action which may be taken against the discloser and provide that written assessment to the Authorised Officer. See section 11 for detailed guidance on risk assessments.
- (c) The supervisor must make a written record of the fact of the disclosure and, if the disclosure is made orally, make a written record of the substance of the disclosure with the date and time of the disclosure noted. The discloser should where possible be asked to confirm in writing or by signature the accuracy of this record.
- (d) Supervisors should also:
 - (i) adhere to the PID Act confidentiality requirements when handling PIDs (see section 8 of these Procedures); and
 - (ii) look at the substance of the report from the discloser rather than focusing on what they believe to be the person's motive for reporting, particularly where there may be a history of conflict in the workplace.
- (e) Supervisors have a key role in ensuring that the workplace culture supports the making of PIDs. They can help to do so by:
 - (i) familiarising themselves with the application and framework of the PID Act, and with these Procedures;
 - (ii) being approachable to staff who may wish to make a disclosure to them or raise concerns;
 - (iii) supporting officials who they know have made a PID and ensuring they are protected from reprisal;
 - (iv) increasing management supervision of the workplace if necessary;
 - (v) ensuring identified problems in the workplace are corrected; and

- (vi) setting an example for officials.

5. Procedures for Authorised Officers

5.1 Role of Authorised Officers

Authorised Officers of the NADC (see section 2.2) receive and allocate PIDs relating to the NADC in accordance with the PID Act and with these Procedures.

5.2 Responsibilities of Authorised Officers

- (a) When an Authorised Officer receives a disclosure, they must:
 - (i) consider whether the discloser understands the PID Act;
 - (ii) perform an assessment of the disclosure;
 - (iii) decide whether to allocate the PID to a Principal Officer for consideration; and
 - (iv) notify the discloser and the Ombudsman of the allocation.
- (b) The Authorised Officer is also responsible for conducting a risk assessment (see section 11).

5.3 Providing initial information to discloser

- (a) Within 14 days of a disclosure being given to or made to the Authorised Officer, the Authorised Officer will provide the discloser with information about his or her powers to decide to investigate the disclosure; not to investigate the disclosure further; or to investigate the disclosure under a separate power.
- (b) Where an individual discloses, or proposes to disclose, information to an Authorised Officer and the Authorised Officer has reasonable grounds to believe that the information concerns, or could concern, disclosable conduct, and the individual may be unaware of the consequences of making a disclosure under the PID Act, the Authorised Officer must, in accordance with section 60(1) of the PID Act:
 - (i) inform the person that the disclosure could be treated as an internal disclosure for the purposes of the PID Act;
 - (ii) explain to the person what the PID Act requires for a disclosure to be an internal disclosure;
 - (iii) explain to the person the circumstances in which a disclosure must be referred to another agency, person or body under another law of the Commonwealth;¹⁹
 - (iv) advise the person of any orders or directions that may affect disclosure of the information; and
 - (v) explain to the person the protections provided by the PID Act to persons who make disclosures under that Act.

5.4 Considering whether or not a disclosure should be allocated

- (a) The Authorised Officer must make a written record of the fact of the disclosure and, if the disclosure is made orally, make a written record of the substance of the disclosure with the date and time of the disclosure noted. The discloser should where possible be asked to confirm in writing or by signature the accuracy of this record.
- (b) The Authorised Officer must use their best endeavours to decide within 14 days whether or not to allocate the disclosure. This requires deciding whether they are

¹⁹ Such as referral to the NACC if the disclosure could involve serious or systemic conduct.

satisfied, on reasonable grounds, that there is a reasonable basis on which the disclosure could be considered to be an internal disclosure.

- (c) Matters that the Authorised Officer may base this decision on include:
- (i) that the disclosure has not been made by a person who is, or was, a public official;
 - (ii) that the disclosure was not made to an authorised internal recipient or supervisor;
 - (iii) that the disclosure is not about disclosable conduct;
 - (iv) that the person who is alleged to have carried out the disclosable conduct was not a public official at the time they are alleged to have carried out that conduct;
 - (v) that the conduct would be more appropriately investigated under another law or power; or
 - (vi) that the disclosure is not otherwise a public interest disclosure within the meaning of the PID Act.
- (d) The Authorised Officer may obtain information and make such inquiries as they see fit, for the purpose of deciding the allocation of the disclosure.

5.5 Where the Authorised Officer decides to not allocate the disclosure

- (a) Where the Authorised Officer decides that the disclosure will not be allocated they must:
- (i) if reasonably practicable, give written notice to the discloser of:
 - (A) the decision not to allocate the disclosure and the reasons why the disclosure has not been allocated; and
 - (B) if the Authorised Officer is satisfied on reasonable grounds that the conduct disclosed would be more appropriately investigated under another law or power, the details of:
 - (1) the other law or power;
 - (2) the agency or other person or body to which the conduct has been, or is to be referred;
 - (3) the steps taken or proposed to be taken to refer the conduct disclosed, or to facilitate its referral, for investigation; and
 - (4) otherwise, any other course of action that might be available to the discloser under another law or power.
 - (b) If the discloser cannot be contacted, the Authorised Officer should still make a written record of their decision and the reasons for it, as well as the reasons why contacting the discloser was not practicable and the date, time and methods of any efforts to contact the discloser.
 - (c) The Authorised Officer must also notify the Ombudsman of their decision not to allocate the disclosure, except to the extent (if any) to which the conduct disclosed relates to an intelligence agency, the Australian Criminal Intelligence Commission (**ACIC**) or the Australian Federal Police (**AFP**) in relation to that agency's intelligence functions.²⁰ This notice must be done using *Form 4 – Notification of decision not to allocate*²¹ and contain the matters listed in sections 5.5(a)(i)(A) and (B) above.

²⁰ PID Act, section 44A(3)(b).

²¹ Available on the Ombudsman's website at <https://www.ombudsman.gov.au/industry-and-agency-oversight/public-interest-disclosure-whistleblowing/pid-reform-2023>.

- (d) If the conduct disclosed relates to an intelligence agency, ACIC or the AFP in relation to their intelligence functions, give written notice to the Inspector-General of Intelligence and Security (**IGIS**) containing the matters listed in sections 5.5(a)(i)(A) and (B) above.²²
- (e) If the Authorised Officer is satisfied on reasonable grounds that the conduct disclosed would be more appropriately investigated under another law or power, take reasonable steps as soon as reasonably practicable to refer the conduct disclosed, or facilitate its referral, for investigation under the other law or power.
- (f) An appropriate written record must be kept by the Authorised Officer of:
 - (i) the decision and the reasons for the decision;
 - (ii) whether notice was given to the discloser, and if not, why not;
 - (iii) if notice was given, a copy of the notice given to the discloser must be retained, which includes confirmation of the day and time the notice was given and the means by which the notice was given.

5.6 Stop action directions under the NACC Act

If a stop action direction under the *National Anti-Corruption Commission Act 2022* (Cth) (**NACC Act**) prevents the Authorised Officer from allocating a disclosure, the Authorised Officer must follow the notice requirements and other procedures set out in section 12.2 of these Procedures.

