



Housing Australia

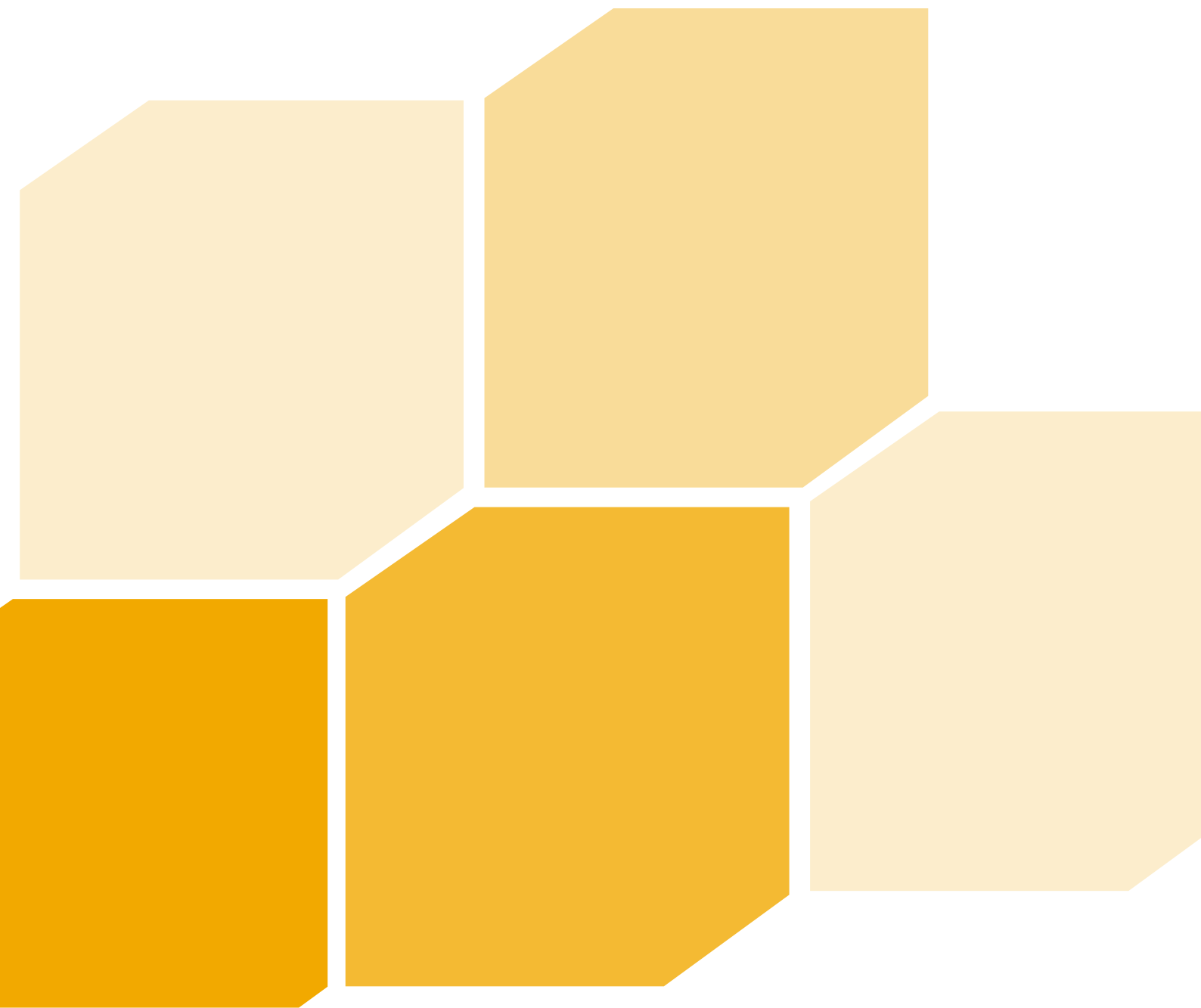
Public Interest Disclosure Procedures

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Chief Risk Officer

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1. Introduction

These procedures are established in accordance with section 59(3) of the *Public Interest Disclosure Act 2013* (PID Act) for Housing Australia.

The purpose of the PID Act is to provide a legislative scheme for the making of disclosures about certain wrongdoing in the Commonwealth public sector, investigating those disclosures, and protecting persons who make those disclosures (known as ‘disclosers’) and others from legal action and reprisals for making, or proposing to make a disclosure. These procedures outline what a public interest disclosure (PID) is (see section 2) and describe how an internal PID can be made at Housing Australia (see sections 3, 4 and 5). They:

- provide for confidentiality of investigative processes (see section 3.4);
- deal with the assessment of risks that reprisals may be taken in relation to disclosures under the PID Act (see section 3.6 and 5.2); and
- comply with standards in force under section 74(1) of the PID Act (*Public Interest Disclosure Standard 2013* (PID Standard)).

Housing Australia is committed to the highest standards of ethical and accountable conduct. Housing Australia encourages the reporting of wrongdoing under the PID Act and will act on disclosures where appropriate and protect disclosers and others from any reprisals or threats of reprisals as a result of making a disclosure.

The operation of these procedures will be reviewed regularly to ensure their continued effectiveness.

2. What is a public interest disclosure?

There are five kinds of PID – internal, external, emergency, legal practitioner, and NACC disclosures. These procedures only focus on **internal disclosures under the PID Act**. Further information on other types of disclosure is available on the Commonwealth Ombudsman’s website: <https://www.ombudsman.gov.au/>.

Under these procedures, an internal disclosure will only be a PID if all of the following criteria are met:

- a disclosure is made by a current, former or deemed public official (the discloser) (see section 2.1); and
- the disclosure is made either to a supervisor of the discloser, or to an authorised officer (see section 2.2); and
- the information disclosed tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of **disclosable conduct** (see section 2.3), and
- the disclosure is not made in the course of performing the discloser’s ordinary functions as a public official.

The full definition of ‘public interest disclosure’ is in section 26 of the PID Act.

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.

Accordingly, it is important that persons intending to make a disclosure of information under the PID Act carefully review the contents of the PID Act and seek advice where appropriate.



2.1. Who is a public official?

A person must be a current, former or deemed public official to be a discloser within the meaning of the PID Act.

The term 'public official' is broadly defined in the PID Act and includes (but is not limited to):

- the principal officer of an agency (i.e. the Chief Executive Officer [CEO] of Housing Australia)
- a member of staff of an agency (e.g. an employee engaged under the Housing Australia Act and an APS employee seconded to Housing Australia)
- a member of the Board of Housing Australia,
- a service provider under a Commonwealth contract, along with their officers and employees who provide services directly or indirectly for the purposes of the Commonwealth contract. A Commonwealth contract is one where goods and services are provided to Housing Australia, or for and on behalf of Housing Australia in connection with the performance of its functions or exercise of its powers. This does not include a grant covered by an instrument made under section 105C of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) (instruments relating to grants).
- a statutory officeholder
- a person employed under the *Parliamentary Service Act 1999*
- a member of the Australian Defence Force
- an appointee of the Australian Federal Police, and
- a person deemed to be a public official by an authorised officer under section 70 of the PID Act.

Judicial officers, members of a Royal Commission, members of Parliament and persons employed or engaged under the *Members of Parliament (Staff) Act 1984* **are not** public officials for the purposes of the PID Act.

The full definition of 'public official' is in section 69 of the PID Act, and the full definition of 'principal officer' is in section 73(1) (see item 10).

2.2. Who can a PID be made to?

A public official can make a PID to their supervisor (or manager) or to an 'authorised internal recipient' (the principal officer or an authorised officer at Housing Australia, an authorised officer at the agency to which the discloser belongs, or the Commonwealth Ombudsman).

The principal officer of Housing Australia is the CEO; the Chief Risk Officer, Board Secretary and Chief Operating Officer are authorised officers and authorised internal recipient under the PID Act.

PIDs can be sent to the CEO at scott.langford@housingaustralia.gov.au or campbell.nicoll@housingaustralia.gov.au. If the PID relates to the conduct of another agency, it may be appropriate to make the PID to an authorised officer of that agency.

If the discloser believes, on reasonable grounds, that it would be appropriate for the PID to be investigated by the Commonwealth Ombudsman – or if the PID is about conduct related to the Ombudsman's office then the PID can be made to the Ombudsman.

There are additional obligations for supervisors who receive PIDs (see section 4).

The full definition of 'authorised internal recipient' is in section 34 of the PID Act and the full definition of 'authorised officer' is in section 36.



