

# Public Interest Disclosure Guidelines 2014

Notifiable instrument NI2014–357

made under the

***Public Interest Disclosure Act 2012 s32 (Commissioner’s Guidelines)***

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**1 Name of instrument**

This instrument is the *Public Interest Disclosure Guidelines 2014*.

**2 Commencement**

This instrument commences the day after notification.

**3 Guidelines**

I make the Public Interest Disclosure Guidelines under s 32 of the *Public Interest Disclosure Act 2012* as attached.

**4 Revocation**

NI2013-240 is revoked.

Michael Young  
Delegate of the Commissioner for Public Administration  
31 July 2014



# Public Interest Disclosure Guidelines 2014

*Made under the Public Interest Disclosure Act 2012*

*July 2014*

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## Commissioner's Foreword

It is critical to the proper functioning of the ACT Government and ACT Public Service (ACTPS) that the citizens we serve have trust and confidence in the integrity and probity structures that underpin the ACT's system of representative democracy. A focus on the desired standards of behaviour of the holders of public office – be they elected representatives or officials – plays an important role in this regard and is achieved through the maintenance of codes of conduct and legislative frameworks for decision making and behaviour.

It is also important that there be a range of measures and institutions that provide avenues for the independent review of decisions made and actions taken. Public interest disclosure (PID) legislation and processes form part of this governance framework and provide an opportunity for people to raise concerns about alleged wrongdoing in the public sector without fear of reprisal.

Governments and the public services that support them hold a special place in society, being entrusted to manage public resources and make decisions on the community's behalf. It is proper that mechanisms are in place to ensure these public resources are not wasted or used for individual gain.

The ACT Government is committed to creating and maintaining working environments in the ACTPS and other public sector agencies that encourage and facilitate the raising of concerns – and of new and innovative ideas – as part of an ongoing process of continuous improvement in service planning and delivery. The Head of Service, Ms Kathy Leigh, and I encourage any employee or member of the public who considers that they have witnessed conduct that may give rise to a PID to come forward and report it. The ACTPS aims to provide an environment where its employees feel confident and comfortable about reporting PIDs, and recognises its fundamental obligation to proactively deal with allegations of wrongdoing in a fair and robust fashion. Indeed, the maintenance of proper standards of integrity and probity in the discharge of official duties is central to the expectations of behaviour enshrined in the *ACTPS Code of Conduct* and comprises one of the four ACTPS Values.

Furthermore, the ACTPS believes that employees or members of the public who raise genuine disclosures of wrongdoing are acting in an exemplary manner by assisting in promoting open and accountable government, good management and continuous improvement. In recognition of this, the ACTPS is committed to ensuring that any employee who raises genuine concerns through proper processes about wrongdoing is protected from retaliation or reprisal.

Under the *Public Interest Disclosure Act 2012* (the Act), I am obliged to make guidelines about the way in which the ACTPS and other ACT public sector entities (entities) covered by the Act should handle PIDs.

A decision to make a PID is not an easy one. Decision making on a disclosure is similarly complex and sensitive. It is my hope that the Act and these Guidelines together provide a clear framework in which concerns can be aired appropriately, investigated fairly and properly, and responded to robustly.

I would like to thank the People and Performance Council, the Senior Executives with Responsibility for Business Integrity and Risk and entities across the ACT Public Sector for their assistance and feedback in developing these revised Guidelines. Entity experiences dealing with

the Act have afforded comprehensive suggestions, contributing to technical and procedural improvements of the Guidelines. The guidance provided has been elaborated, particularly in regards to handling anonymous disclosures, protections for disclosers and responsibilities of entities. It is my hope that this revised version of the Guidelines better meets the needs of entities across the Sector.

Michael Young

Delegate of the Commissioner for Public Administration

July 2014

# Introduction

The ACT Government recognises the inherent value in providing effective complaint mechanisms to find out what areas of government are working as well as highlighting areas for improvement. They are also an important means to support transparency and accountability in the public sector creating a channel for the reporting of wrongdoing in the delivery of government services.

The *Public Interest Disclosure Act 2012* (the Act) specifically encourages and enables anyone witnessing serious wrongdoing that falls within the definition of ‘disclosable conduct’ to raise concerns. It guarantees these concerns will be seriously considered and investigated where warranted. The Act sets out the strict legal obligations of those raising a potential PID (the discloser), the protections available for disclosers, how disclosures should be dealt with, and the obligations of staff who manage disclosures and PIDs.

These Guidelines are designed to explain and support PID arrangements and assist individuals who wish to make a disclosure, as well as ensure that ACT public sector entities (entities) have arrangements in place to consider disclosures and take appropriate action on PIDs. They will be reviewed periodically to ensure they meet the needs of users.

The Guidelines are broken into two parts:

- **Part One** is relevant to all readers. It looks at who and what is covered and provides general information about making a disclosure and the PID framework established by the Act.
- **Part Two** is about the coordination and handling of disclosures and PIDs. It has been written with an internal focus and aims to assist those with responsibility for managing disclosures and PIDs.