5.7 Where the Authorised Officer decides to allocate the disclosure

- (a) If the Authorised Officer decides to allocate the disclosure, they must determine which agency it is appropriate to allocate the PID to. Generally, it is likely that PIDs that are made to the NADC and which relate to the NADC should be investigated by the NADC.
- (b) In determining where to allocate a PID, the Authorised Officer must have regard to:
 - (i) the principle that an agency should not handle the PID unless some or all of the suspected disclosable conduct relates to that agency (unless the agency is the Ombudsman, IGIS, or an investigative agency); and
 - (ii) any other matters as the Authorised Officer considers relevant to their decision where to allocate a PID, including any recommendation from the Ombudsman or IGIS under section 55 of the PID Act about the allocation of the disclosure.
- (c) Before making the decision, the Authorised Officer must also consider whether they have satisfied their obligations to inform the discloser of certain matters in relation to the disclosure (see section 5.3(b) above).
- (d) In making this determination, the Authorised Officer must not allocate the PID to an agency other than the NADC unless the Authorised Officer of that other agency (the **recipient agency**) has consented to the allocation.
- (e) In determining where to allocate a PID, the Authorised Officer may obtain information in a manner they think fit.
- (f) Where the Authorised Officer has decided that a disclosure will be allocated, they must give written notice to the following persons/agencies:²³
 - (i) the Principal Officer of each agency to which the disclosure was allocated;

²² PID Act, section 44A(3)(c).

²³ PID Act, section 44.

- (ii) the Ombudsman, by way of a completed *Form 1 – Notification of an allocation decision*;²⁴ unless the recipient agency is the Ombudsman, the IGIS, an intelligence agency, or ACIC or the AFP in relation to their intelligence functions;
 - (iii) the IGIS if the recipient agency is, or the disclosure was allocated to, an intelligence agency or ACIC or the AFP in relation to their intelligence functions; and
 - (iv) the discloser, if the discloser’s details are known.
- (g) The written notice referred to in section 5.7(f) is to include the following matters:
- (i) the allocation to the agency;
 - (ii) the information that was disclosed;
 - (iii) the conduct disclosed; and
 - (iv) if the discloser’s name and contact details are known to the Authorised Officer, and the discloser consents to the persons and agencies mentioned in section 5.7(f) being informed—the discloser’s name and contact details.
- (h) The Authorised Officer must also as soon as reasonably practicable give a copy of the allocation notice mentioned in section 5.7(f) to the discloser, if reasonably practicable to do so.
- (i) An appropriate written record must be kept by the Authorised Officer of:
- (i) the decision (including the name of the agency or agencies to which the handling of the PID has been allocated);
 - (ii) the reasons for the decision to allocate the handling of the PID in that way;
 - (iii) if the handling of the PID has been allocated to an agency other than the NADC, a record of the consent of the Authorised Officer of that agency to the allocation;
 - (iv) any consent provided by the discloser;
 - (v) whether the notice (or a copy of the notice) was given to the discloser, and if not, why not; and
 - (vi) if the notice was given to the discloser, the day and time that the discloser was given the notice, the means by which the notice was given, and the matters included in the notice.
- (j) Further information and guidance on the allocation of disclosures can be found in [Chapter 5](#) of the Ombudsman’s Agency Guide.

6. Procedures for Principal Officers

6.1 Role of Principal Officers

- (a) The CEO of the NADC is the Principal Officer for the purposes of the PID Act. They may delegate all or some of their powers as Principal Officer under the PID Act to:
- (i) other NADC employees; or
 - (ii) other public officials who belong to the NADC.²⁵

²⁴ Available on the Ombudsman’s website at <https://www.ombudsman.gov.au/industry-and-agency-oversight/public-interest-disclosure-whistleblowing/pid-reform-2023>.

²⁵ PID Act, section 77(1).

- (b) Any reference in these Procedures to the Principal Officer is to be taken to be a reference to the CEO as well as to persons who may be delegated powers of the CEO as Principal Officer under the PID Act from time to time.
- (c) A person exercising delegated powers or functions of the Principal Officer must comply with any directions of that Principal Officer.²⁶

6.2 Responsibilities of Principal Officers

- (a) The Principal Officer is responsible for considering PIDs that are allocated to the NADC by an Authorised Officer. The following steps must be taken in performing this function:
 - (i) notify the discloser of the allocation;
 - (ii) consider whether an investigation is required;
 - (iii) if an investigation is required, conduct the investigation; and
 - (iv) comply with the relevant post-investigation notification requirements.
- (b) The Principal Officer has 90 days from the allocation date in which to complete an investigation report in relation to a PID that is allocated to them. If further time is required, the Principal Officer must apply to the Ombudsman for an extension of time prior to the expiry of the relevant period using *Form 3 – Extension of time to investigate a PID*.²⁷

6.3 Notifying the discloser

- (a) As soon as practicable after a PID is allocated to a Principal Officer for consideration, the Principal Officer must inform the discloser that the following options are available to the Principal Officer in considering their PID:
 - (i) decide not to investigate the PID further;
 - (ii) decide to investigate the PID under a separate investigative power;
 - (iii) decide to investigate the disclosure under another law or power; or
 - (iv) decide to investigate the PID.
- (b) In practice, where the Authorised Officer has allocated the disclosure to their own agency, this information can be given to the discloser at the same time as the notice of allocation (see section 5.7(f) of these Procedures).

6.4 Considering whether an investigation is required

- (a) When a PID is allocated to a Principal Officer, the Principal Officer must consider whether they should exercise their section 48 discretion under the PID Act to not investigate the PID.
- (b) This discretion is available in circumstances where the Principal Officer is satisfied that any of the grounds listed in section 48 of the PID Act apply. These circumstances include:
 - (i) the discloser is not a current or former public official;
 - (ii) the information does not concern serious disclosable conduct;
 - (iii) the PID is frivolous or vexatious;
 - (iv) information is the same, or substantially the same, as information previously disclosed under the PID Act and the earlier disclosure either has

²⁶ PID Act, section 77(2).

²⁷ Available on the Ombudsman's website at <https://www.ombudsman.gov.au/industry-and-agency-oversight/public-interest-disclosure-whistleblowing/pid-reform-2023>.

- been (or is being) investigated under the PID Act, or was the subject of a previous decision not to investigate under section 48;
- (v) the conduct disclosed, or substantially the same conduct, is being investigated under another law or power and it would be inappropriate to conduct a PID investigation at the same time;
 - (vi) the conduct disclosed, or substantially the same conduct, has already been investigated under another law or power, and there are no further matters concerning the conduct that warrant investigation;
 - (vii) the conduct disclosed would be more appropriately investigated under another law or power;
 - (viii) the Principal Officer has been informed by the discloser, an Authorised Officer of the NADC, or a Principal Officer or Authorised Officer of another agency that the discloser does not wish the investigation to be pursued, and there are no matters concerning the disclosure that warrant investigation; and
 - (ix) it is impracticable for the PID to be investigated because:
 - (A) of the age of the information;
 - (B) the discloser has not disclosed their name and contact details; or
 - (C) the discloser has failed, or is unable, to give the investigator the information or assistance they requested.
- (c) More detailed guidance on each of these grounds can be found in sections 6.2.1 to 6.2.6 of [Chapter 6](#) of the Ombudsman’s Agency Guide.
- (d) If the investigation has already started, the Principal Officer may subsequently decide to stop the investigation on one of the grounds set out in section 6.4(b) above.

