

Public Interest Disclosure

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1. Purpose

This procedure outlines the process for handling reports about public interest disclosures and for providing protection against victimisation or discrimination for making these reports in accordance with section 59 of the *Public Interest Disclosure Act 2013* (Cth) (the PID Act).

This procedure should be read in conjunction with NOPSEMA's N-12100-PL1901 Public Interest Disclosure Policy (PID Policy).

2. What is a public interest disclosure?

A public interest disclosure may be an internal disclosure, an external disclosure, an emergency disclosure or a disclosure to a legal practitioner in accordance with section 26(1) of the PID Act.

Internal disclosures are the most common type of public interest disclosure. This type of disclosure is where the person disclosing suspected wrongdoing is:

- a current or former public official;
- makes the disclosure to their supervisor, manager, Authorised Officer or, where appropriate, the Commonwealth Ombudsman; and
- the information contained in the disclosure tends to show, or they believe on reasonable grounds tends to show, one or more instances of disclosable conduct.

This Procedure focuses on internal disclosures.

2.1. Who can make a public interest disclosure?

2.1.1. Public Officials

A person must be a current or former Commonwealth public official to make a public interest disclosure in accordance with section 69 of the PID Act. This includes Commonwealth public servants, members of the Australian Defence Force, members of the Australian Federal Police, Parliamentary Service employees, directors or staff members of Commonwealth companies, statutory officeholders or other persons who exercise powers under a Commonwealth law.

Individuals and organisations that provide goods or services under a Commonwealth contract and their officers or employees are also public officials for the purposes of the PID Act. This includes: contracted employees engaged through a recruitment agency; and subcontractors who are responsible for providing goods or services either directly or indirectly to agency covered by the PID Act for the purposes of a Commonwealth contract.

2.1.2. Deemed Public Officials

An Authorised Officer may deem an individual to be a public official if they reasonably believe the individual has information about wrongdoing and proposes to make a disclosure in accordance with section 70 of the PID Act. The Authorised Officer will provide an individual with a written determination on whether they are deemed to be a public official for the purposes of the PID Act.

2.2. What is disclosable conduct?

The full definition of disclosable conduct is set out in section 29 of the PID Act. In summary, it includes conduct by a public official that:

- contravenes a law of the Commonwealth, a State or a Territory;
- 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;
- perverts, or attempts to pervert, the course of justice or involves corruption of any other kind;
- constitutes maladministration, including conduct that is based on improper motives, is unreasonable, unjust or oppressive or is negligent;
- is an abuse of public trust;
- is fabrication, falsification, or deception in relation to scientific research, or misconduct in relation to scientific work;
- results in the wastage of public money or public property or of the money or property of an authority covered by the PID Act;
- 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;
- results in a danger to the environment or results in or increases the risk of a danger to the environment; or
- is prescribed by the PID Rules.

It also includes conduct by a public official that:

- involves or is engaged in for the purposes of abusing their position as a public official; or
- could give reasonable grounds for disciplinary action (i.e. actions taken by an employer to correct and/or punish an employee's wrongdoing) against the public official.

It does not matter whether the public official who carried out the alleged conduct has ceased to be a public official since the time the conduct is alleged to have occurred but it is necessary that they carried out the conduct in connection with their position as a public official.

It does not matter whether the disclosable conduct engaged in by a public official occurred before or after the commencement of the PID Act.

If a NOPSEMA employee has a complaint that does not fall within the definition of disclosable conduct but they nevertheless wish to raise the issue, they should discuss this with their supervisor, manager, Head of Division, Workplace Contact Officer, Assistant Manager Human Resources or Manager Human Resources.

2.3. Who are the Authorised Officers?

The Chief Executive Officer has appointed the following employees as Authorised Officers:

Authorised Officer	Division
Damien Cronin	Regulatory Support
Jeremy Dunster	Safety and Integrity
Rhys Jones	Environment
Nicholas Page	Regulatory Support

3. How to make a public interest disclosure to NOPSEMA

NOPSEMA employees can make a public interest disclosure to either their supervisor, manager or an Authorised Officer of NOPSEMA. Other public officials can make a public interest disclosure to an Authorised Officer of NOPSEMA or, where appropriate, a supervisor or manager within their agency. The names and contact details of the NOPSEMA's Authorised Officers are set out on NOPSEMA's external website at www.nopsema.gov.au. Public officials can also make a public interest disclosure to the Commonwealth Ombudsman in certain circumstances. They should not investigate a matter themselves before making a disclosure.