## Part One

This part makes the distinction between a public interest disclosure and other types of complaint, looks at how to make a disclosure, the types of information that might amount to a public interest disclosure, protections available and what happens after a disclosure is made.

### 1. Public Interest Disclosures

There are many kinds of feedback ranging from formal client satisfaction surveys, general complaints and allegations, to personal grievances and workplace disputes. These guidelines deal with complaints raising suspected illegal or illegitimate practices relating to the work of the ACT Government and entities.

#### 1.1 What is a Public Interest Disclosure?

Sometimes matters raised are so serious that they should sit outside normal complaint or feedback systems. Certain matters suggest serious or systemic concerns that may bring harm directly or indirectly to the general public, now, or in the future. These matters are outside of the bounds of the regular complaint handling process and are in a special category called a 'Public Interest Disclosure' (PID).

**Reporting suspected wrongdoing is essential to the integrity of the ACTPS.**

Disclosable conduct is more serious than a technical breach of policy or procedures: it is action (or inaction) that has a significant or widespread negative impact. Disclosures of this kind require a special type of treatment due to their seriousness. Likewise, a person disclosing information of this sort needs special protection for taking the risk of raising such serious allegations.

Employees who are prepared to speak up about wrongdoing in the public sector are recognised as one of the most important sources of information about problems that disadvantage or endanger others. People who raise concerns of this sort are sometimes called 'whistleblowers'.

Whistleblowing is important because it serves to uphold community standards and enhance the integrity of the public sector.

A disclosure becomes a PID when it is about *disclosable conduct*<sup>1</sup>. Examples of disclosable conduct include:

- corrupt conduct, e.g. accepting money or other benefits in exchange for helping someone to avoid prosecution, win a contract or gain Government approval;
- fraud or theft, e.g. falsifying documents or information, or stealing an employer's property or funds;

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<sup>1</sup> see the Glossary for a definition of 'disclosable conduct'



- official misconduct or maladministration, e.g. gaining personal benefit by not revealing a conflict of interest;
- harassment, intimidation or discrimination, e.g. assaulting a person during the course of carrying out their work functions, duties or responsibilities; or
- practices endangering the health or safety of staff, the community or the environment.

The legislation provides for a PID to be made about an ACT public sector entity (entity), which is broadly defined to include anyone performing a function on behalf of the ACT government using public funds (i.e. all government agencies and their staff or contractors). In other words, a PID might be made about activity by an instrumentality, officer, employee, contractor, or anyone else who exercises a function on behalf of the Government.

A PID can be about the actions of permanent, temporary or casual staff and employees of the ACTPS and other entities, including the ACT Legislative Assembly.

It can also be about the actions of contractors, sub-contractors, consultants and volunteers working on ACT Government sponsored projects or on programs funded by the ACT Government. This might include not-for-profit or other non-government entities providing a public service to the community under a contract with an entity.

A PID might relate to events which are happening (or are strongly suspected of happening) now, in the past, or that may happen in the future.

**A person may make a PID even if they are not able to identify a particular person who is responsible for the activity. Likewise, a PID might be made unintentionally, for example, during a casual conversation or other informal means.**

***If you are worried that something wrong or dangerous is happening within the ACT public sector, please don't keep it to yourself. Unless you pass on information about any concerns you may have about fraud, safety risks, or other wrongdoing, it is possible the problem won't become known until it's too late.***

## **1.2 What is not a Public Interest Disclosure?**

Not all concerns will amount to a PID. False allegations will not be a PID. Matters that affect only personal or private interests of an individual are unlikely to be a PID. Complaints relating to individual employment and industrial matters, isolated allegations of bullying or harassment, personnel matters, individual performance management concerns and individual workplace health or safety concerns would not generally be considered a PID.

**A PID is not a mechanism for solving a personal grievance. It is a process within government to deal with matters of a serious nature which if resolved would serve the public good.**

Certain matters can be more appropriately addressed through other complaint handling mechanisms such as internal review or grievance resolution procedures, a workplace inspection or sometimes the Fair Work Commission. If you think your concerns fall outside of the PID framework, as a first step you should speak to your manager, a work health and safety representative, or Respect, Equity and Diversity contact officer.