6.5 If the Principal Officer decides not to investigate or further investigate disclosure

- (a) If the Principal Officer decides not to investigate (or further investigate) a disclosure under the PID Act, they must comply with the steps set out in this section 6.5.
- (b) If reasonably practicable, the Principal Officer must provide written notice to the discloser that the Principal Officer has decided not to investigate (or further investigate) the disclosure,²⁸ identifying:
 - (i) the reasons for the decision not to investigate; and
 - (ii) if the Principal Officer decides that the disclosure would be more appropriately investigated under another law or power, details of:
 - (A) the other law or power;
 - (B) the agency or other person or body to which the conduct has been or will be referred;
 - (C) the steps taken or proposed to be taken for the conduct to be referred or to facilitate referral. The Principal Officer may delete from the reasons any information that would cause the document to:
 - (1) be exempt for the purposes of Part IV of the *Freedom of Information Act 1982* (Cth) (**FOI Act**);

²⁸ PID Act, section 50.

- (2) have or be required to have a national security or other protective security classification; or
 - (3) contain intelligence information.
- (c) The notice referred to in section 6.5(b) can be provided in a single document along with the notice of the allocation of the disclosure.²⁹ However, this approach should only be used if the two decisions are made close in time.
- (d) If the discloser cannot be contacted, the Principal Officer should still make a written record of their decision and the reasons for it, as well as the reasons why contacting the discloser was not practicable and the date, time and methods of any efforts to contact the discloser.
- (e) The Principal Officer must also provide written notice to the Ombudsman of the decision not to investigate (or further investigate) and the reasons for that decision.³⁰ If the Principal Officer decides that the disclosure would be more appropriately investigated under another law or power, the Principal Officer must provide the Ombudsman with details of:
 - (i) the other law or power;
 - (ii) the agency or other person or body to which the conduct has been or will be referred; and
 - (iii) the steps taken or proposed to be taken for the conduct to be referred or to facilitate referral.
- (f) The written notice to the Ombudsman must be given using the Ombudsman's *Form 2 – Notification of a decision not to investigate or not to investigate further*.³¹

6.6 If the disclosure cannot be investigated because of a stop action direction

- (a) If the disclosure cannot be investigated or investigated further because of a stop action direction under the NACC Act, the Principal Officer must give written notice of the stop action direction to the discloser and the Ombudsman as soon as reasonably practicable. Notice to the Ombudsman must be given using the Ombudsman's *Form 6 – Notification of a stop action direction*.³²
- (b) The Principal Officer must, as soon as reasonably practicable, inform the discloser if the Principal Officer investigates, or further investigates, a disclosure that is no longer the subject of a stop action direction under the NACC Act.
- (c) See section 12.2 of these Procedures for detailed guidance on stop action directions issued under the NACC Act.

6.7 If the Principal Officer decides to investigate the disclosure

- (a) Where the Principal Officer decides that the section 48 discretion to not investigate the PID act does not apply, they must commence an investigation into the PID unless there is a stop action direction. The steps for the investigation process are provided in the following section.

²⁹ PID Act, section 50(4).

³⁰ PID Act, section 50A.

³¹ Available on the Ombudsman's website at <https://www.ombudsman.gov.au/industry-and-agency-oversight/public-interest-disclosure-whistleblowing/pid-reform-2023>.

³² Available on the Ombudsman's website at <https://www.ombudsman.gov.au/industry-and-agency-oversight/public-interest-disclosure-whistleblowing/pid-reform-2023>.

7. Investigations

7.1 Notification of investigation

- (a) When the Principal Officer has decided to investigate a PID, if reasonably practicable they must give written notice to the discloser,³³ informing them:
 - (i) that they are investigating the disclosure;
 - (ii) of the estimated length of the investigation; and
 - (iii) they still hold the discretion to cease investigating under section 48 of the PID Act.
- (b) If the agency that allocated the disclosure is the same as the agency which will investigate the disclosure, this notice can be given in the same document.³⁴
- (c) If the discloser cannot be contacted, the Principal Officer should still make a written record of their decision and the reasons for it, as well as the reasons why contacting the discloser was not practicable and the date, time and methods of any efforts to contact the discloser.

7.2 Conducting an investigation

- (a) The Principal Officer may conduct an investigation into a PID in any manner they see fit.
- (b) The Principal Officer may investigate the matter personally, or may refer the matter to an investigator to assist in determining whether there are one or more instances of disclosable conduct.
- (c) The Principal Officer may delegate the investigative function to a contractor. This may be appropriate and necessary in the following situations:
 - (i) when investigation of the PID requires a skillset or subject matter expertise beyond that available within the NADC;
 - (ii) when the NADC is handling a peak in PID investigations and internal staff cannot be mobilised due to existing full caseloads; and/or
 - (iii) where the risk of real or perceived bias or conflict is most appropriately (and effectively) managed by engaging an external contractor.
- (d) Further guidance on the engagement of an external contractor to investigate a PID can be found in section 7.3.2.1 of [Chapter 7](#) of the Ombudsman's Agency Guide.
- (e) The Principal Officer must investigate whether there are one or more instances of disclosable conduct. Instances of disclosable conduct may relate to information that is disclosed or information obtained in the course of the investigation, unless the Principal Officer is satisfied on reasonable grounds that such information is tangential or remote to the disclosure.
- (f) Investigations should be conducted in a manner consistent with the PID Standard and the general principles set out below.

7.3 General principles for investigations

- (a) The following general principles apply to the conduct of investigations:
 - (i) maintaining the confidentiality of the discloser's identity unless consent to disclose their identity has been provided;

³³ PID Act, section 50(1)(a).

³⁴ PID Act, section 50(4).

- (ii) documentation of actions, conversations and decisions relating to a disclosure should be kept;
 - (iii) the evidence relied on in an investigation must be relevant to the investigation;
 - (iv) a person who is the subject of the investigation will have an opportunity to respond or provide information;
 - (v) if an interview is to be conducted as part of the investigation, ensuring it complies with the requirements set out in the PID Standard;³⁵
 - (vi) a decision on whether there is sufficient evidence to prove a fact will be determined on the balance of probabilities;³⁶
 - (vii) findings will be made on the basis of relevant and logically probative evidence;³⁷ and
 - (viii) the investigation will be conducted in accordance with the principles of procedural fairness.³⁸
- (b) During a PID investigation, the Principal Officer may adopt findings contained in a report of an investigation or inquiry under another law or power (including procedures established under a law of the Commonwealth) or under the PID Act.
 - (c) The Principal Officer can obtain such information and make such enquiries as they consider appropriate in conducting their investigation.
 - (d) Public officials are required to use their best endeavours to assist the Principal Officer or other relevant agency in the conduct of an investigation under the PID Act.
 - (e) Throughout the PID investigation, the Principal Officer should continue to consider whether one or more of the discretionary grounds in section 48 of the PID Act applies to the disclosure. If the Principal Officer forms the view that one or more grounds apply, the Principal Officer should cease investigating and follow the appropriate process detailed in section 6.4 of these Procedures.
 - (f) Further information and guidance on conducting an investigation can be found in [Chapter 7](#) of the Ombudsman's Agency Guide.

