

Public Interest Disclosure

1 Purpose

On 15 January 2014, the *Public Interest Disclosure Act 2013* (PID Act) repealed section 16 of the *Public Service Act 1999* which had previously protected whistleblowers who report suspected breaches of the Australian Public Service (APS) Code of Conduct.

The PID Act specifically covers 'disclosable conduct' which includes:

- Conduct that contravenes a Commonwealth law
- Corruption or maladministration
- Wastage of public money
- Conduct that unreasonably endangers the health and safety of other people or the environment
- Conduct that could give rise to disciplinary action/breach of the APS Code of Conduct.

2 Making a public interest disclosure

A public official is entitled to make a public interest disclosure if they believe on reasonable grounds that there is information that tends to show one or more instances of 'disclosable conduct'. A 'public official' includes a current or former NOPSEMA employee, and individual contracted service providers and/or their employees who provide services to NOPSEMA under contract.

A public official does not have to say that they are making a disclosure under the PID Act for it to be a public interest disclosure. What needs to be considered is the type of conduct disclosed, who it is about and who it is reported to.

Reports of disclosable conduct should be made to a NOPSEMA Authorised Officer or the public official's supervisor. If a supervisor believes that the information given to them concerns, or could concern, disclosable conduct, they must refer it to an Authorised Officer.

The NOPSEMA Chief Executive Officer (CEO) has appointed the following people as Authorised Officers under the PID Act as follows:

- Damien Cronin, Regulatory Support Division (Enforcement)
- Rhys Jones, Environment Division
- Nicholas Page, Regulatory Support Division (Legislative Change, Communications & Stakeholder Relations)
- Jeremy Dunster, Safety and Integrity Division.

The CEO is also an Authorised Officer under the PID Act.

A disclosure may be made either orally or in writing. The discloser may remain anonymous, however, this may affect whether the disclosable conduct can be properly investigated.

The Authorised Officer will make a decision as to whether the disclosure is of a kind covered by the PID Act, and if so, will allocate it within 14 days to the appropriate agency to investigate the matter. If the conduct relates to NOPSEMA, then it will be allocated to NOPSEMA as the investigating agency.



Reports of a breach of the APS Code of Conduct will usually be dealt with by NOPSEMA under the PID Act in the first instance. However, a PID Act investigation is a separate process to a Code of Conduct investigation. It is also separate to NOPSEMA processes for dealing with employee grievances and review of employment related actions.

Instances of suspected fraud and corruption may constitute disclosable conduct under the PID Act and they will also be dealt with under NOPSEMA's Fraud and Corruption Control Plan.

3 Investigation of public interest disclosures

The CEO must investigate disclosures allocated to NOPSEMA, or can delegate their investigative powers and functions to other individuals.

Disclosures will be investigated within 90 days of being made and in accordance with the provisions in the PID Act and the Public Interest Disclosure Standard 2013 published by the Commonwealth Ombudsman (the Standards).

Where conduct is identified by an investigator that constitutes a breach of the APS Code of Conduct, an investigator may recommend that it also be investigated under NOPSEMA's Code of Conduct policy.

An investigator has discretion not to investigate disclosures for various reasons set out in section 48 of the PID Act, for example, if the disclosure is deemed frivolous or vexatious. The investigator must provide reasons if this discretion is exercised.

After the investigation, the investigator will prepare a report setting out the matters considered, length of time of investigation, findings, action recommended or taken, any claims or evidence of detrimental action to the discloser and NOPSEMA's response to those claims. A copy will be given to the discloser.

4 Protection of disclosures

If a public official makes a disclosure under the PID Act:

- they cannot be made the subject of any criminal, civil or administrative liability
- there are criminal penalties for reprisal action
- the individual's identity will be protected unless they consent to it being released
- workplace rights under the *Fair Work Act 2009* are not affected.

5 Rights of review

If a discloser is unhappy with NOPSEMA's decision or a decision was not completed within required timeframes they may make an 'external disclosure', which is a disclosure to any person outside government. There are strict criteria for making external disclosures which must be followed.

A discloser may also complain about the public interest disclosure process or NOPSEMA's handling of their report to the Ombudsman.

More information on how to make an external disclosure or complaint is available at ombudsman.gov.au