**Table 1: Differentiating between a PID, complaints /grievances and performance management matters**

If the matter involves:	Then it could be:
<ul style="list-style-type: none"> <li>• <u>Unlawful activity</u> – has someone broken a law or engaged in illegal activity?</li> <li>• <u>Corruption</u> – has someone been involved in corrupt behaviour such as bribery, graft, extortion, political manipulation, kickbacks, misappropriation or theft, fraud, abuse of discretion, creating or exploiting a conflict of interest, nepotism or favouritism?</li> <li>• <u>Misconduct</u> – has someone breached section 9 of the <i>Public Sector Management Act 1994</i> in a way that has significant consequences for their organisation or a third party, or a widespread impact?</li> <li>• <u>Maladministration</u> – does the issue relate to the action (or inaction) of an entity or public official for an entity that is of a serious nature and is unjust, unreasonable, improperly discriminatory, involves dishonest or fraudulent decisions or is contrary to law, including an act, decision, advice or omission:               <ul style="list-style-type: none"> <li>○ that does not comply with the law, is inconsistent with relevant legislation, or which violates administrative fairness; or</li> <li>○ that goes against the principles of equity, fairness or equity; or</li> <li>○ that is inconsistent with well established policies or procedures; or</li> <li>○ that demonstrates negligence, or the absence of proper care or attention; or</li> <li>○ that involves excessive use of authority or where authority is used to intimidate, harass or subject someone to unreasonable conditions.</li> </ul> </li> <li>• <u>A danger to the health or safety of the community or environment</u> - is someone doing something that will adversely affect people’s health or damage the environment?</li> </ul>	<p><b>Public Interest Disclosure</b></p> <p><b>(talk to your manager, supervisor or disclosure officer)</b></p>
<ul style="list-style-type: none"> <li>• <u>Industrial matters</u> – is it an issue relating to overtime, workload or working conditions?</li> <li>• Individual allegations of <u>bullying, harassment or discrimination</u>.</li> <li>• <u>Conduct</u> of an individual where the consequences do not have a widespread impact.</li> </ul>	<p><b>Complaint, grievance</b></p> <p><b>(talk to your supervisor, workplace representative or Human Resource area)</b></p>
<ul style="list-style-type: none"> <li>• Issues relating to <u>underperformance</u>.</li> <li>• The exercise of duties without reasonable care or skill where the consequences are localised.</li> <li>• Issues relating to the way performance is <u>managed</u>.</li> </ul>	<p><b>Performance management or misconduct</b></p> <p><b>(talk to your supervisor)</b></p>

Every disclosure will be treated as being made in good faith. However, if it is found that a person has maliciously raised a concern that they know is untrue, protections are not provided. If the person is employed under the *Public Sector Management Act 1994* (PSM Act), they may be subject to disciplinary proceedings as articulated in the PSM Act or Enterprise Agreement as appropriate. Similarly, an employee making a disclosure about their own conduct will not protect them from management or criminal action.

Making a disclosure to a journalist or Member of the Legislative Assembly other than in strictly defined circumstances (see Part 5 of the Act) may constitute an unauthorised release of official information and render the individual liable to misconduct proceedings under the PSM Act and/or prosecution under the *Crimes Act 1900*.

### ***1.3 Relationship to other external scrutiny/compliant functions***

In some situations it may be more appropriate that a concern or complaint is addressed under the statutory or regulatory provisions. For example, this may particularly be the case in relation to health concerns, where approaches can be made in appropriate circumstances direct to the Health Services Commissioner, the Clinical Practice Committee of the Health Directorate, or a nationally regulated health professional board. It is also possible for a disclosure officer under the Act to refer a matter to such bodies, or to decide not to investigate a matter if it is being, or has already been, dealt with by such an external scrutineer. Conversely there may also be occasions when a matter is brought to the attention of one of those entities but cannot be progressed by them. In such instances, if permissible under their own confidentiality and secrecy restrictions, they too should refer relevant issues to a disclosure officer under the Act.

## 2. Making a Disclosure

This section deals with the things someone considering making a disclosure needs to be aware of before they come forward.

**Table 2:** *Before making a disclosure*

1. Consider what have you witnessed or otherwise come to know. Is it
  - a. unlawful (has someone has broken a law or are they engaging in illegal activity?)
  - b. corrupt conduct (for example, bribery, graft, extortion, political manipulation, kickbacks, misappropriation or theft, fraud, self-dealing, patronage, abuse of discretion, creating/exploiting a conflict of interest, nepotism, or favouritism etc.)
  - c. misconduct (see Section 9 PSM Act and the *ACTPS Code of Conduct*)
  - d. maladministration (including public wastage, organisational negligence or inaction)
  - e. a danger to the health or safety of the community or environment (has someone done something that will adversely affect people's health or damage the environment leaving it in a worse state than it was previously?)
2. Think about what you are reporting. Is the information rumour or fact? Can you provide evidence to support your assertions?
3. Is your belief reasonable?
4. Does the activity damage the public interest? (is someone benefiting personally by taking something from the public purse, or will the public at large suffer due to the actions of the individual or entity?)
5. Does the issue have wide ramifications or longer term implications?
6. Have you thought about how others might react to your PID? It is a good idea to establish a support network (e.g. employee assistance provider or seek the assistance of others trained in helping people to deal with stressful situations) so that if things become complex, you are in a good position to take care of your interests.
7. If after considering the above you decide you hold information that will serve to protect the public interest and uphold the integrity of the public sector:
  - a. do you know how to make the disclosure? Are you willing to put it in writing? A disclosure should be made to your supervisor, a disclosure officer, the head of an entity or the Commissioner for Public Administration (Commissioner). Only in very specific circumstances can a disclosure be made to a journalist or a Member of the Legislative Assembly.
  - b. Do you know the kinds of information you should provide when making a disclosure? You should have good reasons and possibly evidence for your suspicions.
  - c. Is the outcome you expect reasonable? You should communicate your expectations when making your disclosure. Do you know what happens next? If unsure you should ask when making your disclosure.