A public interest disclosure may be made verbally or in writing.

A public interest disclosure should, depending on the circumstances, provide information on as many of the following matters as possible:

- name and contact details;
- the nature of the suspected wrongdoing;
- who they think committed the suspected wrongdoing;
- when and where the suspected wrongdoing occurred;
- any relevant events surrounding the issue;
- if they did anything in response to the suspected wrongdoing;
- others who know about the suspected wrongdoing and have allowed it to continue;
- whether they believe their information is a PID under the PID Act (note that it does not need to be described that way for it to be treated as a PID); and
- if they are concerned about possible reprisal as a result of making the disclosure.

The information contained in a disclosure should be clear and factual, and should, as far as possible, avoid speculation, personal attacks and emotive language. It should contain supporting evidence where it is available.

A public interest disclosure may be made openly or anonymously (the disclosure does not include the identity and contact details of the discloser). Anonymous disclosures will be acted on whenever possible however, in some cases, the inability to obtain further information from the public official may result in the matter not proceeding or make it difficult to conduct an investigation.

A public official must make a public interest disclosure in accordance with the PID Act and NOPSEMA's relevant policies and procedures to gain the protections afforded by the PID Act. A public official who knowingly makes a false or misleading disclosure will not have any protections under the PID Act. If a

public official discusses the details of their disclosure with anyone who does not need to know about it then these discussions will not have any protections under the PID Act.

A public official who is considering making a disclosure should be aware that making a disclosure does not entitle them to protection from the consequences of their own wrongdoing.

A public official cannot withdraw a public interest disclosure once it has been made. They can decline to provide their consent to disclose their name and contact details or expressly state that they do not wish to have the matter investigated which may affect the decision to investigate a public interest disclosure.

A public official can choose to make a public interest disclosure about a matter that may reflect personal interest, such as an individual grievance or workplace conflict, if it meets the definition of disclosable conduct even where there may be other mechanisms available to report their concerns.

4. Receiving a public interest disclosure

4.1. Supervisors and Managers

NOPSEMA employees can make a public interest disclosure to their supervisor or manager, including where they do not formally identify that the disclosure is made under the PID Act. If the disclosure is made verbally, the manager should record this in writing, including noting the time and date of the disclosure, and ask the employee to sign the record where practicable.

Supervisors and managers should comply with confidentiality requirements. Supervisors and managers should obtain consent from the employee to disclose their identity to the Authorised Officer. If the employee does not provide this consent, then supervisor or manager should undertake a risk assessment of reprisals against the employee (refer to section 4.3).

Supervisors and managers will support employees providing disclosures through:

- providing information to the discloser about the PID Act and NOPSEMA's policies and procedures; and
- advising the discloser of other support options, including NOPSEMA's Employee Assistance Program.

If the supervisor or manager has reasonable grounds to believe that the information concerns, or could concern, disclosable conduct, they must give this information to an Authorised Officer as soon as practicable. The supervisor or manager must inform the employee that they have given the information to the Authorised Officer and provide them with the name and contact details of the Authorised Officer.

4.2. Authorised Officers

Authorised Officers may receive public interest disclosures from a public official or a public official's supervisor or manager. If the disclosure is made verbally, the Authorised Officer should record this in writing, including noting the time and date of the disclosure, and ask the discloser to sign the record where practicable.

If the Authorised Officer has reasonable grounds to believe that the person making the disclosure is unaware of the PID Act and has their contact details, the Authorised Officer must:

- inform the person that the disclosure could be treated as an internal disclosure for the PID Act;
- explain to the person what the PID Act requires for a disclosure to be an internal disclosure;
- explain to the person the protections provided by the PID Act to persons who make disclosures under the Act; and

- advise the person of any orders or directions that may affect disclosure of the information.

Authorised Officers will review the information they have received and decide whether it is a public interest disclosure under the PID Act.

Authorised Officers may receive a disclosure from a person who is not a public official. If appropriate, the Authorised Officer may determine deem them to be a public official and that the PID Act applies to the disclosure as outlined in section 70 of the PID Act. This determination can be made irrespective of whether the person requested it. If the person does request this and the Authorised Officer refuses the request, they will notify the person and provide the reasons for the refusal.

Authorised Officers should comply with confidentiality requirements.

4.3. Risk Assessment

Reprisal occurs if someone causes, by an act or omission, any detriment to another person because they believe or suspect that person, or anyone else, may have made or intends to make a public interest disclosure. It is not reasonable administrative or management action taken within the work environment.

