

Public Interest Disclosure Policy

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1. Purpose

The *Public Interest Disclosure Act 2013* ('the PID Act') commenced on 15 January 2014.

Pursuant to Section 74 of the PID Act the Ombudsman introduced PID rules and PID standards which individuals and Australian government agencies must comply with when dealing with public interest disclosures. As an Australian government agency Creative Australia is required to comply with the PID Act.

The purpose of the PID Act is to “**to facilitate disclosure and investigation of wrongdoing and maladministration in the Commonwealth public sector.....**”.

In summary, the legislation creates a public interest disclosure scheme which promotes integrity and accountability in the Australian public sector by:

- encouraging and facilitating the disclosure of information by public officials about suspected wrongdoing in the public sector;
- ensuring that public officials who make public interest disclosures are supported and protected from adverse consequences; and
- ensuring that disclosures by public officials are properly investigated and dealt with.

2. Policy statement

Encouraging, supporting and facilitating Public Interest Disclosures will provide positive benefits to Creative Australia. Specifically, this will assist us to:

- Discover conduct that requires corrective action as soon as possible
- Identify any inadequate or flawed processes which may expose Creative Australia to operational, financial or reputational risk
- Ensure that the health and safety of officials and the community is maintained
- Increase efficiency and productivity
- Promote an open, transparent, accountable and ethical culture within the workplace
- Support employees' duty to act with integrity
- Encourage public confidence

3. Scope

3.1. Coverage

This policy applies to all Creative Australia public officials which, for the purposes of the PID Act and this policy, includes:

- All Creative Australia employees or staff;
- Part-time Office Holders (in their capacity as a Part-time Office Holder); and

- Creative Australia Board Members (in their capacity as a Board Member).

Any past or present employee of Creative Australia can make a Public Interest Disclosure at any time. When making a disclosure it is important that the correct procedures (refer Annexure 1) are complied with for the following reasons:

- to ensure that the legal protections available to disclosers are maintained;
- so that the disclosure may be appropriately and fairly considered and responded to;
- so that any necessary corrective action can be implemented.

3.2. Compliance

This policy needs to be understood and complied with by all Creative Australia public officials, as defined above.

4. Definitions

What is a Public Interest Disclosure?

An “**internal disclosure**” is made when:

1. a person who is, or has been, a public official (or “deemed” public official)
2. discloses to their Supervisor or Manager, or an Authorised Officer of an agency
3. information which tends to show, or the discloser honestly believes on reasonable grounds tends to show, one or more instances of “disclosable conduct.”

In limited circumstances a public official may disclose such information to a person outside government. This is known as an “**external disclosure**” or emergency disclosure and is discussed in more detail below.

What is disclosable conduct?

A public official can disclose information which they honestly believe, on reasonable grounds, tends to show “disclosable conduct” or “wrongdoing”. This includes conduct which:

- contravenes a law
- is corrupt
- perverts the course of justice
- results in wastage of public funds or property
- is an abuse of public trust
- unreasonably endangers health and safety or endangers the environment
- is misconduct relating to scientific research, analysis or advice or
- is maladministration, including conduct that is unjust, oppressive or negligent.

The above list is not exhaustive. Disclosable conduct also includes conduct by a public official engaged in abusing their position as a public official and conduct that could give rise to disciplinary action against the public official.

It does not matter if the conduct occurred before or after 15 January 2014 (the date the legislation commenced), or if the public official alleged to have committed the wrongdoing has since ceased to be a public official. It is the date the disclosure is made, not the date of the conduct, that determines whether the PID Act applies.

Note: Disagreement with government policy, action or expenditure does not amount to disclosable conduct.

An **Authorised Officer** is defined in Section 36 of the PID Act as:

- “(a) the principal officer of the agency; or*
- (b) a public official who:*
 - (i) belongs to the agency; and*
 - (ii) is appointed, in writing, by the principal officer of the agency**as an authorised officer for the purposes of this Act.”*

Ombudsman means the Commonwealth Ombudsman.

Official has the same meaning as Part 3.1.

PID Act is the *Public Interest Disclosure Act 2013* (Cth).

The **Principal Officer** of an agency is the departmental secretary, chief executive officer or other head of an agency or prescribed authority: Section 73 of the PID Act.

A **public official** includes any past or present employee of the relevant agency. The term is broadly defined under Section 69 of the PID Act and covers individuals in, or with a relevant connection to, the Commonwealth public sector, including staff of contracted service providers.

A “deemed” **public official** is a person who intends to make a disclosure but was not a public official at the time they obtained the information they intend to disclose. They may be “deemed” to be a public official by an Authorised Officer who believes on reasonable grounds that the person has information that concerns disclosable conduct.