## 2.1 Who can make a disclosure?

Anyone suspecting a misuse of public resources or with information that indicates questionable activity relating to the work of an entity is encouraged to make a disclosure. This includes ACTPS employees, contractors and others who work with entities, and members of the public.

Here are some tips for raising a concern:

- Raise it when it's a concern – you won't be asked to prove it.
- Keep it in perspective - there may be an innocent explanation.
- Stay calm - you're doing the right thing.

*If you are unsure about how you can make a disclosure, or have a question about procedural matters relating to PIDs, you can always approach the Commissioner for confidential advice.*

## 2.2 How should a disclosure be made?

A disclosure may be made orally or in writing. There is no prescribed form.

Before making a disclosure, you should think about the problem and what you think should be done to fix it. You should try to communicate these things when making your disclosure and provide as much detail as will be needed to resolve the issue, but no more. This might include the main facts, dates and times, and steps already taken to resolve the problem.

If you make your disclosure in person or over the phone, the receiver will make a written record of the conversation. For this reason, it is best to document the details of your concern in a letter or email.

There are a number of people you can approach in order to make a disclosure:

Every entity has at least one disclosure officer who has been given special responsibility and training in dealing with disclosures and PIDs.

- In relation to the ACTPS, a disclosure can be made to a Director-General or the Head of Service.
- If there is a governing board, a disclosure can be made to a board member.
- For matters that relate to the Legislative Assembly, a disclosure can be made to the Clerk of the Legislative Assembly.
- Disclosures can also be made to the Commissioner, the ACT Auditor-General, or the ACT Ombudsman.
- For employees of the ACTPS, a disclosure can be made to your supervisor or manager.

*For employees in the ACTPS, if you feel that the matter is so serious that you cannot discuss it internally, you should inform the Commissioner, ACT Auditor-General or the ACT Ombudsman.*

Remember that while you will not be required to satisfy a legal level of proof, a discloser must have good reasons or evidence for their suspicions.

## **2.3 Making a disclosure inadvertently**

A disclosure may be made without the discloser asserting that the disclosure is made under the Act.

**Because a disclosure can be made inadvertently, it emphasises the importance of all employees being aware of this type of disclosure and that managers and supervisors be aware of their possible role as a *receiving officer*<sup>2</sup>.**

Essentially this means that a disclosure could be made unintentionally, possibly during a casual conversation, or without the person claiming that the information is provided as a disclosure. For example, while chatting in the kitchen, a colleague might mention that an invoice was received for furniture that was never delivered. This should be addressed as a disclosure.

Similarly, you may find yourself in a situation where you inadvertently witness the disclosure of information which you suspect is wrongdoing. For example, you may overhear a conversation in the lift that a manager has selected their own family member through a recruitment process without declaring a conflict of interest. This should also be addressed as a disclosure.

Although you may not be directly involved in the discussion or actions, you may have nonetheless witnessed wrongdoing. It is strongly encouraged that you report these matters to a supervisor or disclosure officer.

## **2.4 Making a disclosure anonymously or in-confidence**

The chance of an outcome will be more likely where the identity of a discloser is known. However, a PID can be made **anonymously**, where the discloser does not identify themselves at all (for example an anonymous phone call or letter).

Remember that if you make a disclosure anonymously, it will not be possible for the decision maker to seek clarification, so it is essential that as much information is provided as possible. In weighing the veracity of any anonymous complaint, decision makers will have regard to the extent to which the allegations made can be independently verified. If enough information is provided, anonymous reports may be inquired into, however it will not be possible to keep the discloser protected or informed about that status of their disclosure.

A disclosure can also be made **in-confidence**, where the discloser asks that they not be revealed as the source of the disclosure. Where a disclosure is made in-confidence, the discloser's identity will not be revealed without that person's consent unless required by law.

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<sup>2</sup> Refer to Section 4 of these Guidelines

**Both anonymity and confidentiality may have practical implications in consideration of a disclosure.**

**There may be times when a concern cannot be examined without revealing the discloser's identity, for example where personal evidence is essential. In such cases, the matter will be discussed with the discloser.**

**Where a disclosure is made anonymously, it is generally more difficult for an entity to look into the matter. It is also not possible to protect the discloser or keep them informed of the process.**

However, in some circumstances a discloser's identity may be required by law, for example for a witness of an assault in a workplace. Under Section 21 of the Act, an entity must refer a disclosure to the chief police officer if satisfied on reasonable grounds that the subject of the disclosure involves, or could involve, an offence.

Should an anonymous disclosure be received by an employee, the employee should pass the disclosure, including the date and time the disclosure was received, to a disclosure officer, after which time their role in the process ceases.

## ***2.5 Protection for people who make a disclosure***

Under the Act, a person who acts honestly and reasonably in making a disclosure (the discloser) receives protection from reprisal that results from the disclosure (reprisal is called ***detrimental action*** in the Act).

Under the Act all ACT public sector employees (employees) are required to report any fraudulent, corrupt or maladministration that comes to their attention. An employee, a contractor, employee of a contractor, volunteer exercising a function of the entity, or a person prescribed by regulation who makes a disclosure is not liable under the Act to administrative action, including disciplinary action or dismissal because of the making of a disclosure.