7.4 Suspicion of criminal offences and/or fraud

- (a) If, in the course of the PID investigation, the Principal Officer suspects on reasonable grounds that information disclosed as part of a disclosure, or obtained during their investigation of a disclosure, is evidence of an offence against a Commonwealth, State or Territory law, they may disclose that information to a member of an Australian police force responsible for the investigation of the offence.³⁹
- (b) Police notification is mandatory if the suspected offence is punishable by imprisonment for two years or more, unless the information relates to a corruption issue that has already been referred to the NACC.⁴⁰

³⁵ More information on interviewing witnesses can be found in section 7.3.3.5 of Chapter 7 of the Ombudsman's Agency Guide.

³⁶ More information on the standard of proof can be found in section 7.3.3.6 of Chapter 7 of the Ombudsman's Agency Guide.

³⁷ More information on the evidence that can be taken into account can be found in section 7.3.3.7 of Chapter 7 of the Ombudsman's Agency Guide.

³⁸ More information on procedural fairness in a PID investigation be found in section 7.3.3.8 of Chapter 7 of the Ombudsman's Agency Guide.

³⁹ PID Act, section 56(2).

⁴⁰ PID Act, sections 56(3), (4)(a) and (4)(b).

- (c) Notification to police does not mean that the PID investigation should stop.⁴¹
- (d) Where the PID concerns alleged fraud that would usually be investigated in accordance with the NADC's Fraud Control Plan, the recommend course of action would usually be to stop the PID investigation and refer the disclosure for investigation under another law or power (see section 6.4 of these Procedures).

7.5 The PID investigation report

- (a) When an investigation is completed and within 90 days from the start of the investigation,⁴² the Principal Officer must prepare a report of the investigation.
- (b) The Ombudsman may extend, or further extend, the 90-day period by such period as they consider appropriate, on application by the Principal Officer (see section 6.2(b) of these Procedures). If the Ombudsman grants an extension, the Principal Officer will, as soon as reasonably practicable, inform the discloser of the progress of the investigation.
- (c) The report must set out:⁴³
 - (i) the matters considered in the course of the investigation, including:
 - (A) the disclosable conduct alleged by the discloser; and
 - (B) any other possible disclosable conduct subsequently identified;
 - (ii) the duration of the investigation;
 - (iii) an explanation of the steps taken to gather evidence;
 - (iv) a summary of the evidence and how the evidence informed the findings;
 - (v) the Principal Officer's findings (if any) including:
 - (A) whether there have been one or more instances of disclosable conduct established and, if so, what type; and
 - (B) the laws, rules, procedures, etc to which the disclosable conduct relates;
 - (vi) the action (if any) that has been, is being, or is recommended to be, taken to address those findings;⁴⁴
 - (vii) any claims of any reprisal action taken against the discloser, or any other person, that relates to the matters considered in the course of the investigation, together with any related evidence; and
 - (viii) the NADC's response to any claims or evidence relating to reprisals.
- (d) Any finding of fact in the report must be based on relevant evidence, sufficient to satisfy the Principal Officer on the balance of probabilities.
- (e) If the investigation report contains recommendations, the Principal Officer should ensure that they provide the recommendations to a person within the NADC who would be able to consider and address those recommendations.

⁴¹ Further guidance on continuing the PID investigation after police notification is found in section 7.3.6 of Chapter 7 of the Ombudsman's Agency Guide.

⁴² Under section 52 of the PID Act, this 90-day period starts from the date that the following occurs (as applicable):

- (a) the initial allocation or reallocation of the disclosure to the NADC;
- (b) in the case of a re-investigation, the day on which the Principal Officer decides to reinvestigate the disclosure; or
- (c) to the extent that a stop action direction under the NACC Act prevented the investigation, the day on which the Principal Officer becomes aware that a stop direction under the NACC Act which prevented the investigation no longer applies.

⁴³ See sections 47(2), 51(2) and 52 of the PID Act and section 13 of the PID Standard.

⁴⁴ The action to address the findings of the PID investigation could include a different type of investigation or referring the matter to the police.

7.6 Copies of the PID investigation report

- (a) A copy of the PID investigation report must be given to the discloser and to the Ombudsman (or the IGIS, for intelligence related PIDs) within a reasonable time of preparing it. The report may also be shared with another agency if the investigation concerns conduct related to that agency.⁴⁵
- (b) Section 51(5) of the PID Act permits the Principal Officer to delete from the copy of the report given to the discloser any material:
 - (i) that is likely to enable the identification of the discloser or another person (such as somebody under investigation or a witness);
 - (ii) whose inclusion would:
 - (A) cause the document to be exempt for the purposes of Part IV of the FOI Act;
 - (B) result in the document having or being required to have a national security or other protective security classification;
 - (C) result in the document containing intelligence information; or
 - (D) contravene a designated publication restriction.⁴⁶
- (c) Section 51(6) of the PID Act permits the Principal Officer to delete from the copy of the report given to the Ombudsman any material:
 - (i) that is likely to enable the identification of the discloser or another person; or
 - (ii) the inclusion of which would contravene a designated publication restriction.
- (d) The Ombudsman (or the IGIS) may choose to review the NADC's handling of the disclosure and obtain information or documents and make such enquiries as it thinks fit.⁴⁷ They may also make recommendations to the Principal Officer. See section 9.1.6 of [Chapter 9](#) of the Ombudsman's Agency Guide. for more information about the Ombudsman's powers in this respect.

8. Confidentiality and authorised information sharing

8.1 Confidentiality

- (a) The Authorised Officer and the Principal Officer will take all reasonable steps to protect the identity of a public official who has made a PID from the time of disclosure.
- (b) Only individuals directly involved in dealing with the PID may be advised of the details of the PID. These individuals must not disclose the identity of the discloser or any information which is likely to reveal the identity of the discloser without the consent of the discloser.
- (c) It is an offence for a public official to disclose information that is likely to enable the identification of a person as a person who has made a PID, other than in accordance with the PID Act.
- (d) Similarly, if a person discloses information to another person or uses information otherwise than in accordance with the PID Act, the person may commit an offence if the information was obtained by the person in the course of conducting

⁴⁵ PID Act, section 65.

⁴⁶ A 'designated publication restriction' is defined in section 8 of the PID Act. It refers to a number of restrictions which usually relate to protecting the identity of people, such as certain orders made under the *Family Law Act 1975* (Cth) or the *Migration Act 1958* (Cth). See section 8 for the full list of relevant restrictions.