Supervisor or Manager includes any public official who supervises or manages the person making the disclosure.

5. Personal work-related conduct

Personal work-related conduct is not disclosable conduct under section 29A of the PID Act, subject to the below.

Examples of personal work-related conduct that would not constitute disclosable conduct:

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

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

- would constitute taking a reprisal against another person
- would constitute an offence against 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).

6. Roles and responsibilities

Role	Responsibility
The Board and the Executive	<p>The Board and the Executive are responsible for ensuring that the requirements under the PID Act are complied with, including making sure there is a policy and procedures in place to manage Public Interest Disclosures and that all officials are aware of these.</p> <p>They are also responsible for leading by example and maintaining the highest ethical conduct as well as mitigating and managing any conduct or behaviour that could be defined as “disclosable conduct”.</p>
The Principal Officer	<p>The Principal Officer for Creative Australia is the CEO.</p> <p>The Principal Officer of a Commonwealth agency has specific responsibilities to ensure the legislation is implemented, promoted and complied with. These include:</p> <ul style="list-style-type: none"> ○ A positive obligation to ensure the making of Public Interest Disclosures are supported and encouraged ○ Establishing procedures for their agency to facilitate and deal with Public Interest Disclosures ○ Providing early information to any disclosers regarding the Principal Officer’s powers to decide not to investigate the disclosure, not to investigate the disclosure any further or to have the disclosure investigated under a separate investigative power ○ Appointing Authorised Officers to receive and allocate disclosures ○ An obligation to take reasonable steps to provide ongoing training and education to all public officials they are responsible for on (amongst other things) how to make a PID and the protections available to them; and Authorised Officers and Supervisors to ensure they are aware of their requirements under the PID Act in regards to the functions, duties or powers conferred on them. ○ Ensuring officials are aware of the procedures and the protections available, including providing details on how to contact Authorised Officers ○ Ensuring disclosures are properly investigated

	<ul style="list-style-type: none"> ○ Determining whether not to investigate the disclosure, not to investigate the disclosure any further, or investigate the disclosure under a separate investigative power ○ A positive obligation to protect public officials from reprisals, detriment or threats of detriment if they make a disclosure ○ Taking appropriate action in response to an investigation report ○ Providing information to the Ombudsman or Inspector-General of Intelligence and Security ('IGIS').
Authorised Officers	<p>Authorised Officers can include the Principal Officer or officers of the agency that the Principal Officer appoints as Authorised Officers. They are responsible for receiving and allocating Public Interest Disclosures.</p> <p>Authorised Officers are skilled in dealing with sensitive and confidential matters, including whistle blowing and complaint investigations. They are also trained on their specific decision making, notification and other responsibilities under the PID Act which include:</p> <ul style="list-style-type: none"> ○ receiving and allocating disclosures from current or former public officials about disclosable conduct ○ deeming a person to be a "public official" to facilitate the making of a public interest disclosure ○ informing a person who may be unaware that information that the Authorised Officer reasonably believes could concern disclosable conduct could be treated as an internal disclosure, explaining the requirements of the PID Act and advising the person of any designated publication restrictions (as defined in Section 8) that may affect their disclosure (refer Section 60) ○ assessing reported information to determine whether there are no reasonable grounds to believe the information could be considered to be a public interest disclosure ○ making any preliminary enquiries necessary to make an allocation decision ○ conducting risk assessments ○ allocating all or part of the disclosure to the Principal Officer of their agency and/or another agency, with that agency's consent ○ informing the Principal Officer of each relevant agency, and the Ombudsman or IGIS as appropriate, of allocation decisions and associated information ○ informing the discloser of the allocation decision ○ consenting to the allocation of a disclosure by an Authorised Officer of another agency ○ advising the discloser of a decision not to allocate, the reasons why and any other course of action that may be available under Commonwealth law. <p>Authorised Officers have a duty to protect public officials against reprisal and a duty to advise potential disclosers about the</p>