If a person makes a disclosure, they will not incur civil or criminal liability only because of the making of the disclosure. A disclosure is not:

- a breach of confidence; or
- a breach of professional etiquette or ethics; or
- a breach of a rule of professional conduct; or
- if the disclosure is made in relation to a member of the Legislative Assembly – a contempt of the Assembly.

If a person retaliates against the discloser by directly or indirectly punishing them for reporting information, they will be held accountable for their behaviour.

***There can be serious consequences for reprisals. Under Section 40 of the Act the person who takes detrimental action has committed an offence. This person may also be pursued for damages in court (Section 41).***

Examples of detrimental action include:

- intimidating or harassing the discloser;
- damaging or taking the discloser's property;
- disadvantaging the discloser in relation to their career, employment, trade or business;
- threats of any of the above; or
- deliberately causing financial loss to the discloser.

If a disclosure is made in good faith but turns out to be untrue, the discloser is still entitled to protection under the Act.

Vexatious disclosures may be investigated, however where a person makes a disclosure vexatiously or with otherwise unethical intentions, they will lose the protections provided in the Act.

***Protection will not be provided to people who knowingly make false claims.***

## **2.6 Making a disclosure externally**

Usually, issues should be reported to the disclosure officer in the relevant entity in the first instance.

Under certain circumstances, the discloser may make a disclosure to a third party, specifically, a journalist or a Member of the ACT Legislative Assembly.

Protection only applies to disclosures made in this way under very specific circumstances, specifically where:

- an entity refuses or otherwise fails to look into your disclosure;
- where an entity agrees someone has acted inappropriately but the entity does not act to address the problem; or
- where you have not been told about progress on your disclosure within the statutory timeframe.

**Where an entity fails in their duty to manage a disclosure according to the recommended process, a person may be entitled to make their disclosure public. However, a discloser should be aware that should the disclosure fail to constitute a PID, they will not be provided with the protections available under the Act.**

**This part of the Act emphasises the onus on entities to understand and manage disclosures and the PID process as per the Act in every instance.**

If you believe the conduct involves many people or is so deeply embedded in the culture of an entity and for this reason making an internal disclosure is unlikely to be taken seriously or may be detrimental to your health or wellbeing, you may make a disclosure to a third party. Section 27 of the Act permits this where a person honestly believes on reasonable grounds that:

- he/she has information that tends to show disclosable conduct;



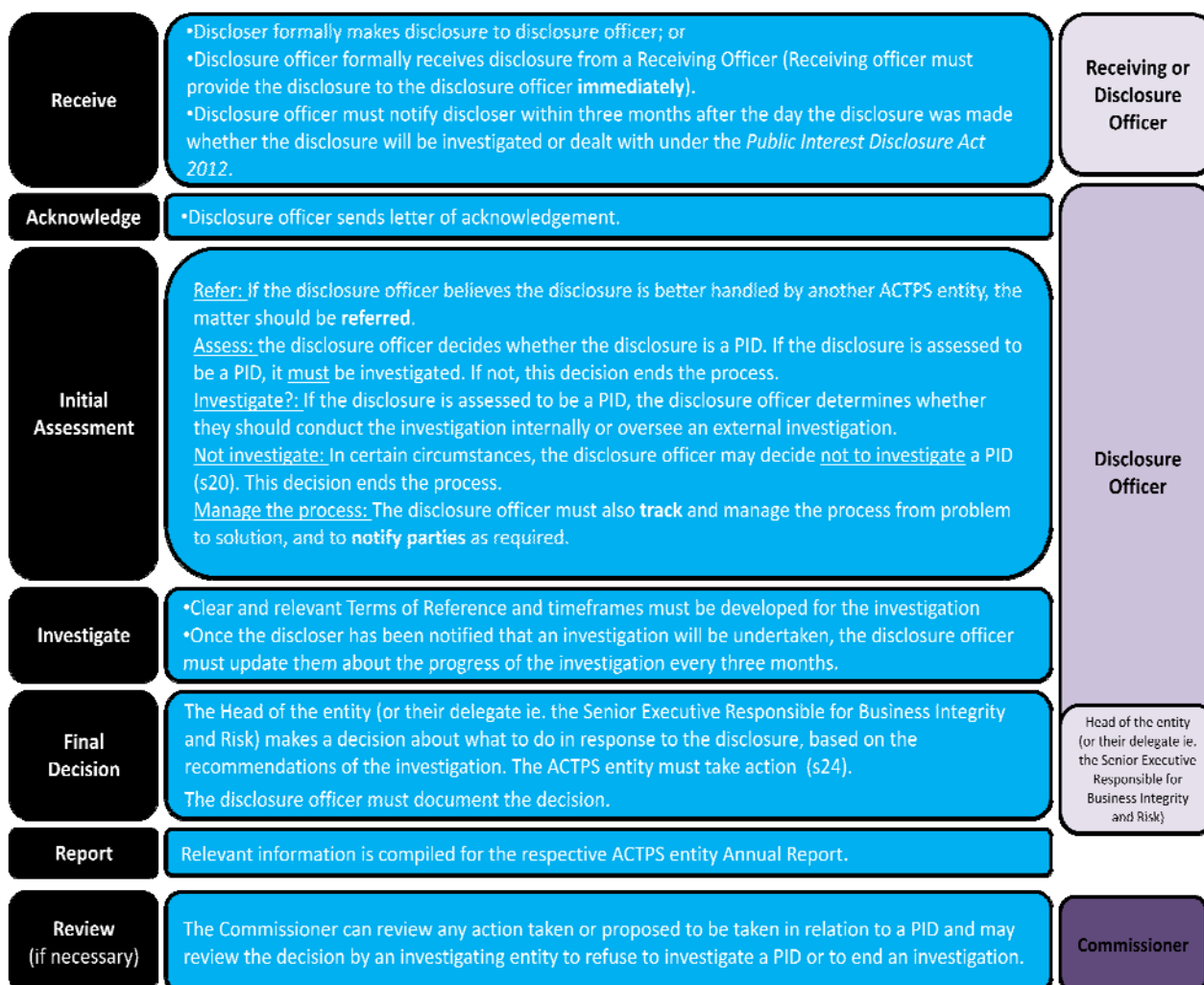
- there is a significant risk of detrimental action to him/herself or someone else if a disclosure is made through the usual process; and
- it would be unreasonable to make a disclosure through the usual process to a person mentioned in Section 15 of the Act.