An assessment of the risk of reprisals against the discloser must be conducted as soon as practicable following the receipt of a public interest disclosure. This assessment will be determine:

- the likelihood of reprisals or related workplace conflict occurring; and
- the potential consequences if they do occur, including the discloser's immediate and long-term wellbeing and the cost to NOPSEMA.

The risk assessment will be conducted by the Authorised Officer receiving the disclosure. The only exception is where an employee makes a disclosure to their supervisor or manager and wishes to remain anonymous in which case the supervisor or manager will be responsible for conducting the risk assessment.

The discloser and the discloser's supervisor or manager are likely to be the best sources of information for conducting the risk assessment. The person conducting the risk assessment should refer to the checklist of risk factors contained in NOPSEMA's N-12100-FM1875 Risk of Reprisal Assessment.

Strategies will be put in place to prevent or manage any risks identified from the risk assessment. The risk assessment will be monitored and reviewed as necessary.

5. Allocating a disclosure

Authorised Officers may make inquiries and obtain further information before making a decision about allocating the matter for handling. Information collected will be used to assist the Authorised Officer in reaching a decision about allocating the disclosure and not to reach any conclusions about the substance of the disclosure. These types of inquiries do not constitute an investigation.

If an Authorised Officer is satisfied that the requirements for a public interest disclosure have been met, they must allocate the handling of the disclosure to one or more agencies within fourteen (14) days of receiving the disclosure. If they have the contact details of the discloser, they must ask for the discloser's consent to provide their name and contact details to the Principal Officer and whether they wish to have the disclosure investigated prior to allocating the disclosure. Any responses to these questions will be recorded in writing. If no response is received, the Authorised Officer will assume that the discloser has not consented to the release of their name and contact details to the Principal Officer and wishes to have the discloser investigated.

NOPSEMA's Authorised Officers will provide notification of an internal disclosure to a receiving agency as follows:

- if the internal disclosure concerns conduct relating to NOPSEMA, the notification will be given to the Principal Officer of NOPSEMA; or
- if the internal disclosure concerns conduct relating to another agency, the Authorised Officer must obtain consent from an Authorised Officer in that agency and then provide notification to the Principal Officer of that agency.

The Authorised Officer will also provide a copy of the notification of the allocation to:

- the Commonwealth Ombudsman by completing and submitting N-12100-FM1333 – Form 1 – Notification to Ombudsman of an allocation decision; and
- the discloser if they have been informed of the discloser's contact details by using template contained in N-12100-FM1320 Notice to discloser of allocation.

If an Authorised Officer is not satisfied that the requirements of a public interest disclosure have been met, they must notify the discloser if their contact details are available.

6. Investigating an allocated internal disclosure

6.1. Deciding whether to investigate

The Principal Officer of NOPSEMA must decide whether to investigate an allocated internal disclosure within fourteen (14) days after the disclosure was allocated to NOPSEMA and notify the discloser of their decision. The Principal Officer can delegate the authority to investigate an allocated internal disclosure to an Authorised Officer in NOPSEMA, an employee of NOPSEMA or an external investigator.

The Principal Officer can decide to investigate the disclosure, not investigate the disclosure or not continue to investigate the disclosure in accordance with section 48 of the PID Act. The Principal Officer may decide not to investigate or discontinue a current investigation where:

- the discloser is not a current or former public official;
- the information does not, to any extent, concern serious disclosable conduct;
- the disclosure is frivolous or vexatious;
- the disclosure is substantially the same as a disclosure that has been investigated or is being investigated under the PID Act;
- the disclosure is substantially the same as a disclosure that has already been investigated, or is currently being investigated, under another Commonwealth law and:
 - it would be inappropriate to conduct another investigation at the same time; or
 - the Principal Officer is reasonably satisfied that there are no matters that warrant further investigation;
- the discloser has informed the Principal Officer that they do not wish the disclosure to be pursued and the Principal Officer is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation; or
- it is impracticable to investigate the disclosure because:
 - the discloser has not revealed their name and contact details;

- the discloser has refused or has failed or is unable to give the investigator the information they requested; or
- of the age of the information.

Note that a decision not to investigate under the PID Act does not prevent any other type of investigation into the matter.

6.2. Notifying of an investigation decision

A decision to investigate an allocated disclosure and the estimated length of the investigation by the Principal Officer must be notified to the discloser as soon as practicable; for further details refer to N-12100-FM1323 Notice to discloser of investigation of disclosure.