	<p>circumstances under which their disclosure might be referred to another agency.</p> <p>Authorised Officers are also Creative Australia's general point of contact for any Public Interest Disclosure enquiries and liaison contact with the Ombudsman as required. They are available to provide advice and explain to an individual the process of making a Public Interest Disclosure and/or the protections available to them.</p> <p>The details for contacting Creative Australia's Authorised Officers are available on the intranet as well as Creative Australia's website.</p>
Supervisors and Managers (including Executive Directors)	<p>An official may also make a Public Interest Disclosure to their Supervisor or Manager. If the Supervisor or Manager believes that the information given to them concerns, or could concern, disclosable conduct, they must explain to the discloser that information they have provided may be a Public Interest Disclosure, and how that process works, and they must give that information to an Authorised Officer of the agency as soon as reasonably practicable.</p> <p>Note: Because of the confidentiality requirements of the PID Act, the Supervisor or Manager should get the person's consent before passing on their identifying information.</p> <p>Supervisors and Managers also have a key role in ensuring that the workplace culture supports the making of Public Interest Disclosures. They can help to do so by:</p> <ul style="list-style-type: none"> ○ being knowledgeable about the operation of the PID Act and Creative Australia's procedures, particularly in relation to confidentiality requirements ○ being approachable to officials who wish to raise concerns ○ holding awareness sessions or discussion forums for their officials ○ ensuring officials undergo available training ○ confronting any workplace prejudices about making a disclosure ○ supporting an official who they know has made a Public Interest Disclosure and ensuring they are protected from reprisal ○ increasing management supervision of the workplace if necessary (for example, if workplace conflict occurs because a disclosure has been made or an investigation is under way) ○ ensuring identified problems in the workplace are corrected ○ setting an example for officials.

All officials

The PID Act requires all public officials to assist the Principal Officer in the conduct of an investigation as best they can. They must also assist the Ombudsman or IGIS in their functions under the PID Act if required.

Beyond these specific responsibilities, all 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 those with management
- supporting other officials who they know have made public interest disclosures
- keeping confidential the identity of a discloser and anyone against whom an allegation has been made, if they become aware of those matters.

7. Interacting legislation, policies and information

Whilst the PID Policy is intended to support and encourage Creative Australia officials to report instances of improper conduct, the following internal documents may also provide employees with assistance in resolving any workplace issues in the first instance.

- Problem Solving
- Code of Conduct
- Work, Health & Safety Policy
- Managing Performance and Conduct Challenges
- Discrimination, Harassment and Bullying Prevention Policy
- Sexual Misconduct Policy

The following legislation is also relevant to complying with the PID Act.

- The *Creative Australia Act 2023*
- The *Public Governance, Performance and Accountability Act 2013* ('PGPA Act')
- The *National Anti-Corruption Commission Act 2022* ('NACC Act')
- Convention on Combating Bribery of Foreign Public officials in International Business Transactions

Additional resources:

[Public Interest Disclosure Act 2013](#)
[PID Standards](#)
[Commonwealth Ombudsman's website](#)

8. Change history

Date	Change description	Reason for change	Author	Issue no.
January 2014	Initial document creation	N/A	Rebecca Kenny	1.0
January 2016	Review	Scheduled 2-year review	Rebecca Kenny	2.0
February 2018	Review	Scheduled 2-year review	Rebecca Kenny	3.0
February 2020	Review	Scheduled 2-year review	Rebecca Kenny, General Counsel	4.0
July 2022	Review and updated terminology	Scheduled 2-year review	Rebecca Kenny, General Counsel	5.0
September 2023	Updated to reflect Australia Council's transition to Creative Australia and to incorporate the amendments to the PID Act under the <i>Public Interest Disclosure Amendment (Review) Act 2023</i>	Commencement of the <i>Creative Australia Act 2023</i>	Rebecca Kenny, General Counsel	6.0

Annexure 1:

Procedures For Managing A Public Interest Disclosure Under The PID Act

Making a Public Interest Disclosure

Public Interest Disclosures can be made verbally or in writing and may be made anonymously. It is not a requirement that the person making the disclosure declare it to be a disclosure under the PID Act for it to constitute a Public Interest Disclosure.

Creative Australia's email address for making a Public Interest Disclosure is:

pid@creativeaustralia.gov.au

Any email sent to this address will be received by both of Creative Australia's Authorised Officers.

In order to gain the protections available under the PID Act a disclosure must be made to an appropriate person. These protections include confidentiality and immunity from criminal and civil liability or disciplinary action.

A discloser should not discuss the details of their disclosure with anyone who does not need to know. Discussions with those people will not be covered by the protections in the PID Act. A discloser should also be discreet about the fact that they have made a public interest disclosure, the information in their disclosure and any information that would identify someone they allege has acted wrongly.

Internal Disclosures

Public officials can report suspected wrongdoing internally, either to their current Supervisor or Manager or to an Authorised Officer of their agency or the agency to which they previously belonged.

A public official can make a disclosure to Authorised Officers of the Commonwealth Ombudsman, if they believe on reasonable grounds that it would be appropriate for the Ombudsman to investigate (Refer to Sections 26(1) and 34 of the PID Act).

A public official can also make a complaint to the Ombudsman if they believe the agency that received their internal disclosure did not deal with it appropriately: Sections 5 and 5A of the *Ombudsman Act 1976*.