2.3. What is disclosable conduct?

Disclosable conduct is conduct by:

- an agency (a Commonwealth entity – including a ‘prescribed authority’ such as Housing Australia)
- a public official in connection with their position (see section 2.1), or a contracted service provider for a Commonwealth contract (in connection with that contract) that involves:

- illegal or unlawful conduct
- conduct that perverts (or attempts to pervert) the course of justice
- corruption (including corrupt conduct – see below)
- maladministration
- abuse of public trust
- fabrication, falsification, plagiarism or deception relating to scientific research
- wastage of public money or public property
- unreasonable danger, or increased risk of danger, to health and safety
- danger, or an increased risk of danger, to the environment
- a public official abusing their position
- conduct that could (if proved) give reasonable grounds for disciplinary action resulting in the termination of the public official’s engagement or appointment, or
- any conduct prescribed by the PID Rules. At the date that this document was made, there are no PID Rules in effect.

Importantly, personal work-related conduct is **not** disclosable conduct unless an exception applies (see section 2.4).

The full definition of ‘disclosable conduct’ is in section 29 of the PID Act.

Contracted service provider for a Commonwealth contract

A ‘contracted service provider for a Commonwealth contract’ is:

- a person who is a party to a Commonwealth contract, and is responsible for the provision of goods or services under that contract, or
- a subcontractor who is responsible under a subcontract for the provision of goods or services for the purposes (whether direct or indirect) of the Commonwealth contract.

A ‘Commonwealth contract’ does not include a grant covered by an instrument made under section 105C of the *Public Governance, Performance and Accountability Act 2013* (instruments relating to grants).

The full definition of ‘contracted service provider for a Commonwealth contract’ is set out in section 30 of the PID Act.

Corrupt conduct

Section 8(1) of the *National Anti-Corruption Commission Act 2022* (NACC Act) states that each of the following is ‘corrupt conduct’.



- any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly:
 - the honest or impartial exercise of any public official’s powers as a public official
 - the honest or impartial performance of any public official’s functions or duties as a public official
- any conduct of a public official that constitutes or involves a breach of public trust
- 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, or
- 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.

Conduct involving a public official may be corrupt conduct even if the conduct is not for the person’s personal benefit.

2.4. What is not disclosable conduct?

The following **is not** disclosable conduct:

- disagreement with government policies or government action or expenditure
- certain conduct connected with courts, Commonwealth tribunals and intelligence agencies, or
- personal work-related conduct (subject to the exceptions set out below).

Personal work-related conduct

Personal work-related conduct is conduct (by act or omission) engaged in by a public official (the first official) in relation to another public official (the second official) that:

- occurs in relation to, or in the course of, either or both of the following:
 - the second official’s engagement or appointment as a public official
 - the second official’s employment, or exercise of functions and powers, and
- has, or would tend to have, personal implications for the second official.

The following are some examples of personal work-related conduct:

- conduct relating to an interpersonal conflict between the first official and the second official (including, but not limited to, bullying or harassment)
- conduct relating to the transfer or promotion of the second official
- conduct relating to the terms and conditions of engagement or appointment of the second official
- disciplinary action taken in relation to the second official, or
- the suspension or termination of the second official’s employment or appointment as a public official.

If you have concerns about personal work-related conduct, this can be raised in the first instance with People and Culture.

Personal work-related conduct will be disclosable conduct if the conduct:

- would constitute taking a reprisal against another person, or an offence under section 19 of the PID Act, or



- 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).

The full definition of 'personal work-related conduct' is in section 29A of the PID Act. Sections 31, 32 and 33 of the PID Act provide more detail about conduct that **is not** disclosable conduct (as referred to above).

3. Making an internal disclosure under the PID Act

3.1. How do you make an internal disclosure under the PID Act?

Where a public official is considering making a PID they may wish to, in the first instance, contact an authorised officer to get information about making a disclosure under the PID Act.

A PID may be made by a public official to their supervisor or to an authorised officer (see section 2.2):

- orally or in writing
- anonymously or openly, and
- with or without the discloser asserting that the disclosure is made for the purposes of the PID Act – a PID may be made even without the discloser knowing about the PID Act.

Where possible, Housing Australia officials are encouraged to make a PID to an authorised officer rather than to their supervisor (or manager) because of the additional training given to authorised officers in Housing Australia. This paragraph does not prevent a Housing Australia official from making a PID to their supervisor or manager.

Once a PID has been made it cannot be withdrawn, but a discloser may tell the authorised officer that they do not want the PID to be investigated. This will be a relevant consideration in the CEO or their delegate deciding whether or not to investigate the PID.

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

A disclosure made in the course of performing the discloser's ordinary functions as a public official is not a PID.

3.2. What information should be provided when making a PID?

The information contained in a PID should be clear and factual, and should, as far as possible, avoid speculation, personal attacks and emotive language. It should contain supporting evidence where available to the discloser and should, where possible, identify any witnesses to the disclosable conduct.

A public official making a PID may wish to include the following details:

- their name and contact details (but they do not have to do this, and they can use a pseudonym instead of their real name)
- the details of the suspected wrongdoing
- the name of the person or entity who they believe committed the suspected wrongdoing
- the place, time and date of the suspected wrongdoing
- whether the suspected wrongdoing has been reported to anyone else



- whether there were any witnesses to the wrongdoing, and if so, who the witnesses are, and
- whether they have any concerns that anyone might take reprisal action against them for having made the PID.

A discloser who knowingly makes a false or misleading statement in a PID **will not** have immunity from civil, criminal or administrative liability under the PID Act.

3.3. How are anonymous disclosures dealt with?

A discloser may wish to make an anonymous disclosure. A disclosure is anonymous if the identity of the discloser is not revealed and if no contact details for the discloser are provided. It is also anonymous if the discloser does not disclose their name but provides anonymous contact details. Providing a de-identified email address for correspondence will allow the authorised officer or CEO (or delegate) to contact the discloser anonymously where required.

Receiving an anonymous disclosure does not mean that it cannot be treated as a disclosure for the purposes of the PID Act. However, the disclosure will only be a PID if the discloser is a public official (see section 2.1).

Where a supervisor (or manager) receives an anonymous disclosure for the purposes of the PID Act they **must** refer it to an authorised officer as soon as reasonably practicable.

Persons considering making an anonymous disclosure should be aware that anonymous disclosures are often more difficult to investigate.

If the discloser remains anonymous and uncontactable, the authorised officer, principal officer or their delegates will not be able to seek further information from the discloser or advise the discloser of any action that might be taken.

Additionally, the CEO or the CEO's delegates have the discretion not to investigate the disclosure further if it is impracticable to do so because the discloser does not provide their name and contact details or is unable to give the CEO or their delegate further information or assistance if they need it.

3.4. What are the confidentiality obligations under the PID Act?

Housing Australia's authorised officers and the CEO (or delegate), and any other persons who are aware of a PID, should take all reasonable steps to protect the identity of a public official who has made a PID for the purposes of the PID Act.

Only individuals directly involved in dealing with the PID (such as the authorised officer and the CEO, and any persons assisting them) 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 (identifying information) without the consent of the discloser or were permitted under the PID Act.

Any interviews conducted for the purpose of an investigation under the PID Act should be conducted in private and avoid the identification of the discloser by other staff of Housing Australia.

A person commits an offence if they disclose or use identifying information about a discloser, **unless** one or more of the following applies:

- the disclosure or use is for the purposes of the PID Act – that is for the purpose of providing assistance in relation to a PID, providing legal advice, or other professional assistance in relation to a PID, or in the performance or exercise (or purported performance or exercise) of a function or power conferred by the PID Act



- the disclosure or use is in connection with the performance of the Commonwealth Ombudsman's functions or the Inspector-General of Intelligence and Security's functions
- the disclosure or use is for the purposes of a law of the Commonwealth of Australia or a prescribed law of an Australian State or a Territory (which might include disclosure where this is required to allow Housing Australia to meet e.g. its duties under the *Work Health and Safety Act 2011*)
- the person likely to be identified by the information has consented to the disclosure or use of the information, or acted in a way that is inconsistent with keeping that person's identity confidential, or
- the information has previously been lawfully published.

Identifying information about a discloser is not required to be disclosed to a court or tribunal except where it is necessary to do so for the purposes of giving effect to the PID Act.

The offences regarding the use or disclosure of identifying information are set out in sections 20 and 21 of the PID Act.

3.5. What are the recordkeeping obligations?

Where an authorised officer or the CEO (or delegate) is required to keep a record under these procedures, the PID Act or the PID Standard, the record **must** be kept in hard copy or electronic form or both. Access to these records **must** be restricted to only those officers who require access in order to perform some function under the PID Act or for the purposes of another law of the Commonwealth (for example, under the *Work Health and Safety Act 2011*).

- The system of privileges in document management systems must be used to ensure restricted access to electronic documents.
- Hard copies of documents must be stored in a locked cabinet– they must not be kept in a container or cabinet that is accessible by an employee who is not authorised to access the record.