**If you approach a third party in this manner, you:**

- **must disclose sufficient information to demonstrate disclosable conduct but should not provide more than is reasonably necessary; and**
- **may inform an MLA or journalist about the progress and outcome of any investigation of a PID you have made.**

## 2.7 What happens after a disclosure has been made?

The steps in this process are laid out in detail in Part 2 of these guidelines. Each entity will also have a short document outlining their internal processes based on these guidelines.



## Receive

Once the disclosure officer has received the disclosure (either from a *receiving officer*<sup>3</sup> or the discloser) the process begins. It is the disclosure officer's responsibility to manage the process from beginning to end.

Under the Act, the disclosure officer must notify the discloser within three months after the day the disclosure is made whether or not the disclosure will be investigated or dealt with.

## Acknowledge

The disclosure officer should thank the discloser for making the disclosure and acknowledge their courage to raise the matter by providing an acknowledgement letter<sup>4</sup>.

## Initial Assessment

### Refer

The disclosure officer will assess whether the disclosure should be referred<sup>5</sup> to another entity for their consideration.

### Assess

**Most importantly**, the disclosure officer will make a decision as to whether the disclosure is **in fact a PID**. To support this decision, the disclosure officer may seek advice from the ACT Government Solicitors Office (GSO), or from an investigating entity.

If the disclosure officer has assessed the disclosure is a PID, the discloser will be notified of who will be handling the matter, how they can be contacted, and what further assistance may be needed.

### Investigate?

If the disclosure officer has assessed the disclosure is a PID, the disclosure officer decides whether their entity should conduct the investigation internally or oversee an external investigation.

### Not investigate?

In certain circumstances, the investigating entity may make a decision not to investigate a PID (Section 20). This is a decision that would end the process.

### Manage the process

The disclosure officer has the responsibility to:

- track the PID process from problem to resolution; and
- notify relevant persons.

## Investigate

The disclosure officer must develop clear and relevant Terms of Reference, including timelines. The investigation is undertaken.

Once the disclosure officer has notified the discloser that an investigation will be undertaken, they must update the discloser about the progress of the investigation every three months.

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<sup>3</sup> Refer to section 5 of these guidelines

<sup>4</sup> Refer to section 6.2 of these guidelines

<sup>5</sup> Refer to section 6.3 of these guidelines

## Final Decision

The Head of the entity (or their delegate) makes a decision based on the recommendations of the investigation and drafts a report documenting their decision about the PID<sup>6</sup>.

The entity must take action.

The Commissioner must be informed.

Following completion of the investigation, the disclosure officer must inform the discloser:

- of the outcome of any investigation; or
- if it is decided that the investigation will be ended, including the reason for this decision and how this complies with Section 20 of the Act.

However, the discloser is not entitled to all the information obtained during the course of investigating a PID. The discloser does not have to be kept informed where this is likely to bring risk to a person's safety or an investigation relating to the PID.

## Report

Under Section 45 of the Act, the following information must be provided in an entity's Annual Report:

- number of PIDs made;
- number of investigations carried out;
- number of investigations completed; and
- average time taken to complete investigations.

However, the annual report must not include protected information (see Section 44 (6)).

## Review

It is suggested good practice for respective entities to take the opportunity when afforded to review their procedures.

The Commissioner has a role in overseeing the action taken once a PID has been made, and will ensure all matters are handled fairly and properly (see part 7 of these guidelines). This includes:

- reviewing a decision by an investigating entity to refuse to investigate a PID or to end an investigation; and
- any action taken, or proposed to be taken in relation to a PID.