External Disclosures

A public official can make a Public Interest Disclosure to other people, including people outside government, in limited circumstances as follows:

- the internal investigation under the PID Act was not completed (meaning that the report of the investigation was not finalised) within 90 days or within a timeframe approved by the Ombudsman; or

- they believe on reasonable grounds that the investigation under the PID Act was inadequate; or
- they believe on reasonable grounds that the agency took inadequate action after the investigation was completed (whether the investigation was conducted under the PID Act or under other legislation); and
- it is not, on balance, contrary to the public interest for an external disclosure to be made (Refer Sections 26(1) item 2 26(3)).

Two other restrictions apply to external disclosures:

- the matter must not include intelligence information or sensitive law enforcement information or concern an intelligence agency; and
- a disclosure may not be made to a foreign public official.

Emergency Disclosures

If a public official believes on reasonable grounds that the information they have concerns a substantial and imminent danger to the health or safety of one or more people or to the environment, under Section 26(1), Item 3 of the PID Act, they may make an emergency disclosure to anyone provided they meet certain requirements as follows:

- The extent of the information they disclose must be only what is necessary to alert the recipient of the substantial and imminent danger
- If they have not previously made an internal disclosure about the matter, or if they have done so and the investigation is not yet completed, there must be exceptional circumstances justifying their action. (This might include, for example, if the investigation was taking too long to complete having regard to the risk to a person's health and safety)
- As noted above, they must not disclose intelligence information, including sensitive law enforcement information.

Anonymous Disclosures

Disclosers do not have to identify themselves and may remain anonymous.

Remaining anonymous means disclosers do not identify themselves at any stage to anyone, including the Authorised Officer who receives the disclosure. If the disclosure comes from an email address from which the person's identity cannot be determined, and the discloser does not identify themselves in the email, it should be treated as an anonymous disclosure.

One of the requirements for making a Public Interest Disclosure is that the person is or was a public official: Section 26(1). This does not mean that the person has to prove their status. They may give information that supports that status, for example, by stating that they used to work for the agency or otherwise explaining how they know about the wrongdoing they are reporting. If they do not, the Authorised Officer may wish to ask questions along these lines (if the person has provided contact details). However, it is suggested that Authorised Officers should be generous in their interpretation of the requirement that the discloser is a current or former public official and treat an anonymous discloser as such unless there is evidence to suggest otherwise. The focus

should be on the purpose of the PID Act, which is to encourage reports of wrongdoing and ensure they are properly dealt with.

It ought to be noted that an anonymous disclosure may make the disclosure more difficult to investigate or substantiate, however anonymous disclosures will be acted on whenever possible.

Pseudonyms

Alternatively, a discloser may wish to use a pseudonym throughout the PID process. This may be appropriate in circumstances where the discloser is identifiable to their Supervisor or an Authorised Officer but decides to hide their identity to others.

What to include in a disclosure

In order to assist the Authorised Officer in making a fully informed decision on how to proceed with a disclosure, as much of the following information ought to be provided as possible:

- the discloser's name and contact details
- the nature of the wrongdoing
- who the discloser thinks committed the wrongdoing
- when and where the wrongdoing occurred
- relevant events surrounding the issue
- if the discloser did anything in response to the wrongdoing
- others who know about the wrongdoing and have allowed it to continue
- whether it is believed the information is a Public Interest Disclosure under the PID Act (it does not have to be described as such for it to be treated as a Public Interest Disclosure)
- if there are concerns about any possible reprisals as a result of making a disclosure

It is important to be clear and factual, and to avoid speculation, personal attacks and emotive language as this will only divert attention from the real and relevant issues. A matter should not be investigated by the discloser before making a disclosure as doing so may hinder any future investigation.

The Authorised Officer may ask for further supporting correspondence or other documents, such as file notes or a diary of events, and the names of any people who witnessed the conduct or may be able to verify what is being disclosed.

Confidentiality

The PID Act requires agencies to keep a discloser's identity confidential, subject to limited exceptions, including the discloser's consent: Sections 20 and 21.

The person's identity may nonetheless become apparent if an investigation is commenced. If the person's identity needs to be disclosed or is likely to become apparent, this will be discussed with the discloser.

It is an offence for a person who has obtained information in the course of conducting a disclosure investigation, or in connection with their powers and functions under the PID Act, to disclose or use that information unless it is:

- for the purposes of the PID Act; or
- in connection with the person's powers and functions under the PID Act; or
- in response to a disclosure investigation; or
- information which has previously been lawfully published.

Making a disclosure outside of the above circumstances

In order to gain the protections available under the PID Act a Public official must use one of the proper avenues as discussed above when making a Public Interest Disclosure.