If a person ceases to be an authorised officer or delegate in Housing Australia (including because of resignation or movement to another agency), their public interest disclosure records must be transferred to another authorised officer or delegate in Housing Australia.

Appropriate written records **must** be kept of the allocation decision (see section 5) and of the investigation (see section 6.3).

All records made for the purposes of the PID Act in accordance with these procedures must be marked as **Sensitive: Personal**.

Any email message sent by an authorised officer or CEO (or delegate) that contains identifying information must be clearly marked 'To be read by named addressee only' in the subject heading with no other information provided in the heading.

3.6. What protections and support are available under the PID Act?

Protection against reprisals

The PID Act provides a range of protections for persons who make a PID and others who may be affected. Chief among these is that reprisal action cannot be taken or threatened against a discloser or any other person (for example, a witness) because of a PID.

Reprisal occurs when someone causes, by an act or omission, detriment to another person because they believe or suspect that person, or anyone else, may have made, intends to make, or could make



a PID. This could include an action or omission (or threat of action or omission), or detriment, that results in:

- disadvantage to a person, including dismissal, injury in their employment, discrimination between them and other employees or alteration of their position to their disadvantage
- a physical or psychological injury, including a stress-related injury
- intimidation, harassment or victimisation
- loss or damage to property, or
- disadvantage to a person's career (for example, denying them a reference or a promotion without appropriate reasons).

It is a criminal offence to take or threaten to take a reprisal action against anyone in relation to a PID and the penalty is up to two years imprisonment. A Housing Australia official who commits a reprisal action may also be subject to disciplinary procedures, for example for breaching the Housing Australia's Code of Conduct (Staff).

The CEO **must** take reasonable steps to protect public officials against reprisals that have been, or may be, taken in relation to PIDs that have been made, may have been made, are proposed to be made or could be made to an authorised officer or supervisor belonging to Housing Australia. Following the reprisal risk assessment, a strategy for providing an appropriate level of support will be developed by the authorised officer (see section 5.2).

A person **does not** take a reprisal against another person to the extent that the person takes administrative action that is reasonable to protect the other person from detriment.

What constitutes 'taking a reprisal' is set out in section 13 of the PID Act.

Disclosers' immunity from liability

If an individual makes a PID they are not subject to any civil, criminal or administrative liability (including disciplinary action) for making the PID and no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the individual on the basis of the PID.

The discloser has absolute privilege in proceedings for defamation in respect of the PID, and a contract to which the discloser is a party **must not** be terminated on the basis that the PID constitutes a breach of the contract.

However, these immunities do not apply if the discloser:

- makes a statement which they know is false or misleading
- commits an offence under specific sections of the Criminal Code by:
 - providing false or misleading information
 - giving false or misleading documents
 - making a false document
 - using a forged document, or
- contravenes a designated publication restriction if they know the PID contravenes that restriction and do not have a reasonable excuse for that contravention. Designated publication restrictions are restrictions contained in a range of Commonwealth legislation, such as the *Family Law Act 1975*, the *Migration Act 1958* or the *Australian Crime Commission Act 2002*. A full list of designated publications restrictions can be found in section 8 of the PID Act.



If a discloser provides information that relates to their own conduct, their liability for that conduct **is not affected**.

The details of the immunity from liability for disclosers are set out in sections 10, 11, 11A and 12 of the PID Act.

Witnesses' immunity from liability

An individual is a 'witness' if they provide assistance in relation to a PID by giving information or producing a document or other thing, or answering a question, that they consider on reasonable grounds to be relevant to:

- the making of a decision in relation to the allocation of a PID
- a PID investigation or a proposed PID investigation, or
- a review or proposed review by the Commonwealth Ombudsman under section 55(3) of the PID Act.

A witness is not subject to any civil, criminal or administrative liability (including disciplinary action) because of the assistance provided. No contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the witness on the basis of the assistance provided.

A witness has absolute privilege in proceedings for defamation in respect of the assistance provided, and a contract to which the witness is a party **must not** be terminated on the basis that the assistance provided constitutes a breach of the contract.

However, these immunities **do not apply** if the witness:

- makes a statement which they know is false or misleading
- commits an offence under specific sections of the *Criminal Code* by:
 - providing false or misleading information
 - giving false or misleading documents
 - making a false document
 - using a forged document, or
- contravenes a designated publication restriction.

If a witness provides information that relates to their own conduct, their liability for that conduct **is not affected**.

The details of the immunity from liability for witnesses are set out in sections 12A and 12B of the PID Act (see also the definition of 'designated publication restriction' in section 8).

Good faith exemption for officers involved in PID processes

The CEO (or delegate), an authorised officer, a supervisor (or manager) of a person who makes a PID, or a person assisting the CEO (or delegate) is not liable to any criminal or civil proceedings, or any disciplinary action (including any action that involves imposing any detriment), for or in relation to an act or matter done, or omitted to be done, in good faith:

- in the performance, or purported performance, of any function conferred on the person by the PID Act
- in the exercise, or purported exercise, of any power conferred on the person by the PID Act, or



- in the case of a person assisting the CEO (or delegate) — in assisting the CEO (or delegate) in performing any function or exercising any power under the PID Act.

This exemption does not apply to a breach of a designated publication restriction.

The details of this good faith exemption are in section 78 of the PID Act (see also the definition of ‘designated publication restriction’ in section 8).

4. Procedures for supervisors receiving a disclosure

A ‘supervisor’ is a public official who supervises or manages the public official making the disclosure. This can be the discloser’s direct supervisor or another person up the line of reporting. A supervisor (or manager) who receives a disclosure of disclosable conduct (see section 2.3) from a public official is required under the PID Act to take the following steps.

If a current Housing Australia employee approaches a person as their supervisor to make a disclosure, and the person is not the employee’s supervisor, or there is uncertainty as to whether they supervise the employee, the person should advise the employee to make their disclosure to an authorised officer.

Where a public official discloses information to their supervisor or manager (who is not an authorised officer) and the supervisor (or manager) has reasonable grounds to believe that the information concerns, or could concern, disclosable conduct they **must**:

- inform the discloser that the disclosure could be treated as a PID
- explain to the discloser that the procedures under the PID Act require:
 - the supervisor (or manager) to give the disclosure to an authorised officer
 - the authorised officer to decide whether to allocate the disclosure to the CEO or to another agency, and
 - if the PID is allocated, the CEO (or delegate) must investigate it
- advise the discloser about the circumstances (if any are applicable) in which a disclosure must be referred to another agency or person under another law of the Commonwealth
- explain to the discloser the protections under the PID Act (see section 3.6), and
- as soon as reasonably practicable after the disclosure is made, give the information to an authorised officer.

The supervisor (or manager) should also seek the discloser’s consent to provide the authorised officer with the discloser’s identity. If the discloser declines, the supervisor (or manager) will need provide the authorised officer with as much information as possible, without revealing the discloser’s identity and will need to conduct the reprisal risk assessment (see section 5.2).

At the time the supervisor (or manager) gives the information to the authorised officer, the supervisor (or manager) must also give the officer their initial written assessment of any risks that reprisal action might be taken against the discloser.

If the disclosure is not in writing, the supervisor or manager must make a written record of the substance of the disclosure and of the time and date of the disclosure and ask the discloser to sign the written record of the disclosure (where this is practicable).

Unless the disclosure is anonymous, the supervisor must advise the discloser when they have given the information to an authorised officer and provide the name and contact details of the authorised officer.



The obligations of supervisors are set out in section 60A of the PID Act.

5. Procedures for authorised officers receiving and allocating a disclosure

An authorised officer who receives a disclosure of disclosable conduct (see section 2.3) from a public official must deal with the disclosure in accordance with the PID Act, PID Standard and these procedures. An authorised officer may seek legal advice to support their compliance. Schedule 1 sets out a flow chart of the process to be followed.

5.1. Receiving a disclosure

Where:

- an individual discloses, or proposes to disclose, information to an authorised officer, which the authorised officer has reasonable grounds to believe may be disclosable conduct (see section 2.3), and
- the authorised officer has reasonable grounds to believe that the person may be unaware of the consequences of making the disclosure,

the authorised officer **must**:

- inform the individual that the disclosure could be treated as an internal disclosure for the purposes of the PID Act
- explain what the PID Act requires in order for the disclosure to be an internal disclosure (see section 2)
- advise the individual about the circumstances (if any) in which a PID must be referred to an agency, or other person or body, under another law of the Commonwealth, and
- advise the individual of any orders or directions of which the authorised officer is aware that are designated publication restrictions that may affect disclosure of the information.