## ***2.8 What happens if I think my disclosure is not handled properly?***

If a discloser is unhappy with the process used to deal with their disclosure, they should first talk to the disclosure officer and head of the relevant entity to better understand the process which was used. The disclosure officers are responsible for making clear to a discloser how their disclosure was handled and any steps taken to address their concerns.

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<sup>6</sup> See section 6.5 of these guidelines

**If you think a matter has not been handled appropriately, there are certain checks and balances in place to ensure a matter receives a fair and proper hearing.**

If you are dissatisfied with the outcome of an investigation, the Commissioner is able to review an investigation or any aspect of the handling of a disclosure. Additionally, the Ombudsman may look into any matter dealt with under the Act.

**If you have contacted your disclosure officers and are still unsatisfied with how your disclosure has been handled, you can contact the Commissioner for further advice.**

## ***2.9 What happens if my disclosure is determined not to be a PID?***

Sometimes your concerns, even though warranted, will not be serious enough to amount to a PID. There may be occasions when a disclosure is made either with an ulterior motive or maliciously. In such a case, an entity is unable to provide the assurances and safeguards to someone who is found to have maliciously raised a concern that they also know to be untrue.

If it is found that your concerns are false or otherwise misplaced they will not be dealt with as a PID. If information is assessed and determined not to be a PID, the discloser must be informed and given reasons for the decision.

All decisions made under the Act are subject to review. You are entitled to be informed of this and provided with information about how to seek a review. You may wish to seek clarification from the disclosure officer (an internal review), or a formal review by the Commissioner.

**Note: A disclosure that has been assessed as not being a PID may still be investigated in accordance with the PSM Act or Enterprise Agreement as appropriate.**

The Ombudsman is also available to investigate complaints about the actions and decisions of entities to determine if they are wrong, unjust, unlawful or discriminatory. As a general rule, however, the ACT Ombudsman will not investigate a complaint unless the concern has been raised with the entity concerned and an attempt has been made to solve the problem.

**It is essential that you are aware of what a PID is before making a disclosure (see section 1.1 & 1.2 of these guidelines). Consider closely whether your concerns and what you want to happen only affect you, or have a wider impact. It is possible that other avenues to pursue your concerns may be more suitable.**

**It is important to recognise that disclosure officers are independent officers trained in handling disclosures and making decisions about PIDs.**

## Part Two

This part outlines the integrated management approach entities should follow in handling PIDs. It will be of particular use to those involved in receiving and managing PIDs. It outlines the responsibilities of disclosure officers, entities and the Commissioner.

It articulates what to do when a disclosure is received or PID suspected, the types of information that might amount to a PID, the steps a disclosure officer should follow in actioning a disclosure, the parameters an entity must work within in handling a disclosure, and the functions of the Commissioner in overseeing the handling of disclosures.

It also reminds entities of their reporting responsibilities.

### 3. Responsibilities of entities

#### **3.1 What must each entity do under the Act?**

Each entity has a number of responsibilities under the Act. Each must:

- declare at least one disclosure officer<sup>7</sup>;
- keep the list of disclosure officers current;
- make information on entity procedures accessible;
- notify the Commissioner of any disclosures (which have been determined to be PIDs);
- determine whether to investigate a disclosure or whether a matter needs to be referred to another entity for investigation;
- keep the discloser and other parties informed during the process in accordance with the timeframes and other requirements in the Act; and
- take action if disclosable conduct is proven.

The head of each entity has responsibility for these actions and should determine whether delegations are to be established for any aspect of these actions. Should the head of an entity decide to delegate powers under the PID Act, they should do so in writing and place this document on the legislation register by notifiable instrument.

#### **3.2 Procedures by each entity**

Under Section 33 of the Act, entities are required to prepare and publish procedures about how they intend to deal with disclosures and those **procedures must be approved by the Commissioner**.

Entities may choose to adopt these guidelines and apply them as their PID procedures. In the event that these guidelines are updated, entities who have adopted these guidelines as their entity procedures will not be required to revise their procedures. Entities intending to do this should publish a statement that they adopt these guidelines (which may be amended from time to time),

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<sup>7</sup> See section 5 of these guidelines

and name their disclosure officers in keeping with the requirements of Section 33 of the Act. In addition, entities must provide a copy of the statement endorsing the guidelines to the Commissioner for approval.

Where entities require specific amendments/additions to reflect their particular circumstances, these must be approved by the Commissioner.

### **3.3 Other actions by each entity**

Each entity should review their procedures periodically. Every three years is recommended.

Each entity should periodically ensure staff are aware of the procedures and the intention of the legislation.

Entities should consider:

- comparing and correlating disclosure data with information from other risk management systems; and
- gauging staff awareness and trust of PID arrangements.

### **3.4 Reporting**

Each financial year, an entity must detail the number of disclosures made, number of investigations carried out, number of investigations completed and the average time taken to complete an investigation in their annual report.

***The annual report must not include protected information<sup>8</sup>***

## **4. What to do if someone makes a disclosure to me**

### **4.1 Am I likely to receive a disclosure?**

If you suspect that you have come across information that may involve disclosable conduct, or if you are unsure, then you have a responsibility to pass that information to your manager, supervisor or a disclosure officer.