⁴⁷ PID Act, sections 55(3) and (4).

a disclosure investigation, or in connection with the performance of a function or the exercise of a power by the person under the PID Act.

- (e) Identifying information about a discloser will not be disclosed to a court or tribunal except where necessary to give effect to the PID Act.
- (f) NADC staff are also bound by obligations under the *Privacy Act 1988* (Cth) in relation to storing personal information securely and limiting its use and disclosure.

8.2 Authorised information sharing between agencies

- (a) Section 65 of the PID Act expressly permits (but does not *require*) information sharing between agencies in the following situations:

Agency sharing the information	Agency that can receive information
An investigative agency (i.e., the Ombudsman or the IGIS)	<ul style="list-style-type: none"> • Another investigative agency • The portfolio department of the agency to which the conduct relates • The agency to which the conduct relates
If the disclosure is allocated within an agency's portfolio under section 43(8), the agency to which the disclosure is allocated	The agency to which the conduct relates
If the disclosure is allocated within an agency's portfolio under section 43(8), the agency to which the conduct relates	The agency to which the disclosure is allocated

- (b) Note that section 65 does not permit the sharing of the discloser's name and contact details if the discloser does not consent to these details being shared.
- (c) The agency sharing the information or documents may redact any material from what it provides to another agency, if the sharing agency considers it appropriate to do so.
- (d) Agencies may also share information in other circumstances permitted by the PID Act, provided they abide by secrecy provisions in the PID Act and in other laws.

9. Support for public officials in the PID process

The protections and immunities described in this section 9 apply to any disclosure that is made in accordance with the PID Act, i.e. internal, external, emergency, legal practitioner and NACC disclosures. This includes where the discloser's report of wrongdoing turns out to be incorrect or cannot be substantiated (provided they reasonably believed that the information tended to show disclosable conduct).

9.1 Protection for the discloser

Protection of their identity

- (a) It is a criminal offence to disclose identifying information of a person who has made a PID if an exception does not apply.⁴⁸ Measures that can be taken to protect the discloser's identity are discussed further in section 8.2.1 of [Chapter 8](#) of the Ombudsman's Agency Guide.

⁴⁸ PID Act, section 20.

Immunity from civil, criminal or administrative liability

- (b) A person who makes a public interest disclosure is not subject to any civil, criminal or administrative liability (including disciplinary action) for disclosing information in accordance with the provisions of the PID Act.⁴⁹ However, if the person discloses the same information elsewhere or outside the context of making a PID, those disclosures are not protected by the PID Act.
- (c) A public official making a PID or other disclosure is not entitled to protection from the consequences of their own wrongdoing. A person who knowingly makes a false or misleading disclosure will not have any protections under the PID Act.
- (d) Despite the PID Act protections, a discloser may still be reasonably managed or disciplined for any unsatisfactory performance or disclosable conduct on their part⁵⁰ provided it is not done because they made, or provided assistance in relation to, a PID.

9.2 Protection for witnesses in a PID investigation

- (a) The PID Act protects people who provide assistance in relation to a PID in the same way that it protects disclosers. This includes immunity from liability for providing information as long as the information meets the criteria in section 12A of the PID Act.
- (b) This immunity does not apply:⁵¹
 - (i) if the witness knowingly makes a false or misleading statement;
 - (ii) if the witness contravenes a designated publication restriction; or
 - (iii) where information is about the witness' own conduct, in respect of that conduct.
- (c) This immunity also does not apply to assistance that is not, on reasonable grounds, relevant to the making of a PID allocation decision, a disclosure investigation or proposed disclosure investigation, or an Ombudsman or IGIS review about a disclosure's handling. If a witness wishes to disclose such unrelated information they should do it to an Authorised Officer who will then assess it under the PID Act.

9.3 Protection for officials exercising powers or performing functions under the PID Act

- (a) The PID Act provides that the following persons are not liable to any criminal or civil proceedings or any disciplinary action for acting in good faith in the exercise of functions and powers under the PID Act:⁵²
 - (i) a Principal Officer or their delegate;
 - (ii) an Authorised Officer;
 - (iii) a supervisor or manager of a discloser; or
 - (iv) a person assisting a Principal Officer or their delegate in good faith in the performance of their PID Act functions or powers.
- (b) The above immunity does not apply where the person contravenes a designated publication restriction.⁵³

⁴⁹ PID Act, section 10(1)(a).

⁵⁰ PID Act, section 12.

⁵¹ PID Act, section 12B.

⁵² PID Act, section 78(1).

⁵³ PID Act, section 78(2).

9.4 Protecting from detriment and reprisal

- (a) The Principal Officer must take reasonable steps to protect NADC public officials against reprisals that have been, or may be, taken in relation to PIDs that have been, may have been, are proposed to be, or could be, made to an Authorised Officer or supervisor.
- (b) A 'reprisal' is where someone by act or omission causes any detriment to another person because they believe or suspect that person, or anyone else, has made, may have made, proposes to make, or could make a PID.⁵⁴ A reprisal includes a threat to take a reprisal.
- (c) A reprisal does not include an administrative action that is reasonable to protect the discloser from detriment (provided there is no perception that the discloser is being punished).⁵⁵
- (d) A 'detriment' includes, but is not limited to, the following:⁵⁶
 - (i) dismissal of an employee;
 - (ii) injury of an employee in his or her employment;
 - (iii) alteration of an employee's position to his or her disadvantage;
 - (iv) discrimination between an employee and other employees of the same employer;
 - (v) harassment or intimidation of a person;
 - (vi) harm or injury to a person, including psychological harm;
 - (vii) damage to a person's property;
 - (viii) damage to a person's reputation;
 - (ix) damage to a person's business or financial position; and
 - (x) any other damage to a person.
- (e) The PID Act seeks to protect any person from reprisal through the following mechanisms:
 - (i) it is a criminal offence for anyone to cause, or threaten to cause, detriment to a person because it is suspected or believed that they have made, may have made, propose to make or could make a PID;
 - (ii) a person who believes they are suffering or have been threatened with reprisal has the right to apply to court for an injunction to stop or prevent it;
 - (iii) a person has the right to apply for compensation for loss, damage or injury suffered from a reprisal; and
 - (iv) an agency may be open to a claim for damages if it cannot show it took reasonable steps to prevent a reprisal.

More information on these mechanisms can be found in sections 8.7 and 8.8 of [Chapter 8](#) of the Ombudsman's Agency Guide.

9.5 Supporting and protecting disclosers and witnesses

- (a) NADC staff should actively support disclosers and witnesses throughout, and after, the PID process. This includes:

⁵⁴ PID Act, section 13(1).

⁵⁵ PID Act, section 13(3).

⁵⁶ PID Act, section 13(2).