If the disclosure is not in writing, the authorised officer must make a written record of the substance of the disclosure and of the time and date of the disclosure and ask the discloser to sign the written record of the disclosure (where this is practicable).

5.2. Conducting a reprisal risk assessment

An authorised officer must conduct a risk assessment of the risk of reprisals being taken against the discloser (and other public officials who belong to Housing Australia, if applicable) as a result of the PID using the risk assessment matrix at Schedule 2 and risk indicators at Schedule 3. This should be conducted as soon as possible after a potential PID is received by an authorised officer.

If the disclosure is first made to a supervisor (or manager) then they must give the authorised officer their initial written assessment of any risks that reprisal action might be taken against the discloser. The authorised officer may ask the supervisor (or manager) for further assistance in carrying out the risk assessment.

If a disclosure is referred to the authorised officer by the discloser's supervisor, the supervisor is required to prepare a written risk assessment, as noted above. The authorised officer must review the supervisor's risk assessment in consultation with the supervisor and discloser as appropriate. As a result of the review, the authorised officer may make written comments which must become an addendum to the supervisor's assessment.



The authorised officer must submit their risk assessment, or the supervisor's assessment and the authorised officer's addendum, whichever is relevant to the CEO at the same time as they submit the disclosure to the CEO.

Reprisal risk **must** be assessed in all cases however the way in which a risk assessment is conducted may vary depending on the circumstances. The risk assessment can include the risk of direct reprisal against the discloser and the risk of related workplace conflict or difficulties.

Early and open communication with the discloser is critical. Sensitivity needs to be applied in talking about the risks with the discloser. The authorised officer conducting the risk assessment should be alert to the possibility that the discloser may feel that the discussion of reprisal risk is intended to discourage them from proceeding with their disclosure. As part of the risk assessment, any concerns of the discloser about the reprisal risks should be discussed with them and addressed, considering all of the circumstances. The discloser should also be informed of the protections afforded to them under the PID Act (see section 3.6).

The following framework may be used for assessing the risk of reprisals being taken:

- **Identifying the risks** – the authorised officer should identify the risk factors relating to the particular disclosure, taking into account the individual, organisational circumstances and the potential risks that the discloser perceives arising from the disclosure. The discloser's supervisor may be consulted provided the supervisor is not involved in the alleged wrongdoing and the discloser has consented to the supervisor's involvement. Some risk factors may include (but are not limited to) threats or past experience, confidentiality unlikely to be maintained, significant reported wrongdoing, vulnerable discloser etc.
- **Assessing the risks** – the authorised officer should consider the likelihood and consequence of reprisal or related workplace conflict occurring. For example, the likelihood of a risk may be high where threats have been made, there is already conflict in the workplace or the discloser's identity would be obvious because of the nature of the disclosure.
- **Controlling the risks** – the authorised officer should identify strategies to be put in place to prevent or contain reprisals or related workplace conflict. The authorised officer will consult with the Compliance Function and relevant senior managers on what appropriate actions might be undertaken. Any decision affecting the discloser should be made in consultation with them and should be reasonable and appropriate in all of the circumstances.
- **Monitoring and reviewing the risk management process** – the risk assessment should be monitored, reviewed and updated as circumstances change throughout the course of the investigation.

Regardless of the outcome of the risk assessment, if it has been determined that a discloser will require support, the authorised officer should develop a strategy for providing an appropriate level of support. This may include taking one or more of the following actions:

- with the discloser's consent, appointing a support person to assist the discloser, who is responsible for checking on the wellbeing of the discloser regularly
- informing the discloser of the progress of the investigation
- advising the discloser of the availability of the Employee Assistance Program and access to the People and Culture team, and
- where there are any concerns about the health and wellbeing of the discloser, liaising with officers responsible for health and safety in Housing Australia.



If the situation is serious enough, protecting the discloser may require significant action such as a transfer, relocation, a leave of absence, physical protection or an injunction.

For further information on carrying out reprisal risk assessments, see the Commonwealth Ombudsman's *Agency Guide to the Public Interest Disclosure Act 2013*: www.ombudsman.gov.au.

5.3. Allocating a disclosure

An authorised officer who receives a disclosure (either directly from the discloser or from the discloser's supervisor) **must** either:

- allocate the disclosure to one or more agencies, or
- decide not to allocate the disclosure to any agency if they are satisfied, on reasonable grounds, that:
 - there is no reasonable basis on which the disclosure could be considered an internal disclosure (see section 2), or
 - the conduct disclosed would be more appropriately investigated under another law or power.

The authorised officer **must** use their best endeavours to make a decision about the allocation of the disclosure **within 14 days** of the disclosure being made or given to the officer (unless a stop action direction has been issued under the NACC Act).

If the authorised officer is aware of the name and the contact details of the discloser, they must, as soon as practicable after receiving the disclosure and before allocating the disclosure, ask the discloser whether they:

- consent to the authorised officer giving the discloser's name and contact details to the CEO and to the CEO's delegates; and
- wish their disclosure to be investigated - expressing a wish not to have a disclosure investigated does not necessarily mean that the disclosure will not be investigated. One of the grounds on which the CEO (or delegate) may decide not to investigate a disclosure, is if the discloser has informed the delegate that they do not wish the disclosure to be pursued and the delegate is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation.

The authorised officer must make a written record of the discloser's responses (if any) to these questions.

If a discloser does not respond within seven days to the question referred to:

- in the first dot point – the discloser is taken not to have consented to their name and contact details being given to the CEO and their delegates; and
- in the second dot point – the discloser is taken to wish the disclosure to be investigated.

The authorised officer must also advise the discloser that if they do give such consent and the disclosure is allocated to Housing Australia, the authorised officer will be required to give the discloser's name and contact details to the Commonwealth Ombudsman as part of the authorised officer's obligation to inform the Commonwealth Ombudsman of any allocation of a disclosure.

The authorised officer must advise the CEO as soon as practical that they have received a disclosure.



If the discloser does not consent to their name and contact details being given to the CEO and their delegates, the authorised officer's advice to the CEO must be anonymised to the extent possible to avoid the discloser's name being able to be ascertained from the information provided to the CEO.

Deciding whether or not to allocate the disclosure

An authorised officer who receives a disclosure must allocate the disclosure to the CEO or a principal officer of another agency **unless**:

- they are satisfied, on reasonable grounds, that there is no reasonable basis on which the disclosure could be considered an internal disclosure – the grounds on which an authorised officer could be satisfied of this include that:
 - the disclosure has not been made by a person who is, or was, a public official (see section 2.1)
 - the disclosure was not made to an authorised officer or supervisor (see section 2.2)
 - the disclosure does not include disclosable conduct (see section 2.3)
 - the person who is alleged to have carried out the disclosable conduct was not a public official at the time that they are alleged to have carried out that conduct, or
 - the disclosure is not otherwise a PID within the meaning of the PID Act, or
- the conduct would be more appropriately investigated under another Commonwealth law or power.

In making a decision about allocation, the authorised officer **must** have regard to the following considerations:

- generally an agency should not handle a PID unless some or all of the conduct disclosed relates to that agency (i.e. generally Housing Australia should not handle the PID if it does not relate to Housing Australia or public officials belonging to Housing Australia)
- any other matters the authorised officer considers relevant, including:
 - if another agency in the same portfolio would be better able to handle the PID (for example, the portfolio department, the Treasury)
 - » the authorised officer may allocate the PID to another agency in the same portfolio as the recipient agency if they consider that the other agency would be better able to handle the PID. However, the allocation may not be made to another agency unless an authorised officer in that agency consents to the allocation
 - any recommendation made by the Commonwealth Ombudsman about the allocation of the PID, and
- whether the obligation in section 60(1) of the PID Act (Additional obligations of authorised officers) has been satisfied in relation to the PID.

The authorised officer may obtain information from such persons, and make such inquiries, as the authorised officer thinks fit, in order to make a decision about the allocation of the disclosure.

A disclosure that includes information relating to a number of instances of conduct, some of which may be considered disclosable conduct, and some of which may not (for example, because that conduct is personal work-related conduct) must still be allocated.

If the information disclosed concerns conduct alleged to be related to an intelligence agency, Australian Criminal Intelligence Commission (ACIC) or the Australian Federal Police (AFP) (in



respect of their intelligence functions) then the IGIS must be notified and the process in section 45A of the PID Act **must** be followed.

If the disclosure is anonymous, it may not be clear whether the discloser is or was a public official. In these circumstances, the authorised officer must consider whether to exercise their power in s 70 of the PID Act to determine that the PID Act has effect as if the individual had been a public official. The requirements for making a decision about allocating a disclosure are set out in section 43 of the PID Act.