This means that a public official will not receive these protections if they give the information to someone outside government like a journalist or union representative, unless the conditions for an external or emergency disclosure are met. In addition, they may be in breach of their duty to maintain appropriate confidentiality in relation to official information they have gained in the course of their employment, or be subject to other civil, criminal or disciplinary action (such as the *Crimes Act 1914*).

Motive

An individual's motive or intention does not determine whether investigation into a disclosure is warranted. However, it is important to remain factual and focus on the issues related to the wrongdoing rather than becoming emotive about an individual(s) or situation.

Discloser's wrongdoing

Making a Public Interest Disclosure does not necessarily protect the discloser from the consequences of their own wrongdoing, including where they have been involved in the misconduct they are reporting. However, there may be instances where a discloser may come forward with a report of serious wrongdoing in which they had minor involvement. In these circumstances each matter will be assessed on its individual circumstances and discretion may be exercised in relation to any disciplinary action.

A person who makes a disclosure that is intentionally false or misleading will not gain the protections under the PID Act. False or misleading reporting may also lead to disciplinary action.

Risk Assessment

The Principal Officer of an agency must take reasonable steps to protect public officials from detriment, or threats of detriment, as a result of making a Public Interest Disclosure: Section 59.

A risk assessment must be completed as soon as possible after a disclosure is received (or after Creative Australia is notified that a disclosure concerning them has been received; for example, if the Ombudsman, IGIS or investigative agency decides to investigate a disclosure made directly to them). This gives us the best chance of recognising any risk of reprisals or associated workplace conflict that may ensue.

In identifying any potential risks, the specific behaviour and circumstances of the matter need to be considered, and appropriate strategies put in place to prevent or contain them. The risk assessment can include not only the risk of direct reprisal against the discloser, but also the risk of related workplace conflict or difficulties.

The Authorised Officer should conduct a risk assessment based on a checklist of risk factors. If the disclosure is first made to a Supervisor or Manager and the person wishes their identity to remain anonymous, the Supervisor or Manager should conduct the risk assessment.

The best sources of information about potential risks are people who are involved in the particular workplace, especially the discloser and their Supervisor or Manager (provided that person is not involved in the alleged wrongdoing).

Asking the discloser why they are reporting the wrongdoing and who they might fear a reprisal from can be helpful in identifying the risks.

In conducting the risk assessment, the following framework is recommended:

1. Identifying – are reprisals or related workplace conflict problems in the workplace already, or do they have the potential to be problems?
2. Assessing – what is the likelihood and consequence of reprisals or related workplace conflict? The ‘Indicators of a higher risk of reprisal or workplace conflict’ table on the following page should be consulted when assessments are conducted.
3. Controlling – what strategies should be put in place to prevent or contain reprisals or related workplace conflict?
4. Monitoring and reviewing – have the strategies been implemented and were they effective? If not, repeats points 1-4.

Indicators of a higher risk of reprisal or workplace conflict

Threats or past experience	<p>Has a specific threat against the discloser been made?</p> <p>Is there a history of conflict between the discloser, 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 their circumstances, such as the discloser's stress level, that will make it difficult for them not to 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 the government?</p> <p>Do these people have the motivation to take reprisals – for example, because they have a lot to lose?</p>

	Do these people have the opportunity to take reprisals – for example, because they have power over the discloser?
Vulnerable discloser	Is or was the reported wrongdoing directed at the discloser? Are there multiple subjects of the disclosure? Is the disclosure about a more senior Official? Is the discloser employed part-time or on a casual basis? Is the discloser isolated – for example, geographically or because of shift work? Are the allegations unlikely to be substantiated – for example, because there is a lack of evidence? Is the disclosure being investigated outside your organisation?

Allocating and Investigating

Allocating disclosures

After receiving a Public Interest Disclosure an Authorised Officer will consider the information that has been provided and determine whether it constitutes an internal disclosure under Section 26(1) the PID Act (discussed above).

The PID Act also gives an Authorised Officer the power to make any inquiries and obtain further information required to assist them in deciding whether to allocate the matter for investigation.

A discloser must also be advised as early as possible of the Principal Officer's powers to decide not to investigate the disclosure, not to investigate the disclosure any further or to have the disclosure investigated under a separate investigative power.

Once they are satisfied the information represents an internal disclosure, and no further information is required, the Authorised Officer must allocate the matter for investigation. The matter may be allocated to one or more agencies, including their own agency, the Ombudsman, the IGIS or a prescribed investigative agency.

If an Authorised Officer wishes to make an allocation to another agency, an Authorised Officer of that agency must consent to receive the allocation.

The disclosure can be allocated to more than one agency, but care should be taken that this does not cause any duplication in the investigation process.

The Authorised Officer must endeavour to have allocated the handling of the disclosure for investigation within 14 days of receipt.