- (i) acknowledging the discloser for having come forward with the report of wrongdoing;
 - (ii) informing them about the available support options; and
 - (iii) advising them that the Principal Officer and Authorised Officers are required to take reasonable steps to protect them from reprisal.
- (b) The NADC will take reasonable steps to protect disclosers and witnesses from detriment or threats of detriment relating to the disclosure, both during and after the treatment of the disclosure.
- (c) Such steps may include, as reasonable and appropriate to the circumstances:
- (i) appointing a support person to assist the discloser, who is responsible for checking on the wellbeing of the discloser;⁵⁷
 - (ii) providing the discloser with a copy of the NADC's *Discrimination, Bullying and Harassment Policy*;
 - (iii) advising the discloser about the availability of the Employee Assistance Program;
 - (iv) liaising with its work health and safety officers if there are concerns about the health and wellbeing of the discloser or witness; and
 - (v) moving the discloser or witness to a different area within the workplace or approving remote/teleworking (with the person's consent).⁵⁸
- (d) The Authorised Officer, or other person involved in handling the PID, should periodically contact the discloser to advise them of their progress (while respecting the confidentiality requirements). They should also maintain contact with the discloser, witnesses and other relevant officials to ensure they are not experiencing any reprisals.

9.6 Supporting an employee who is the subject of a PID

- (a) The NADC will also take reasonable steps to support any employee who is the subject of a PID. This may include:
- (i) advising the employee of their rights and obligations under the PID Act and these Procedures, including the employee's right to procedural fairness;
 - (ii) advising the employee about the availability of the NADC's Employee Assistance Program;
 - (iii) ensuring that the employee's identity is kept confidential as far as reasonably practicable;
 - (iv) if there are concerns about the health and wellbeing of the employee, liaising with the Chief Operating Officer within the NADC;
 - (v) moving the employee to a different area within the workplace or approving remote/teleworking (with their consent);⁵⁹ or
 - (vi) advising the employee that it is open to them to seek their own independent legal advice in relation to their rights and responsibilities under the PID Act.

10. Persons who are the subject of a PID

- (a) An NADC employee who is the subject of a disclosure will be:

⁵⁷ Noting that they can discuss the general situation but not disclose information to that support person that would identify those alleged to have committed wrongdoing or disclose other information that they are required to keep confidential.

⁵⁸ This step only likely to be appropriate in cases of very major or extreme risk.

⁵⁹ This step only likely to be appropriate in cases of very major or extreme risk.

- (i) given support in accordance with section 9.6 of these Procedures;
 - (ii) be able to seek assistance from the Ombudsman in relation to the PID Act's operation; and
 - (iii) afforded procedural fairness.
- (b) More information on the involvement of the person who is the subject of the disclosure can be found at section 7.3.3.9 of [Chapter 7](#) of the Ombudsman's Agency Guide.
- (c) An employee who is the subject of a disclosure must:
- (i) use their best endeavours to assist the Principal Officer in the conduct of an investigation;
 - (ii) use their best endeavours to assist the Ombudsman or IGIS in the performance of their functions under the PID Act;
 - (iii) comply with action taken by the NADC to address risks or concerns in relation to the PID;
 - (iv) be aware that:
 - (A) the NADC may decide to take action in relation to the employee, such as temporarily transferring them to another work area without the employee's consent, in order to meet its PID Act and work health and safety obligations; and
 - (B) be aware that the PID investigation outcome may result in another, different investigation taking place such as in relation to the NADC *Code of Conduct*.

11. Risk assessments

11.1 Conducting a risk assessment

- (a) An initial risk assessment should be completed as soon as possible after the PID is received, usually by the Authorised Officer.
- (b) The Authorised Officer may consult with, or refer the preparation of the risk assessment, to another area of the NADC where appropriate. In all cases the risk assessment should be prepared in accordance with these Procedures.
- (c) This risk assessment should consider the likelihood and the seriousness of any potential reprisals, using the information contained within Schedule 1 of these Procedures.
- (d) Further information and guidance on conducting risk assessments can be found in [Chapter 5](#) and [Chapter 8](#) of the Ombudsman's Agency Guide.

11.2 Development of a risk mitigation strategy

- (a) Where the risk level is assessed as anything greater than low, the Authorised Officer will develop a risk management strategy for mitigating the risk of reprisals being taken against the discloser.
- (b) This strategy may include some or all of the support measures set out in section 9 of these Procedures and in appropriate circumstances could include raising the matter with employees by reminding staff that taking or threatening to take a reprisal against a discloser is a criminal offence.
- (c) The Authorised Officer should monitor and review the risk assessment as necessary throughout the investigation process, and continue if necessary after the investigation is completed as the risk of reprisal may persist or even increase.

- (d) The Principal Officer or delegate to whom the matter is allocated will usually also take responsibility for the risk assessment and its maintenance and any related actions.

11.3 Risk assessments for anonymous disclosers

- (a) If an anonymous disclosure is made, it may be difficult for the NADC to protect the discloser and other staff from reprisal or workplace conflict. However, a risk assessment should still be conducted where an anonymous disclosure is received, to assess whether the discloser's identity can be readily ascertained or may become apparent during an investigation.
- (b) Where a person such as another staff member makes an assumption about the identity of a discloser, the risk of reprisal may escalate and require prevention or mitigation strategies to be implemented, such as:
 - (i) raising the issue with staff;
 - (ii) reminding them of the NADC's obligations under the PID Act to protect public officials in their agency from reprisal; and
 - (iii) reminding them that reprisal and threats to cause reprisal are criminal offences, and they may also be liable to civil action from such conduct.
- (c) The Principal Officer also has an obligation to take reasonable steps to provide ongoing training and education to officials in their agency about the PID Act,⁶⁰ including on the protections set out in section 9 of these Procedures.

12. Interaction with the National Anti-Corruption Commission

- (a) The *National Anti-Corruption Commission Act 2022* (Cth) (**NACC Act**) establishes the National Anti-Corruption Commission (**NACC**), which has operated since 1 July 2023.
- (b) This section sets out new obligations imposed on Authorised Officers (including Authorised Officers and their delegates) that are exercising powers or functions under the PID Act.

12.1 Mandatory referral to the NACC

- (a) From 1 July 2023, in considering a disclosure, an Authorised Officer who is:
 - (i) allocating an internal disclosure under Division 1 of Part 3 of the PID Act (i.e. an Authorised Officer); or
 - (ii) investigating an internal disclosure under Division 2 of Part 3 of the PID Act,

must consider whether the NACC Act mandatory referral obligation applies. This mandatory obligation applies from 29 July 2023 to any disclosure made from 1 July 2023.

- (b) To do this, the Authorised Officer must consider if:
 - (i) the internal disclosure raises a 'corruption issue' under the NACC Act;⁶¹
 - (ii) the corruption issue concerns the conduct of a person who is or was an NADC staff member while that person is or was an NADC staff member; and

⁶⁰ PID Act, section 59(7).

⁶¹ A corruption issue is an issue of whether a person has engaged, is engaging in, or will engage in corrupt conduct: NACC Act, section 9.

- (iii) the Authorised Officer suspects the issue could involve serious or systemic corrupt conduct.⁶²
- (c) If the criteria in section 12.1(b) are met, the Authorised Officer must refer the corruption issue to the NACC as soon as reasonably practicable after becoming aware of it,⁶³ unless they believe on reasonable grounds that the NACC is already aware of the issue.
- (d) Where a referral is made to the NACC, section 39 of the NACC Act provides that the NADC should continue to handle the disclosure unless a stop action direction is issued under section 43(1) of the NACC Act.