Decision not to allocate

Where an authorised officer decides **not to allocate** a disclosure to any agency, they **must**, as soon as reasonably practicable, give written notice to:

- the discloser (if reasonably practicable) of:
 - the decision
 - the reasons for the decision
 - any action the authorised officer has taken or proposes to take to refer the conduct for investigation under another law or power (if any), and
 - any courses of action that might be available to the discloser under another law or power (if any), and
- the Commonwealth Ombudsman (unless the conduct disclosed relates to an intelligence agency, or ACIC or the AFP in relation to that agency's intelligence functions) of:
 - the decision
 - the reasons for the decision, and
 - any action the authorised officer has taken or proposes to take to refer the conduct for investigation under another law or power (if any).
- The principal officer (where the authorised officer is not the principal officer). If the discloser has not consented to their name and contact details being given to the principal officer and the principal officer's delegates, the authorised officer must advise the principal officer of their decision not to allocate the disclosure while avoiding the discloser's name being able to be ascertained from the advice provided to the principal officer.

If the conduct disclosed relates to an intelligence agency, or ACIC or the AFP in relation to that agency's intelligence functions, the authorised officer **must** also give written notice to the IGIS.

The authorised officer must keep an appropriate written record of the following:

- the decision
- the reasons for the decision
- whether the notice (or a copy of the notice) of the decision to allocate was given to the discloser, and if not, why not, and
- if the notice (or a copy of the notice) of the decision to allocate was given to the discloser – the following matters:
 - the day and time the notice (or copy) was given to the discloser
 - the means by which the notice (or copy) was given to the discloser, and
 - the matters included in the notice.



The requirements for the notice of a decision to not allocate a disclosure are set out in section 44A of the PID Act. The requirements for written records are set out in section 6 of the PID Standard.

Decision to allocate

Where an authorised officer decides **to allocate** a disclosure (to the CEO or to another agency) they **must**, as soon as reasonably practicable, give written notice to:

- the principal officer of each agency to which the PID is allocated, and
- the Commonwealth Ombudsman (or to the IGIS if the PID is allocated to an intelligence agency or ACIC or the AFP, in relation to their intelligence functions).

The notice **must** include the following matters:

- the allocation to the agency
- the information that was disclosed
- the conduct disclosed, and
- the discloser's name and contact details (if these are known to the authorised officer and the discloser consents to these details being provided).

If reasonably practicable, the authorised officer must give a copy of the notice to the discloser as soon as reasonably practicable.

The authorised officer should also ask the discloser whether they consent to the officer giving the discloser's name and contact details to the CEO (or to the principal officer of another agency if the PID is allocated to another agency). If the discloser has not consented to their name and contact details being given to the principal officer and their delegates, the authorised officer must ensure that the referral is anonymised to the extent possible to avoid the discloser's name being able to be ascertained from the information provided in the form.

The IGIS must also be notified if the PID is allocated to an intelligence agency, ACIC or the AFP in relation to that agency's intelligence functions.

The authorised officer **must** keep an appropriate written record of the following:

- the decision (including the name of each agency to which the PID is to be allocated)
- the reasons for the decision
- if the PID has been allocated to another agency — the consent given by an authorised officer in the agency to which the PID is allocated and
- whether the notice (or a copy of the notice) of the decision to allocate was given to the discloser, and if not, why not and
- if the notice (or a copy of the notice) of the decision to allocate was given to the discloser – the following matters:
 - the day and time the notice (or copy) was given to the discloser
 - the means by which the notice (or copy) was given to the discloser, and
 - the matters included in the notice.

The requirements for the notice of a decision to allocate a PID are set out in section 44 of the PID Act. The requirements for written records are set out in section 6 of the PID Standard.



Additional requirements when allocating PID to another agency

If the authorised officer decides that the disclosure should be allocated to an agency other than Housing Australia, they must obtain the consent of an authorised officer in the other agency before allocating the disclosure to that agency.

Before approaching the other agency, Housing Australia's authorised officer must advise the discloser that they are considering allocating the disclosure to another agency and ask the discloser whether they consent to Housing Australia's authorised officer giving the discloser's name and contact details to the other agency's authorised officer, principal officer or delegate nominated by the principal officer.

The authorised officer must make a written record of the discloser's response. If the discloser does not respond within seven days the discloser is taken not to have given consent.

If the discloser has not consented to their name and contact details being given to the other agency's authorised officer, principal officer or delegate nominated by the principal officer, the authorised officer must ensure that the referral is anonymised to the extent possible to avoid the discloser's name being able to be ascertained from the information provided in the form.

Where the authorised officer of the other agency consents to the disclosure being allocated by Housing Australia and the disclosure is accordingly allocated, the management of the disclosure becomes the responsibility of the authorised officer and principal officer of that agency.

If the authorised officer of the other agency does not consent to the disclosure being allocated by Housing Australia to that agency, the authorised officer is to consult the principal officer on how the disclosure is to be allocated.

Reallocation of PIDs

The authorised officer may, after making a decision to allocate a PID, decide to reallocate the PID to one or more agencies (which may include an agency to which the PID had formerly been allocated). The processes set out above must be followed if a decision is made to reallocate the PID.

Disclosures allocated to Housing Australia

If an authorised officer of another agency approaches a Housing Australia authorised officer with a view to allocating the handling of a disclosure made in that agency to Housing Australia, the Housing Australia authorised officer must consult the CEO about whether to consent to the proposed allocation.

In considering the proposed allocation, the Housing Australia authorised officer must have regard to the principle that an agency should not handle a disclosure unless some or all of the disclosable conduct with which the information is concerned relates to the agency.

If Housing Australia consents to the handling of a disclosure being allocated to it, the allocating agency will send the disclosure to the CEO who will determine who will undertake the investigation of the disclosure.

5.4. Mandatory referral to the NACC

In addition to considering whether or not to allocate the disclosure, the authorised officer **must** consider whether the PID involves a corruption issue which:

- concerns the conduct of a person who is, or was, a staff member of Housing Australia while that person is, or was a staff member, and
- the authorised officer suspects it could involve corrupt conduct that is serious or systematic.



The definition of 'corrupt conduct' is provided at section 2.3.

A staff member includes an agency head, employees, contracted service providers for Commonwealth contracts and their employees and officers, secondees, statutory officeholders, and others performing functions under a Commonwealth law (see section 12 of the NACC Act).

If the authorised officer suspects that the PID involves a corruption issue (meaning an issue of whether a person has engaged, is engaging or will engage in corrupt conduct), they must refer the PID to the National Anti-Corruption Commissioner (the Commissioner) as soon as reasonably practicable. The authorised officer must inform the discloser of the referral as soon as reasonably practicable after the referral.

An authorised officer is not required to provide information to the Commissioner if:

- the authorised officer has reasonable grounds to believe that the Commissioner is already aware of the information, or
- the Commissioner has advised the authorised officer that the provision of information about the corruption issue is not required.

The Commissioner may direct an agency head (including the CEO) to stop the agency taking specified action, including allocating the PID.

If the authorised officer does not allocate the PID because of a stop action direction under the NACC Act, the authorised officer must, as soon as reasonably practicable:

- give written notice to the Commonwealth Ombudsman (or the IGIS regarding intelligence agencies and functions) of:
 - the information that was disclosed
 - the conduct disclosed
 - if the discloser's name and contact details are known to the authorised officer, and the discloser consents to the Commonwealth Ombudsman (or IGIS) being informed—the discloser's name and contact details, and
 - the stop action direction under the NACC Act that prevents allocation of some or all of the PID, and
- inform the discloser and give the discloser a copy of the notice if the CEO (or delegate) considers that it is reasonably practicable or appropriate to do so.

The authorised officer **must** keep an appropriate written record of the following:

- details of the direction, including when the direction was made and when the stop action direction no longer applies, and
- whether the CEO (or delegate) considers that it is reasonably practicable or appropriate for the discloser to be given a copy of the notice (and whether the discloser was given a copy of the notice).

The above requirements for written records are set out in section 6 of the PID Standard.

6. Procedures for investigating an internal disclosure

On receipt of a completed allocation relating to an internal disclosure, the CEO will determine which of their delegates is to undertake the investigation of the disclosure and delegate their investigation functions and powers under the PID Act to that person.



The delegate is required to keep the CEO informed of progress and any developments with respect to the investigation.

The CEO (or delegate) must, as soon as reasonably practicable, after being allocated a PID decide whether to:

- investigate the PID
- not to investigate the PID further, or
- investigate the PID under another law or power.

If the Commissioner issues a stop action direction under the NACC Act, which prevents the investigation of some or all of the PID, the CEO must inform the Commonwealth Ombudsman of the stop action direction.