When allocating the disclosure to an agency the Authorised Officer must give notice of the allocation decision to the Principal Officer of each agency to which the handling of the disclosure is allocated and include:

- the allocation being made to the agency; and
- the information that was disclosed; and
- the suspected disclosable conduct (if any); and
- if the discloser's name and contact details are known to the Authorised Officer, and the discloser consents to the Principal Officer being informed—the discloser's name and contact details.

The Authorised Officer must also inform the Ombudsman of the above when a disclosure is allocated to another agency that is not the Ombudsman, the IGIS or an intelligence agency. If the disclosure is allocated to an intelligence agency the Authorised Officer must inform the IGIS of the above.

The Authorised Officer should ensure that they ask the discloser for their consent to pass their contact details to any other party, including an agency receiving the disclosure. If the discloser declines to provide their details to the receiving agency, the Authorised Officer should advise the receiving agency that the discloser was asked and did not consent.

The Authorised Officer must let the discloser know about their decision to allocate the matter for investigation. Notice of the allocation decision may be given to the discloser in the same document that gives notice of an investigation decision. This would happen if the same agency was investigating, and the two decisions were close in time.

The Principal Officer, or their delegate, may decide not to investigate, or may discontinue an investigation, but only on a ground set out in Section 48. That is, if:

- the discloser is not a current or former public official
- the information does not to any extent concern “serious disclosable conduct”
- the disclosure is determined to be frivolous or vexatious
- the disclosure is the same or substantially the same as another disclosure which has been or is being investigated under the PID Act
- the disclosure is the same or substantially the same as a disclosure already investigated or 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 advised the Principal Officer that they do not wish the investigation to be pursued, and the Principal Officer is reasonably satisfied that there are no matters that warrant further investigation
- it is impracticable to investigate the disclosure because:
 - of the age of the information; or
 - the discloser has not revealed their name and contact details; or
 - the discloser has failed, or is unable, to give the investigator the information or assistance they requested.

If the Authorised Officer decides not to allocate the matter for investigation because they have determined it is not an internal disclosure, they must tell the person the reasons why, and advise them of any other options that they might have under Commonwealth law. They must also provide their decision not to investigate and reasons to the Ombudsman.

Investigations

An internal disclosure may be investigated in one of two ways:

- under the PID Act

- under other legislation applying to the Ombudsman, IGIS and prescribed investigative agencies.

The Ombudsman, IGIS and prescribed investigative agencies may use their own separate investigative powers rather than investigating under the PID Act: Section 49. For example, the Ombudsman has powers to investigate under the *Ombudsman Act 1976*.

The investigation of a Public Interest Disclosure under the PID Act is conducted as the Principal Officer (or their delegate) sees fit, subject to the need to comply with PID standards under Section 74. Where the investigation relates to fraud against the Commonwealth, the Principal Officer will act in accordance with the Commonwealth Fraud Control Guidelines to the extent that those requirements are not inconsistent with the PID Act.

An investigator should be skilled in conducting investigations, and should be familiar with the PID Act, especially the confidentiality requirements and the protections for disclosers.

Investigators must ensure that they do not have an actual or perceived conflict of interest (for example, if information suggests they or a family member are implicated in the alleged wrongdoing). Unless there are other compelling reasons not to do so, they should be separate from the workgroup where the alleged wrongdoing has occurred.

Criminal matters

An investigator who suspects that information disclosed as part of an internal disclosure, or information that is obtained during the course of an investigation, constitutes evidence of a criminal offence, may disclose that information to a member of a relevant police force: Section 56(1).

In cases where the potential offence is serious (that is, punishable by imprisonment for two years or more), notification to the relevant police force is mandatory: Section 56(2).

These provisions apply when an investigation is being conducted under the PID Act as well as where an investigative agency conducts a PID investigation using a “separate investigative power”.

Conducting interviews

If a discloser, or any other person, is interviewed as part of the investigation process, the interviewee must be advised in writing of the following:

- the identity and function of each individual conducting the interview;
- the process for conducting the investigation;
- the authority of the Principal Officer under the Act to conduct the investigation;
- the protections provided by Section 57 of the PID Act.

An audio or visual recording of the interview is not to be made without the interviewee’s knowledge and consent.

When an interview ends, the interviewee must be given an opportunity to make a final statement or comment or express an opinion. Any final statement, comment or position by the interviewee is to be included in the record of the interview.

Evidence and Standard of Proof

The investigator must determine whether evidence in an investigation is sufficient to prove a fact. The standard to be used is a balance of probabilities where the investigator needs to be satisfied it is more likely than not that the fact is true.

The investigator must ensure the evidence relied on is relevant. Relevant evidence is of consequence to a matter under investigation and goes to either proving or disproving a fact.