A decision not to investigate, or not to continue to investigate, an allocated internal disclosure by the Principal Officer must be notified as soon as practicable to the:

- discloser, including reasons for the decision and any other courses of action that might be available under Commonwealth laws (refer to N-12100-FM1322 Notice to discloser of decision not to investigate or to stop investigating disclosure); and
- Commonwealth Ombudsman (refer to N-12100-FM1318 Notification to Ombudsman of decision not to investigate or to stop investigating).

6.3. Conducting an investigation

6.3.1. Objectives

The objectives of the investigation are to:

- collate information relating to the allegation as quick as possible;
- consider the information collected and draw conclusions objectively and impartially; and
- provide a report on the conclusions drawn.

6.3.2. Principles

The Principal Officer or delegated investigator (Investigator) must conduct an investigation under the PID Act, the Public Interest Disclosure Standard 2013 (Cth) any other relevant Commonwealth legislation and guidelines.

The Investigator will conduct the investigation in accordance with the following principles:

- they must be independent and unbiased in the matter;
- they must ensure that they do not have a conflict of interest in the matter;
- they must ensure that a decision on whether evidence is sufficient to prove a fact is made on the balance of probabilities;
- they must ensure there is procedural fairness (refer to section 8.3.4); and
- they must maintain strict confidence as it is an offence for a person to disclose or use information obtained in the course of conducting a disclosure investigation or in connection with their powers and functions under the PID Act unless the disclosure or use is for the purposes of the PID Act or the information has previously been lawfully published.

6.3.3. Collecting information

The Investigator may obtain information for the purposes of the investigation as they see fit.

If the Investigator conducts interviews as part of the investigation, they must, subject to any restrictions imposed by Commonwealth law other than the PID Act, inform the person of the following:

- the identity and function of each person conducting the interview;
- the process of conducting an investigation;
- the Investigator's authority to conduct an investigation under the PID Act;
- the protections provided to the person by section 57 of the PID Act; and
- the person's duty:
 - if they are a public official, to use their best endeavours to assist the Investigator in the conduct of an investigation under the PID Act (subject to the public official's privilege against incriminating themselves or exposing themselves to a penalty);
 - not to take or threaten to take reprisal action against the discloser; and
 - not to disclose the identity of the person who made the disclosure subject to the PID Act.

The Investigator must ensure:

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

If the Investigator is aware of the discloser's identity and considers that it is necessary to reveal the discloser's identity to an interviewee, the Investigator must consult with the discloser before proceeding where practicable.

6.3.4. Procedural fairness

Procedural fairness does not require that a person against whom allegations are made must be advised as soon as the disclosure is received or as soon as an investigation is commenced.

Procedural fairness may require that the discloser's identity be revealed to the person who is the subject of the disclosure.

Where the Investigator in preparing the report of their investigation proposes to:

- make a finding of fact; or
- express an opinion that is adverse to the discloser, to a public official who is the subject of the disclosure or to another person:

the Investigator must give the person who is the subject of that proposed finding or opinion a copy of the evidence that is relevant to that proposed finding or opinion and must give the person a reasonable opportunity to comment on it. This does not apply where the investigation recommends or decides that further investigation action should or should not be taken or will or will not be taken and makes no substantive findings or expresses no adverse opinions.

The Investigator must ensure that a finding of fact in an investigation report under the PID Act is based on logically probative evidence.

The Investigator must ensure that the evidence that is relied on in an investigation is relevant. This generally means that the evidence is of consequence to the matter under investigation and makes the existence of a fact more probable or less probable than it would be without the evidence.

6.3.5. Confidentiality

The investigation is to be conducted in as confidential a manner as possible. In particular, the identity of both the discloser and the person alleged to have engaged in disclosable conduct is not to be revealed except where this is reasonably necessary for the effective investigation of the disclosure.

Any interviews conducted by an Investigator are to be conducted in private.

Any interviews with the discloser are to be arranged so as to avoid, to the extent practicable, the identification of the discloser by other persons.

6.3.6. Referral of information to the police

If the Investigator suspects on reasonable grounds that some of the information disclosed or obtained during the course of the investigation is evidence of the commission of an offence against a law, the Investigator may disclose the information to the Australian Federal Police (AFP). If the information relates to an offence that is punishable for a period of at least two years, the Investigator must disclose the information to the AFP.