The CEO (or delegate) **must**, as soon as reasonably practicable, give written notice to the discloser stating:

- information about the CEO's powers to:
 - decide not to investigate the PID
 - decide not to investigate the PID further, or
 - decide to investigate the PID under a separate investigative power.

The CEO (or delegate) must ensure that, where it is reasonably practicable to do so, the discloser is given the above information **within 14 days** after the PID is allocated to the agency.

6.1. Deciding whether or not to investigate

The CEO (or delegate) **may decide not to investigate** the PID, or (if the investigation has started) not to investigate further if one of the following considerations apply:

- the discloser is not, and has not been, a public official (see section 2.1)
- the information does not, to any extent, concern serious disclosable conduct (see section 2.3)
- the PID is frivolous or vexatious
- the information is the same, or substantially the same, as information previously disclosed under the PID Act, and:
 - a decision was previously made not to investigate the earlier PID further or at all, or
 - the earlier PID has been, or is being, investigated as a PID investigation
- the conduct disclosed, or substantially the same conduct, is being investigated under another law or power, and the CEO (or delegate) is satisfied, on reasonable grounds, that it would be inappropriate to conduct an investigation under the PID Act at the same time
- the conduct disclosed, or substantially the same conduct, has been investigated under another law or power, and the CEO (or delegate) is satisfied, on reasonable grounds, that there are no further matters concerning the conduct that warrant investigation
- the CEO (or delegate) is satisfied, on reasonable grounds, that the conduct disclosed would be more appropriately investigated under another law or power (that the conduct disclosed raises a corruption issue is not sufficient alone for this)
- the CEO (or delegate) has been informed that the discloser does not wish the investigation of the PID to be pursued and the CEO (or delegate) is satisfied, on reasonable grounds, that there are no matters concerning the PID that warrant investigation, or



- it is impracticable for the PID to be investigated:
 - because the discloser’s name and contact details have not been disclosed
 - because the discloser refuses or fails, or is unable, to give, for the purposes of the investigation, such information or assistance as the person who is or will be conducting the investigation asks the discloser to give, or
 - because of the age of the information.

The circumstances where the CEO (or delegate) may decide not to investigate a PID are set out in section 48 of the PID Act.

6.2. Decision not to investigate

Discloser and Commonwealth Ombudsman must be notified

If the CEO (or delegate) has decided not to investigate the PID (or not to investigate the PID further) they must, as soon as reasonably practicable, give written notice to the discloser (if contacting the discloser is reasonably practicable) and to the Commonwealth Ombudsman stating that:

- the CEO (or delegate) has decided not to investigate the PID (or not to investigate the PID further)
- the reasons for that decision, and
- if the CEO (or delegate) has taken action, or proposes to take action, in relation to the referral of the conduct disclosed for investigation under another law or power, details of:
 - the other law or power
 - the agency or other person or body to which the conduct has been, or is to be, referred, and
 - the steps taken, or proposed to be taken, for the conduct to be referred or to facilitate its referral.

The CEO (or delegate) may delete from the copy of the reasons given to the discloser anything that would cause the document:

- to be exempt for the purposes of Part IV of the *Freedom of Information Act 1982*
- to have, or be required to have, a national security or other protective security classification, or
- to contain intelligence information.

The notification requirements are set out in sections 50 and 50A of the PID Act.

Referral for investigation under another law or power

The CEO (or delegate) must, as soon as reasonably practicable, take reasonable steps to refer the conduct disclosed, or to facilitate its referral, for investigation under another law or power, if the CEO (or delegate):

- decides not to investigate the PID, or not to investigate the PID further
- does not decide to investigate the PID under a separate investigative power, and
- is satisfied, on reasonable grounds, that the conduct disclosed would be more appropriately investigated under another law or power (other than a separate investigative power).

The requirements for referral of a PID for investigation under another law or power are set out in section 50AA of the PID Act.

6.3. Decision to investigate



The investigation must be completed within 90 days

If the CEO (or delegate) has decided that an investigation under the PID Act is to commence, and the delegate has been given the contact details of the discloser, the delegate must, as soon as reasonably practicable:

- inform the discloser that the delegate is required to investigate the disclosure under the PID Act; and
- inform the discloser of the estimated length of the investigation.

An investigation must be completed within **90 days** after the day when the PID was initially allocated. If the PID was reallocated, the investigation must be completed 90 days after the day when the PID was reallocated. In the case of a reinvestigation, the investigation must be completed 90 days after the day when the CEO (or delegate) decided to reinvestigate the relevant PID.

The Commonwealth Ombudsman may extend the 90-day period by an additional period that the Ombudsman considers appropriate on the Ombudsman's own initiative or on application made by the CEO (or delegate) or the discloser. If an extension is granted, the CEO (or delegate) must, as soon as reasonably practicable, inform the discloser (if contacting the discloser is reasonably practicable).

Failure to complete the investigation within the 90-day time limit does not affect the validity of the investigation.

Time limit requirements for investigations are in section 52 of the PID Act.

Conduct of the investigation

An investigation is to be conducted as the CEO (or delegate) thinks fit and they may, for the purposes of the investigation, obtain information from such persons, and make such inquiries, as they think fit.

When conducting an investigation, the CEO (or delegate) **must**:

- ensure that a PID is investigated on the basis that a decision whether evidence is sufficient to prove a fact must be determined on the balance of probabilities
- ensure that a finding of fact is based on logically probative evidence
- ensure that the evidence relied on in an investigation is relevant
- act in accordance with any rules relating to fraud that are made for the purposes of the *Public Governance, Performance and Accountability Act 2013*, to the extent that the investigation relates to one or more instances of fraud, and those rules are not inconsistent with the PID Act, and
- comply with any standards in force under the PID Act (i.e. the PID Standard).

Subject to restrictions imposed by any other law of the Commonwealth, the CEO (or delegate) must ensure that, if a person is interviewed as part of the investigation of a PID, the interviewee is informed of the following:

- the identity and function of each individual conducting the interview
- the process of conducting an investigation
- the authority of the CEO (or delegate) under the PID Act to conduct the investigation, and
- the protections provided by Part 2 (Protection of disclosers and witnesses) of the PID Act (see section 3.6).



The CEO (or delegate) must ensure that:

- an audio or visual recording of the interview is not made without the interviewee's knowledge
- when an 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 the interview.

The CEO (or delegate) conducting an investigation may adopt a finding set out in the report of an investigation or inquiry under another law or power, another investigation under Division 2 of Part 3 of the PID Act.

Where the disclosure relates to a matter the investigation of which Housing Australia has established procedures in place (for example, misconduct, fraud), the CEO (or delegate) may consider it appropriate to conduct a short preliminary investigation under the PID Act, with the recommended action in the PID investigation report being that further consideration of the matter should be in accordance with those established procedures.

The requirements for conducting investigations are in sections 53, 54, and 56 of the PID Act and in Part 3 of the PID Standard.

Mandatory reporting during the investigation – corruption issues

At any time during the course of the investigation, if the CEO (or delegate) becomes aware of a corruption issue that:

- concerns the conduct of a person who is, or was, a staff member of the agency while that person is, or was, a staff member (see section 5.4 for the meaning of staff member), and
- the officer suspects could involve corrupt conduct that is serious and systemic,

they **must** refer the corruption issue to the NACC Commissioner. If the corruption issue relates to conduct involving an intelligence agency the CEO (or delegate) must refer the issue to the IGIS.

The CEO (or delegate) **must** notify the discloser that the PID has been referred to the Commissioner, as soon as reasonably practicable, after the referral.

Mandatory reporting during the investigation – criminal conduct

At any time during the course of the investigation, if the CEO (or delegate) suspects on reasonable grounds that the information in the PID or any other information obtained in the course of the investigation is evidence of the commission of an offence against a law of the Commonwealth of Australia, State or Territory:

- they may give the information to a member of an Australian police force responsible for the investigation of the offence, and
- they **must** give the information to a member of an Australian police force responsible for the investigation of the offence if the offence is punishable by imprisonment for life or by imprisonment for a period of at least 2 years, unless (relevantly) the information raises a corruption issue that has already been referred or which the Commissioner/IGIS is already aware.

Report of investigation

In preparing a report of an investigation under the PID Act, the CEO (or delegate) must comply with the PID Act, the PID Standard and these procedures.



On completing an investigation, the CEO (or delegate) **must** prepare a report that sets out:

- whether there have been one or more instances of disclosable conduct
- any regulations, rules, administrative requirements or similar matters to which the disclosable conduct relates
- the steps taken to gather evidence and a summary of the evidence
- the matters considered in the course of the investigation
- the CEO's (or delegate's) findings (if any) based on the evidence
- the duration of the investigation
- the action (if any) that has been, is being, or is recommended to be, taken, and
- claims of any reprisal 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 the agency's response to any claims or evidence.