Keeping the Discloser Informed

The PID Act requires the discloser to be notified at various stages in the process, provided the person's contact details are available. The discloser must be advised:

- when the disclosure is either allocated for investigation, or not allocated because it has been determined not to be an internal disclosure
- of information about the Principal Officer's discretionary powers to not investigate, within 14 days of the disclosure being made
- if it is decided to investigate the disclosure
- if the investigation is under the PID Act, the estimated length of the investigation
- if it is decided not to investigate, the reasons for the decision and any action that might be available to the discloser under other Commonwealth laws
- if an investigation is conducted under the PID Act and an extension of time is granted by the Ombudsman or IGIS
- when the investigation is completed.

As well as the above legislative requirements it is recommended, as far as is practicable, that the discloser be kept up to date with reasonable information on what is being done in response to their disclosure. Early in the process, the Authorised Officer should make sure the discloser understands:

- the powers of the Principal Officer
- what the agency intends to do
- the likely timeframe for an investigation
- the discloser's responsibilities (such as maintaining confidentiality)
- how they will be updated on progress and outcomes
- who to contact if they want further information or are concerned about reprisal.

After the Investigation

After an internal disclosure has been investigated, the Principal Officer must prepare a report containing the following information:

- the matters considered in the course of the investigation
- the duration of the investigation
- the Principal Officer's findings

- the action (if any) that has been, is being, or is recommended to be taken to address those findings
- any claims made about, and any evidence of, detrimental action taken against the discloser, and the agency's response to those claims and that evidence.

The investigation report must show that conclusions have been drawn based on sufficient substantiating evidence.

The report must be completed and finalised by the Principal Officer within 90 days of the allocation being made. The Ombudsman or IGIS may extend this period under Section 52 of the PID Act.

In finalising an investigation, the Principal Officer may adopt the findings and report of another investigation (for example where the investigation has been allocated to another agency).

The Principal Officer must give a copy of the investigation report to the discloser within a reasonable time of preparing it. The version given to the discloser may have some information deleted if it is likely to enable the identification of any person or contain other sensitive material: Refer to Section 51(5)).

What happens at the end of an investigation will vary depending on the circumstances. The Principal Officer must take appropriate action in response to the recommendations contained in the investigation report but will also consider:

- support options to be made available to any officials affected by the investigation process
- mediation or conciliation of a workplace conflict
- an internal audit or review of an issue or the operations of a particular business unit
- implementing or changing policies, procedures or practices
- conducting training and awareness sessions for officials
- referral of the matter to the police or another body that can take further action

If the discloser is dissatisfied with Creative Australia's decision not to investigate the disclosure or believes the investigation or response to the investigation was inadequate, they are entitled to make an external disclosure or lodge a complaint with the Ombudsman.

Keeping Records

When an Authorised Officer receives a Public Interest Disclosure, they must create a new folder in SharePoint, with restricted access, in order to document and save all appropriate records involving the disclosure.

Details about how and when a Public Interest Disclosure was made must be recorded and kept in a secure place. If a disclosure is made verbally, a record of what was said must be drafted and kept. If possible, ask the person making the verbal disclosure to sign the record as a true reflection of what they have disclosed.

Subsequent conversations where the disclosure is discussed should also be documented. Each disclosure should be registered and given a unique reference number. Details of the risk

assessment of reprisal, allocation, the investigation, notifications to the discloser and others should also be kept.

The records should only be factual and free from unnecessary statements such as conjecture about the discloser's motives or personal opinion about the person(s) the disclosure concerns. In addition to the requirement to notify the Ombudsman or IGIS whenever a disclosure is allocated, or a decision made not to investigate or to stop investigating a disclosure, agencies are required to provide to the Ombudsman certain information about disclosures they have handled for the purposes of the annual report under the PID Act (section 15, PID Standard).

If the disclosure is to be allocated to one or more agencies to investigate, appropriate written records of the following must be kept:

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

The Authorised Officer must inform the discloser of the allocation. Written records must be kept of when the discloser was informed of the decision to allocate the disclosure including:

- the day and time the discloser was notified;
- the means by which the discloser was notified; and
- the content of the notification.

If the Authorised Officer is satisfied on reasonable grounds that the matter cannot be considered to be an internal disclosure, and does not allocate the disclosure for investigation, the Authorised Officer must inform the discloser, in writing, of:

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

Note: The above does not apply if contacting the discloser is not reasonably practicable, for example where the disclosure has been made anonymously.

In summary, all relevant correspondence, reports and activities concerning a Public Interest Disclosure must be documented and saved in the designated SharePoint folder. This includes records of verbal exchanges if relevant.