6.3.7. Time limits

Investigations must be completed, including the preparation of the report, within 90 days of the date the matter was allocated for investigation. The Investigator can seek one or more extensions of time from the Ombudsman. A request for an extension of time must be made where an investigation has not been completed within 70 days of the date the disclosure was allocated. The request should include the reasons why the investigation cannot be completed within the time limit, the views of the discloser and an outline of action taken to progress the investigation. An investigation that is not completed within time does not become invalid.

6.3.8. Report

The Investigator will prepare an investigation report which sets out the matters considered, the duration of the investigation, summary of evidence collected, any findings that were made, any recommendations or action taken, any claims or evidence of detrimental action to the discloser and NOPSEMA's response to those claims.

The Investigator must provide the report to NOPSEMA's Principal Officer.

If the Investigator has the discloser's contact details, they must, as soon as practicable, advise the discloser that the investigation report has been completed and whether it was completed within the specified time limit by using N-12100-FM1326 Notice to discloser of completion of investigation form and provide a copy of the investigation report.

The Investigator, where appropriate, may delete from the copy of the investigation report given to the discloser any material:

- that is likely to enable the identification of the discloser or another person; or
- the inclusion of which would result in the copy being a document:

- that is exempt for the purposes of Part IV of the *Freedom of Information Act 1982* (Cth);
- having, or being required to have, a national security or other protective security classification; or
- containing intelligence information; or
- contravening a designated public restriction.

6.4. Discloser not satisfied with NOPSEMA's actions

If a discloser is unhappy with the process or who they have been treated by NOPSEMA, they may complain to the Commonwealth Ombudsman. Note that a reasonable belief by a discloser that NOPSEMA's investigation or response to the investigation was inadequate is one of the conditions of making an external disclosure as outlined in section 2.2.

7. Record Keeping

The Principal Officer and Authorised Officers must keep records relating to this procedure in accordance with NOPSEMA's N-15000-PL0215 Records Management Policy. This includes keeping copies of forms sent to the discloser and Ombudsman.

Access to these records will be restricted to the Authorised Officers, delegates (including Investigators) or other employees who require access in order to perform some function under the PID Act or for the purposes of another Commonwealth law.

8. Monitoring and Evaluation

Authorised Officers are required to provide a quarterly report to the Principal Officer specifying the number of public interest disclosures they received and the nature of the disclosable conduct for each disclosure by making reference to the relevant item or paragraph in the definition of public interest disclosure. This report should include any disclosures that have been allocated to NOPSEMA by another agency's Authorised Officer.

NOPSEMA will appoint a monitoring delegate to prepare the agency's annual report to the Commonwealth Ombudsman on disclosures made during the financial year. Authorised Officers and Investigators must provide any relevant information to the monitoring delegate. The final report will be submitted by the Principal Officer to the Commonwealth Ombudsman within the specified timeframe.

9. References

Public Governance, Performance and Accountability Act 2013 (Cth)

Public Interest Disclosure Act 2013 (Cth)

Public Service Act 1999 (Cth)

Public Interest Disclosure Standard 2013 (Cth)

Commonwealth Ombudsman "Agency Guide to the Public Interest Disclosure Act 2013"

N-07400-PL1476 Fraud and Corruption Control Plan

N-12000-PL0339 Code of Conduct Policy

N-12000-PL0800 Resolving Workplace Issues and Disputes Policy

N-12100-PL1901 Public Interest Disclosure Policy

N-15000-PL0215 Records Management Policy

N-12100-GL1327 Authorised Officer Responsibilities

N-12100-GL1328 Investigator Responsibilities

N-12100-GL1329 Principal Officer Responsibilities

N-12100-GL1330 Supervisor and Manager Responsibilities

N-12100-IP1332 Public Interest Disclosure Flowchart

N-12100-IP131 Frequently Asked Questions

N-12100-FM1333 Form 1 – Notification to Ombudsman of an allocation decision

N-12100-FM1318 Form 2 – Notification to Ombudsman for an extension of time to investigate a PID

N-12100-FM1319 Form 3 – Request to Ombudsman for an extension of time to investigate a PID

N-12100-FM1320 Notice to discloser of allocation

N-12100-FM1321 File Note – notice of allocation and informing the discloser

N-12100-FM1322 Notice to discloser of decision not to investigate or stop investigating disclosure

N-12100-FM1323 Notice to discloser of investigation of disclosure

N-12100-FM1326 Notice to discloser of completion of investigation

N-12100-FM1875 Risk of Reprisal Assessment