Where the CEO (or delegate) in preparing the report proposes to make a finding of fact or express an opinion that is adverse to a person, the CEO (or delegate) must give that person a copy of the evidence that is relevant to the proposed finding or opinion and must give the person a reasonable opportunity to comment on it.

The investigation is 'completed' when the CEO (or delegate) has prepared the above report.

The CEO (or delegate) **must**, within a reasonable time after preparing the report, give written notice of the completion of the investigation, together with a copy of the report, to:

- the discloser, if reasonably practicable, and
- the Commonwealth Ombudsman.

The CEO (or delegate) may delete from the copy given to the discloser any material:

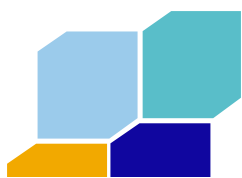
- that is likely to enable the identification of the discloser or another person
- the inclusion of which would:
 - result in the copy being an exempt document under Part IV of the *Freedom of Information Act 1982*
 - result in the copy being a document having, or being required to have, a national security or other protective security classification
 - result in the copy containing intelligence information, or
 - result in contravene a designated publication restriction.

The CEO (or delegate) may delete from a copy of the report given to the Commonwealth Ombudsman any material:

- that is likely to enable the identification of the discloser or another person, or
- the inclusion of which would contravene a designated publication restriction.

The CEO must, as soon as reasonably practicable, ensure that appropriate action in relation to the agency is taken in response to any recommendations in the report.

Requirements for the investigation report are in section 51 of the PID Act.



7. Additional obligations of authorised officers

7.1. Protecting officials against reprisals

An authorised officer **must** take reasonable steps to protect public officials who belong to Housing Australia against reprisals that have been, or may be, taken in relation to PIDs that the authorised officer suspects on reasonable grounds:

- have been made or given to the officer
- may have been made or given to the officer
- are proposed to be made or given to the officer
- could be made or given to the officer.

The obligations of authorised officers set out above are in section 60 of the PID Act.

8. Additional obligations of principal officers

8.1. Facilitating PIDs

The CEO **must** take reasonable steps to ensure that:

- the number of authorised officers of the agency is sufficient to ensure that they are readily accessible by public officials who belong to the agency
- public officials who belong to the agency are aware of the identity of each authorised officer of the agency, and
- there is an effective means for potential disclosers to find out how to contact authorised officers (i.e. a means for both current and former officials of the agency to effectively contact authorised officers).

The CEO must take reasonable steps to encourage and support:

- public officials who make, or are considering making, PIDs relating to the agency, and
- any other persons who provide, or are considering providing, assistance in relation to such PIDs.

For further guidance, see the Commonwealth Ombudsman's *Agency Guide to the Public Interest Disclosure Act 2013*: www.ombudsman.gov.au.

8.2. Providing training and education for officials

The CEO **must** take reasonable steps to provide ongoing training and education to Housing Australia officials about the PID Act including, without limitation, training and education about the following:

- integrity and accountability
- how to make a PID
- the protections available under the PID Act
- the performance by those officials of their functions under the PID Act, and
- the circumstances (if any) in which a PID must be referred to an agency, or other person or body, under another law of the Commonwealth.



The CEO **must** take reasonable steps to ensure that Housing Australia officials who are appointed to positions that require, or could require, them to perform the functions or duties, or exercise the powers, of an authorised officer or supervisor under the PID Act are given training and education appropriate for the position within a reasonable time after that appointment.

The additional obligations of principal officers are in section 59 of the PID Act.

8.3. Protecting officials against reprisals

The CEO **must** take reasonable steps to protect public officials who belong to Housing Australia against reprisals that have been, or may be, taken in relation to PIDs that:

- have been made
- may have been made
- are proposed to be made
- could be made.

The obligations set out above are in section 59(9) of the PID Act.

8.4. Providing information to the Commonwealth Ombudsman

The CEO (or delegate) **must** provide the following information to the Commonwealth Ombudsman, on request by the Ombudsman, for the purpose of the Ombudsman preparing a report under the PID Act:

- the number of PIDs received by authorised officers of the agency during the period covered by the report
- the kinds of disclosable conduct to which those PIDs related
- the number of PIDs allocated to the agency during the period covered by the report
- the number of PID investigations that the CEO (or delegate) conducted during the period covered by the report
- the time taken to conduct those investigations
- the actions that the CEO (or delegate) has taken during the period covered by the report in response to recommendations in reports relating to those PID investigations, and
- any other information requested by the Ombudsman.

The CEO (or delegate) **must** provide the information within a time requested by the Ombudsman or as otherwise agreed with the Ombudsman.

The requirements for giving information and assistance for Ombudsman reports are set out in Part 5 of the PID Standard.

9. Obligations of all Housing Australia officials

All public officials who belong to Housing Australia **must** use their best endeavours to:

- assist the CEO (or delegate) in the conduct of an investigation under the PID Act
- assist the Commonwealth Ombudsman and the IGIS (where relevant) in the performance of their functions under the PID Act, and



- assist any other public official to exercise a right, or perform a duty or function, under the PID Act.

Beyond these specific responsibilities, all Housing Australia officials share the responsibility of ensuring the PID Act works effectively, this includes:

- reporting matters where there is evidence that shows or tends to show disclosable conduct
- identifying areas where there may be opportunities for wrongdoing to occur because of inadequate systems or procedures, and proactively raising these with management
- supporting public officials who have made PIDs, and
- keeping confidential the identity of disclosers and witnesses, where that is known.

The additional obligations of public officials are in section 61 of the PID Act.

10. What if the discloser is not satisfied with the agency's actions?

A discloser may make a complaint to the Commonwealth Ombudsman about Housing Australia's handling of a PID. The Ombudsman may review the handling of the PID by any or all of the supervisor, authorised officer, CEO, or any other public official involved. As a result of the review, the Ombudsman may make written recommendations, including recommendations about allocation, reallocation, investigation, reinvestigation, or any other action. The CEO (or delegate) must consider and respond to any recommendation made by the Commonwealth Ombudsman in accordance with section 55 of the PID Act.

If a person who has made a PID believes, on reasonable grounds, that the investigation conducted by Housing Australia was inadequate, the response to the investigation was inadequate, or the investigation was not completed within the time limit, it may be open to the person to make an external disclosure under the PID Act.

For more information, please refer to the Commonwealth Ombudsman's website: <https://www.ombudsman.gov.au/>.

11. Freedom of information requests

Documents associated with a PID are not exempt from the operation of the *Freedom of Information Act 1982* (FOI Act). Requests for access to documents under the FOI Act must be considered on a case-by-case basis. A range of exemptions may apply to individual documents or parts of documents, particularly in relation to material received in confidence, personal information, agencies' operations, and law enforcement.

For more information, please refer to the 'Freedom of Information Act' page on Housing Australia's website: [National Housing Finance and Investment Corporation \(housingaustralia.gov.au\)](https://www.housingaustralia.gov.au/).

12. Monitoring and evaluation

The CEO must provide the following information to the Commonwealth Ombudsman for the purpose of preparing the Commonwealth Ombudsman's annual report:

- the number of PIDs received by authorised officers during the relevant financial year;
- the kinds of disclosable conduct to which those PIDs related;



- the number of disclosure investigations that were conducted during the relevant financial year;
- the actions that were taken during the relevant financial year in response to recommendations in reports relating to those disclosure investigations; and
- any other information requested by the Commonwealth Ombudsman.

The CEO is required to send the Housing Australia's report to the Commonwealth Ombudsman within the time requested by the Commonwealth Ombudsman or as otherwise agreed with the Commonwealth Ombudsman.

To assist the CEO in preparing this information:

- each authorised officer must provide a report to the CEO by the date requested on the number of public interest disclosures they received during the financial year and the nature of the disclosable conduct for each disclosure, including any disclosures that have been allocated to Housing Australia by another agency's authorised officer. The report must also indicate the number of times they decided not to allocate a disclosure;
- each delegate must provide a report to the CEO by the date requested on the number of disclosure investigations they conducted during the financial year and the number of times they decided not to investigate a disclosure; and
- each person tasked by the CEO during the year to take action in response to a recommendation made in an investigation report must make a report on the action taken and its status.

13. RACI

Action	Document Owner (CRO)	Legal	CEO	Personnel
Draft Document	R	C	C	
Review Document	R	R	C	
Approve Document	A	C	C	I
Implement document	A	C	C	I
Communicate Document	A	C	C	I

R = Responsible = The person who performs the work.