Support and Protection

Public officials

The PID Act provides protection from reprisal for a person who makes a Public Interest Disclosure in the following ways:

- an individual is not subject to any civil, criminal or administrative liability or disciplinary action for making a Public Interest Disclosure.

- it is a criminal offence to cause detriment to a person because it is suspected or believed that they have made or will make a public interest disclosure
- a discloser has the right to apply for an injunction to prevent a reprisal
- a discloser has the right to apply for compensation for loss, damage or injury suffered from a reprisal.

The PID Act also provides the following protections:

- all Public Interest Disclosures must be kept confidential, including the identity of the discloser, as far as possible
- a risk assessment (including the risk of potential reprisals or detriment) must be conducted as soon as possible after a Public Interest Disclosure is made
- disclosers must be advised of their rights and responsibilities under the PID Act as early as possible
- disclosers must be kept informed as to how their disclosure is progressing

Even if the information provided in a disclosure turns out to be untrue or unsubstantiated, the discloser is still protected under the PID Act, provided the disclosure was made to the appropriate person and they honestly believed on reasonable grounds, that the reported information tended to demonstrate disclosable conduct.

Along with the legal protections available, Creative Australia is committed to offering support and protection to employees who make a Public Interest Disclosure as follows:

- Disclosers will be offered support and assurance that Creative Australia will take all reasonable steps necessary to protect them and to provide information about what options are available
- Officials are encouraged to advise an Authorised Officer or their Supervisor or Manager if they believe they are being or may be subject to a reprisal
- Every allegation of reprisal will be taken seriously, recorded and responded to
- All those involved in the handling of a Public Interest Disclosure, or are aware of the discloser's identity (which may include the Authorised Officer, investigator, Supervisor, Manager and anyone else to whom the discloser has agreed to reveal their identifying information) will be responsible for providing guidance and support and monitoring the work environment for signs of inappropriate workplace behaviours and if necessary, taking corrective action early
- Though the Employee Assistance Program

Persons against whom an allegation is made

Creative Australia is committed to providing support for any officials who are the subject of an allegation made in a Public Interest Disclosure. They will be afforded procedural fairness during an investigation. What procedural fairness requires will vary with the circumstances, but essentially it means that the person will be entitled to:

- have a decision-maker act fairly and without bias

- know the substance of allegations and evidence against them if an adverse finding is going to be made about their conduct
- have a reasonable opportunity to respond.

Further support will be provided as follows:

- The official will be given information about their rights and obligations under the PID Act, and about the investigation process and any other relevant matters, as soon as possible
- They will be reminded that anyone who is subject to an allegation, or an investigation is innocent of any wrongdoing until proven otherwise, and they may be completely exonerated
- It will be acknowledged that the experience may be very stressful and access to the Employee Assistance Program or other assistance will be supported and encouraged if needed
- The identity of a person who is the subject of allegations or an investigation should also be kept confidential and protected as much as possible.

Witnesses

Under the PID Act protections are also afforded to witnesses who are involved in a Public Interest Disclosure but are not themselves the discloser.

There are immunity provisions to individuals who "*provide assistance in relation to a public interest disclosure*". Any individuals who give information, produce documents or answer questions in relation to all aspects of the Public Interest Disclosure process are protected from any civil, criminal or administrative liability because of the assistance they provide.

Witnesses are also expressly afforded protection from reprisal action under section 13 of the PID Act.

There are a number of exceptions to witnesses' immunity however, including if the witness provides a knowingly false or misleading statement, or where the assistance they provide relates to their own conduct. A witness may face disciplinary action (for example under Creative Australia's Code of Conduct) if the evidence they provide for the purposes of a Public Interest Disclosure investigation calls their own conduct into question.

Monitoring, Evaluation and Reporting

The Ombudsman is required to draft an annual report and agencies are required to assist in the preparation of this report by providing the Ombudsman with the following information:

- the number of Public Interest Disclosures received by Authorised Officers of the agency during the relevant financial year
- the kinds of disclosable conduct to which those Public Interest Disclosures related
- the number of disclosure investigations that the Principal Officer of the agency conducted during the relevant financial year
- the actions that the Principal Officer took during the relevant financial year in response to recommendations in reports relating to those disclosure investigations

- any other information requested by the Ombudsman.

Creative Australia's Legal and Governance team is responsible for recording the numbers and types of Public Interest Disclosures, the number of investigations, the outcomes (including action taken in response to investigation report findings and recommendations), and details of any support provided to a discloser and allegations of reprisal. Strict confidentiality will be adhered to at all times and any perceived or actual conflicts of interest will be dealt with immediately.

The procedures which have been put in place to deal with Public Interest Disclosures will be monitored closely and regularly to evaluate the effectiveness of the processes and identify any systemic issues or improvement opportunities.