12.2 Stop action direction under the NACC Act

- (a) The NACC may direct the NADC to stop taking specified action in relation to a corruption issue concerning the NADC – including to stop investigating a PID – by issuing a stop action direction.⁶⁴
- (b) Notwithstanding that a stop action direction has been issued, certain time-sensitive actions – such as actions to protect a person’s life – may be taken by the NADC. The specific circumstances that warrant this and information on notification requirements are set out in section 44 of the NACC Act.
- (c) If a stop action direction is issued by the NACC which prevents the NADC from allocating a PID or from investigating or further investigating a PID, the NADC must give written notice to the Ombudsman of the stop action (or to the IGIS if the disclosure concerns conduct relating to an intelligence agency, IGIS, ACIC or AFP in relation to their intelligence functions).⁶⁵ Such notice must contain certain information⁶⁶ and be made using the Ombudsman’s *Form 6 – Notification of a Stop Action*.⁶⁷
- (d) Where a stop action direction is received, the Authorised Officer must consider whether it is appropriate to notify a discloser that a stop action direction has prevented the allocation of the disclosure. The Authorised Officer must carefully consider the terms of any stop action direction and consult with the Principal Officer (who may also consult with the NACC) prior to notifying a discloser.
- (e) If a stop action direction prevents the allocation of a disclosure to an agency, a written record must be kept of the details of the direction, including when the direction was made and when the stop action direction no longer applies. The written record must also indicate whether the Principal Officer of the relevant agency considers that it is reasonably practicable or appropriate for the discloser to be given a copy of the notice.

⁶² Section 8(1) of the NACC Act defines corruption conduct to include the following:

- (a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly:
 - (i) the honest or impartial exercise of any public official’s powers as a public official; or
 - (ii) the honest or impartial performance of any public official’s functions or duties as a public official;
- (b) any conduct of a public official that constitutes or involves a breach of public trust;
- (c) any conduct of a public official that constitutes, involves or is engaged in for the purpose of abuse of the person’s office as a public official;
- (d) any conduct of a public official, or former public official, that constitutes or involves the misuse of information or documents acquired in the person’s capacity as a public official.

Section 8 of the NACC Act provides further information on what does and does not constitute corrupt conduct.

⁶³ NACC Act, sections 35(1) and (2).

⁶⁴ NACC Act, section 43.

⁶⁵ PID Act, sections 44B and 50A.

⁶⁶ This notice must include the information that was disclosed to the Authorised Officer, the conduct disclosed, the discloser’s name and contact details *if* they are known to the Authorised Officer and the discloser consents to them being shared with the Ombudsman/IGIS, and the stop action direction under the NACC Act that prevents allocation of some or all of the disclosure.

⁶⁷ Available on the Ombudsman’s website at <https://www.ombudsman.gov.au/industry-and-agency-oversight/public-interest-disclosure-whistleblowing/pid-reform-2023>.

12.3 Informing the NACC

- (a) In making a mandatory referral to the NACC, the Authorised Officer must include the following information:
 - (i) all information relevant to the corruption issue in their possession or control when they make the referral. This could include:
 - (A) the names of any public officials who the Authorised Officer suspects has engaged in serious or systemic conduct;
 - (B) the names of any private individual or entities involved;
 - (C) a description of the conduct;
 - (D) the dates and timeframes of when the alleged corrupt conduct occurred or may occur;
 - (E) how and when the Authorised Officer became aware of the issue;
 - (F) any supporting documents or evidence; and
 - (G) any other relevant information; and
 - (ii) the reason why they suspect the issue could involve corrupt conduct that is serious or systemic.
- (b) If the Authorised Officer becomes aware of new information after making the referral, they must provide it to the NACC as soon as reasonably practical.

12.4 Exceptions to notification requirements

The Authorised Officer is not required to provide information to the NACC about a corruption issue if any of the following apply:

- (a) the information is subject to an exempt secrecy provision;⁶⁸
- (b) they believe on reasonable grounds that the NACC is already aware of the issue;⁶⁹ or
- (c) the NACC Commissioner has made a determination which provides that referral is not required because of the kind of corruption issue involved or the circumstances in which it arises.⁷⁰

12.5 Notifying the discloser

If the Authorised Officer became aware of the corruption issue as a result of an internal PID, the Authorised Officer must as soon as reasonably practicable notify the discloser of their referral of the issue to the NACC.⁷¹

13. Other disclosures

- (a) In limited circumstances, a public official may disclose such information to a person outside government under section 26 of the PID Act, as either an external disclosure, emergency disclosure or a legal practitioner disclosure.
- (b) A disclosure of this kind must comply with the conditions set out in section 26 of the PID Act, summarised below, or the protections available to disclosers under the PID Act will not apply and the public official may open themselves to civil, criminal or disciplinary proceedings.

⁶⁸ NACC Act, section 36.

⁶⁹ NACC Act, section 37(1)(a).

⁷⁰ NACC Act, section 37(1)(b).

⁷¹ NACC Act, section 35(5).

13.1 External disclosures

- (a) Where a public official has already made an internal disclosure under the PID Act, they may in some circumstances make a subsequent disclosure to any person, except a foreign public official, if:⁷²
 - (i) the final report of the internal PID investigation has not been prepared within 90 days of allocation, or the extended investigation period approved by the Ombudsman or the IGIS;⁷³
 - (ii) the PID investigation has been completed and the discloser believes on reasonable grounds that the investigation was inadequate; or
 - (iii) an investigation has been completed (whether the investigation was conducted under the PID Act or under other legislation) and the discloser believes on reasonable grounds that the response to the investigation was inadequate.
- (b) The following restrictions apply in addition to those described above:⁷⁴
 - (i) the public official must not disclose more information than is reasonably necessary to identify the wrongdoing;
 - (ii) all of the externally disclosed information must have been the subject of at least part of a prior internal disclosure;
 - (iii) on balance, making the external disclosure must not be contrary to the public interest; and
 - (iv) the information does not consist of or contain intelligence information and it does not concern conduct related to an intelligence agency.
- (c) This avenue of external disclosure does not apply if the NADC decides not to allocate or investigate the official's disclosure. In this case, the public official may complain to the Ombudsman about the NADC's decision not to allocate or investigate their disclosure.

13.2 Emergency disclosures

- (a) If a public official believes on reasonable grounds that the information they have involves a substantial and imminent danger to the health or safety of one or more people or to the environment, they may make an emergency disclosure to any person (except a foreign public official) provided they meet the following requirements:⁷⁵
 - (i) the extent of the information they disclose must be only what is necessary to alert the recipient of the substantial and imminent danger; and
 - (ii) if they have not previously made an internal disclosure about the matter, or if they have done so and the investigation is not yet completed, there must be exceptional circumstances justifying their decision to make an external disclosure. This might include, for example, if the investigation was taking too long to complete having regard to the risk to a person's health and safety.
- (b) An emergency disclosure must not include intelligence information, including sensitive law enforcement information.