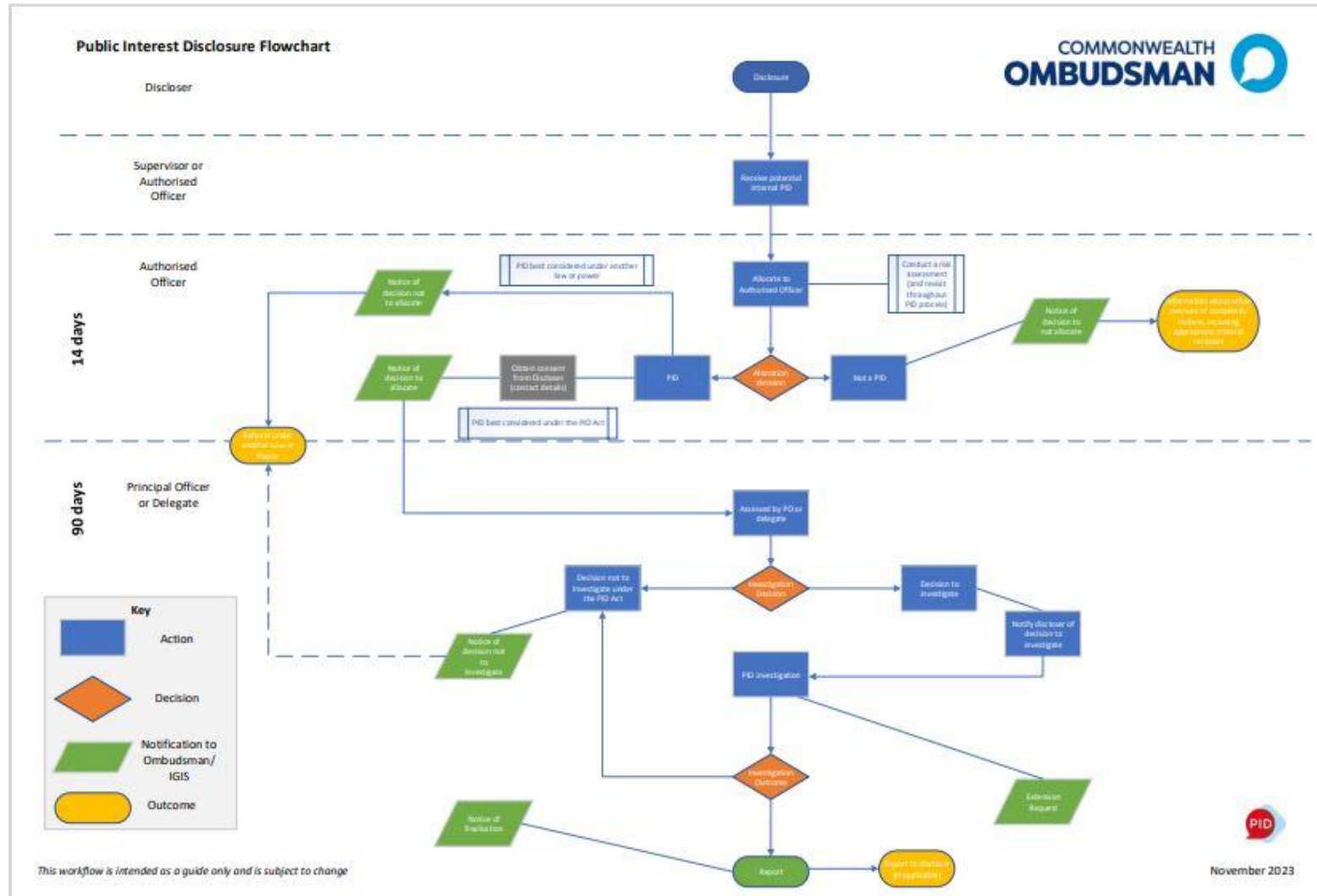
A = Accountable = The person ultimately accountable for the work or decision being made.

C = Consulted = Anyone who must be consulted prior to a decision being made and/or the task being completed.

I = Informed = Anyone who must be informed when a decision is made, or work is completed.



Appendix 1: Public Interest Disclosure Flowchart



Appendix 2: Public Interest Disclosure risk assessment

In assessing the risk of reprisals, the authorised officer, in consultation with the discloser and supervisor as appropriate, should use the following risk matrix:

LIKELIHOOD	CONSEQUENCES				
	Insignificant	Negligible	Moderate	Major	Extensive
Remote	VERY LOW	VERY LOW	LOW	MEDIUM	HIGH
Unlikely	VERY LOW	LOW	MEDIUM	MEDIUM	HIGH
Possible	VERY LOW	LOW	MEDIUM	HIGH	VERY HIGH
Likely	VERY LOW	LOW	MEDIUM	HIGH	VERY HIGH
Almost Certain	LOW	LOW	MEDIUM	HIGH	VERY HIGH

Definition of Consequences

Insignificant: Occasional or one-off action which is likely to have virtually no adverse effect on the discloser

Negligible: Occasional or one-off action which is likely to have a relatively minor adverse effect on the discloser (for example, occasional exclusion of the discloser from a social activity)

Moderate: Repeated action which is likely to have an adverse effect on the discloser (for example, routinely failing to copy the discloser on work emails which they have a genuine need to know)

Major: Sustained or one-off action which has a significant impact on the discloser (for example, consistently exclude the discloser from team discussions to imposing a negative performance assessment without reasonable cause)

Extensive: Action which is likely to have a very severe impact on the discloser (for example, physical violence or denial of promotion opportunity without reasonable cause)

Likelihood Factors

When considering the likelihood of reprisal action being taken against a discloser, all relevant factors should be taken into account including:

- the likelihood of the discloser being identified (think about the size of the discloser's work area and the number of people who are aware of the information leading to the disclosure);
- the number of people implicated in the disclosure;
- the subject matter of the disclosure;
- the culture of the workplace;
- whether any specific threats against the discloser have been received;
- whether there is a history of conflict between the discloser and the subject of the disclosure; and
- whether the disclosure can be investigated while maintaining confidentiality.

Consequence Factors

When considering potential reprisal actions that might be taken against a discloser, all relevant factors should be taken into account including:

- the significance of the issue being disclosed;
- the likely outcome if the conduct disclosed is substantiated;
- the subject matter of the disclosure;
- whether the discloser is isolated; and
- the relative positions of the discloser and the person whose alleged wrongdoing is the subject of the disclosure.

It may be appropriate to ask the discloser from whom they might fear a reprisal.



Appendix 3: Indicators of a higher risk of reprisals or workplace conflict

Indicators of a higher risk of reprisals or workplace conflict:¹

Threats or past experience	<p>Has a specific threat against the discloser been received?</p> <p>Is there a history of conflict between the discloser and the subjects of the disclosure, management, supervisors or colleagues?</p> <p>Is there a history of reprisals or other conflict in the workplace?</p> <p>Is it likely that the disclosure will exacerbate this?</p>
Confidentiality unlikely to be maintained	<p>Who knows that the disclosure has been made or was going to be made?</p> <p>Has the discloser already raised the substance of the disclosure or revealed their identity in the workplace?</p> <p>Who in the workplace knows the discloser's identity?</p> <p>Is the discloser's immediate work unit small?</p> <p>Are there circumstances, such as the discloser's stress level, that will make it difficult for them to not discuss the matter with people in their workplace?</p> <p>Will the discloser become identified or suspected when the existence or substance of the disclosure is made known or investigated?</p> <p>Can the disclosure be investigated while maintaining confidentiality?</p>
Significant reported wrongdoing	<p>Are there allegations about individuals in the disclosure?</p> <p>Who are their close professional and social associates within the workplace?</p> <p>Is there more than one wrongdoer involved in the matter?</p> <p>Is the reported wrongdoing serious?</p> <p>Is or was the reported wrongdoing occurring frequently?</p> <p>Is the disclosure particularly sensitive or embarrassing for any subjects of the disclosure, senior management, the agency or government?</p> <p>Do these people have the intent to take reprisals – for example, because they have a lot to lose?</p> <p>Do these people have the opportunity to take reprisals – for example, because they have power over the discloser?</p>
Vulnerable discloser	<p>Is or was the reported wrongdoing directed at the discloser?</p> <p>Are there multiple subjects of the disclosure?</p> <p>Is the disclosure about a more senior officer?</p> <p>Is the discloser employed part-time or on a casual basis?</p> <p>Is the discloser isolated – for example, geographically or because of shift work?</p> <p>Are the allegations unlikely to be substantiated – for example, because there is a lack of evidence?*</p> <p>Is the disclosure being investigated outside your organisation?*</p>

¹ Adapted from NSW Ombudsman, *Managing risk of reprisals and conflict*, Public Interest Disclosure Guideline as provided in Commonwealth Ombudsman's *Agency Guide to the Public Interest Disclosure Act 2013*, Chapter 8: Page 14.