⁷² PID Act, section 26(1), Item 2.

⁷³ This condition does not apply to Ombudsman/IGIS investigations under their respective legislation.

⁷⁴ PID Act, section 26(1), Item 2, Column 3.

⁷⁵ PID Act, section 26(1), Item 3, Column 3.

13.3 Legal practitioner disclosures

- (a) A public official may also disclose information to an Australian legal practitioner⁷⁶ for the purposes of seeking legal advice or professional assistance in relation to an actual or proposed disclosure (including an internal disclosure, an emergency disclosure or an external disclosure).
- (b) The public official must not disclose intelligence information. If the discloser knows or ought reasonably to have known that the information has a security classification they must only disclose it if the recipient holds the appropriate level of security clearance.⁷⁷

14. Records management

- (a) Documentation must be kept in relation to all PIDs received or handled by the NADC, and all records relating to PIDs must be kept in accordance with the [General Records Authority 39 2016/00471400](#). This authority sets out the manner in which records relating to PIDs must be kept, and the length of time they must be kept.
- (b) For further guidance, refer to the NADC's *Records Management Policy*.

15. Review

These Procedures will be reviewed by the Finance Audit and Risk Management Committee every three years or following a trigger event.

Date	Summary of Changes	Author	Approval	Approval date
08/04/2020	Establishment of document	COO	Finance Audit & Risk Management Committee	May 2020
04/12/2023	Document redrafted following reform of the PID Act and introduction of the NACC	COO	NADC Board	December 2023

⁷⁶ Being an Australian lawyer admitted to the legal profession by a Supreme Court of an Australian State or Territory and who holds a practicing certificate under a law of an Australian State or Territory: PID Act, section 8.

⁷⁷ PID Act, section 26(1), Item 4, Column 3.

Schedule 1 – Risk assessment information

1. Risk matrix

1.1 Overview

In conducting risk assessments in relation to the risk that reprisals will be taken against a discloser, the following matrix should be used:

		<i>Likely seriousness of potential reprisal</i>			
		Minor	Moderate	Major	Extreme
<i>Likelihood of reprisal being taken</i>	Almost certain	Medium	High	High	High
	Likely	Medium	Medium	High	High
	Unlikely	Low	Low	Medium	Medium
	Highly unlikely	Low	Low	Low	Medium

1.2 Examples of the seriousness of reprisals

- (a) Minor: occasional or one-off action that is likely to have a relatively minor adverse effect on the person (for example, occasional exclusion of the person from a social activity).
- (b) Moderate: repeated action which is likely to have an adverse effect on the person (for example, routinely failing to copy in the person on work-related emails which the person has a genuine business need to know about).
- (c) Major: sustained or one-off action which has a significant impact on the person (for example, consistently excluding the person from team discussions or imposing a negative performance assessment on the person without reasonable cause and supporting evidence).
- (d) Extreme: action which is likely to have a very severe impact on the person (for example, physical violence).

1.3 Criteria for assessment of the likelihood of potential reprisals and their likely seriousness

- (a) When considering the likelihood of a reprisal being taken against a discloser and the likely seriousness of any potential reprisal against a discloser, the Authorised Officer should consider all relevant factors, which may include:
 - (i) the significance of the issue being disclosed;
 - (ii) the likely outcome if the conduct disclosed is substantiated;
 - (iii) the subject matter of the disclosure;
 - (iv) whether the discloser is isolated;
 - (v) whether the discloser is employed on a full-time, part time or casual basis;
 - (vi) whether the alleged wrongdoing that is the subject of the disclosure was directed at the discloser; and
 - (vii) the relative positions of the discloser and the person whose alleged wrongdoing is the subject of the disclosure.
- (b) Consultation should occur with the discloser and, keeping in mind confidentiality arrangements, may also occur with their supervisor or manager to help to ascertain where threats of reprisal may lie. This consultation may include asking

the discloser why they are reporting wrongdoing and who they might fear a reprisal from.

(c) The tables below may assist in conducting this risk assessment.

1.4 Indicators of a higher risk of reprisals or workplace conflict

Indicator	Issues to consider
Threats or past experience	<ul style="list-style-type: none"> • Has a specific threat against the discloser, a witness or another relevant official (including a potential discloser or witness) been made? • Is there a history of conflict between the discloser, witnesses or other relevant officials (including a potential discloser or witness), 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 the disclosure will exacerbate this?
Confidentiality unlikely to be maintained	<ul style="list-style-type: none"> • Who knows that the disclosure has been made, was going to be, or could be made? • Who knows that witnesses or other relevant officials are providing, or could provide assistance in relation to the disclosure? • Has the discloser already raised the substance of the disclosure or revealed their identity in the workplace? • Who in the workplace knows the discloser's identity? Who in the workplace knows the identity of witnesses or other persons providing assistance, or who could provide assistance, in relation to the disclosure? • Is the discloser's immediate work unit small? • Are there circumstances, such as the discloser's stress level, which will make it difficult for them to not discuss the matter with people 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	<ul style="list-style-type: none"> • Are there allegations about individuals in the disclosure, or in issues raised that could form the basis of a 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 or was the reported wrongdoing occurring frequently? • Is the disclosure particularly sensitive or embarrassing for any subjects of the disclosure, senior management, the NADC or government? • Do these people have the motivation to take reprisals against the discloser, witnesses or potential discloser or witnesses – for example, because they have a lot to lose?

Indicator	Issues to consider
	<ul style="list-style-type: none"> Do these people have the opportunity to take reprisals against the discloser, witnesses or potential discloser or witnesses – for example, because they have power over the discloser?
Vulnerable discloser, witness or other relevant official	<ul style="list-style-type: none"> 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? Is the discloser, witness or other relevant official employed part-time or on a casual basis? Is the discloser, witness or other relevant official isolated – for example, geographically or because of shift work? Are the allegations unlikely to be substantiated – for example, because there is a lack of evidence? Is the disclosure being investigated outside the NADC?

1.5 Risk assessment matrix

	Identified risk event	Likelihood <i>High / Medium / Low</i>	Consequence <i>Minor / Moderate / Serious</i>	Action to mitigate <i>Yes / No (if Yes, describe action)</i>
1	Physical assault			
2	Verbal assault			
3	Stalking			
4	Bullying or harassment (including cyber-bullying)			
5	Silent treatment in the workplace			
6	Interference to personal items in workplace			
7	Excluded from legitimate access to information			
8	Excluded from promotion			
9	Excluded from workplace-sanctioned social events			

	Identified risk event	Likelihood <i>High / Medium / Low</i>	Consequence <i>Minor / Moderate / Serious</i>	Action to mitigate <i>Yes / No (if Yes, describe action)</i>
10	Unjustified change to duties or hours or work			
11	Unjustified refusal of leave			
12	Dismissal			
14	Onerous or unjustified audit of expenditures of Commonwealth money (e.g. cab charge use)			
15	Onerous or unjustified audit of ICT access or timesheets			
16	Other (please describe)			