While there are disclosure officers in each entity, other employees have responsibilities as *receiving officers*, specifically:

- if you are an ACTPS employee with responsibility for supervising staff, you could receive a disclosure from one of your staff and you must pass disclosures received to a disclosure officer for action;
- if you are the member of the governing board of an entity, you could receive a disclosure in relation to that entity and you must pass disclosures received to a disclosure officer; or

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<sup>8</sup> See Glossary for definition of protected information

- if you are in a position where you receive information about matters such as funding, conduct, whether administrative procedures have been followed, health or safety risks, or environmental risks – such as a chief financial officer, workplace health and safety representative, bullying and harassment contact officer, or member of an audit committee – you could receive a disclosure.

***Managers and supervisors should report to a disclosure officer even if they are unsure their concerns constitute a PID.***

***If you receive a PID and therefore have become a receiving officer, you are not responsible for making a decision about a PID. You must pass that information to a disclosure officer.***

## **4.2 What should I do at the time of receiving a disclosure?**

Given the seriousness of making a disclosure, it is important that their disclosure is acknowledged, and that they are commended for taking this action.

It is suggested the disclosure officer provide send a letter to acknowledge the discloser’s courage to report the matter. If the matter is raised orally, make a written note including details of the discloser and any individuals implicated in the matter. Inform the discloser that they will probably be asked to check, sign and date the record.

**There are certain general principles to follow when receiving a disclosure.**

- **Thank the discloser for raising the concern, even if they may appear to be mistaken.**
- **If you are not a disclosure officer for your entity, let the discloser know that you will inform the disclosure officer.**
- **Respect promises of confidentiality where applicable.**

If you are not the disclosure officer and you suspect you have received a disclosure, **inform the disclosure officer as soon as possible**. Do not attempt to investigate the matter yourself and do not tell others about the disclosure as this might put the discloser or any subsequent investigation at risk. Once you have informed the disclosure officer of the disclosure, your role as a receiving officer has been fulfilled.

## **5. Disclosure Officers**

The role of a disclosure officer is to make an initial assessment of a complaint and act as a central coordination point for all matters relating to public interest disclosures.

A consistent criticism levelled at disclosures that are poorly managed is that often the links in the communication chain break down and disclosures slip between the cracks or fail to be investigated when they should be. **It is the responsibility of a disclosure officer to ensure this does not happen.**

Under the Act, heads of entities are disclosure officers. This means that Directors-General, the Clerk of the Legislative Assembly and other executive or statutory officers with overall management responsibility for an entity (e.g. CEO of Calvary Health Care ACT, Project Director & Director-General of Capital Metro Agency) are disclosure officers under the Act.

Section 11(2) of the Act requires the head of an entity to also declare at least one other person to be a disclosure officer in their entity. Other than the head of the entity, it is recommended that the disclosure officer declared be a Senior Executive Responsible for Business Integrity and Risk (SERBIR).

In the event disclosure officer arrangements change in an entity, a new declaration by notifiable instrument is required.

**The role of the disclosure officer is to receive a disclosure and to support the discloser.**

**The disclosure officer ensures appropriate action is taken in response to a disclosure and maintains the effective administration of the process.**

The following positions are authorised to act as disclosure officers and must meet the requirements of the Act if a disclosure is made to them:

- the Commissioner;
- the Head of Service;
- the Auditor-General; and
- the ACT Ombudsman.



## 6. Guidance for Disclosure Officers

The following table outlines the steps that should be undertaken by a disclosure officer upon receiving a disclosure.

**Remember, disclosure officers must take their responsibilities under the legislation seriously. It is imperative that the process is followed to retain the integrity of the ACT public sector.**

Step	Information	Action
<b>1: RECEIVE</b>	<p>Discloser formally makes a disclosure to a disclosure officer or receiving officer</p> <p>OR</p> <p>Disclosure officer receives a disclosure passed to them from a receiving officer.</p> <p>If necessary, the receiving officer must provide the disclosure to the disclosure officer <b>immediately</b></p>	<p>Make written notes if matter is orally raised.</p> <p>Manage expectations and respect promises of confidentiality where applicable.</p> <p>Notify the discloser within three months after the day the disclosure is made whether or not their disclosure will be investigated or dealt with under the <i>Public Interest Disclosure Act 2012</i>.</p> <p>Move to Step 2</p>
<b>2: ACKNOWLEDGE</b>	<p>It takes courage to raise a disclosure, therefore the discloser must be afforded appropriate recognition.</p> <p>The disclosure should be reassured that their complaint is receiving attention.</p>	<p>Thank discloser for making the disclosure.</p> <p><b>It is suggested the disclosure officer provides an acknowledgement letter at this stage</b> - the letter should also outline the process the disclosure officer will undertake in handling the disclosure.</p> <p>Move to Step 3</p>
<b>3: INITIAL ASSESSMENTS</b>  <b>Covers five steps of assessment</b>	<p><u>Refer</u></p> <p>Disclosure officer must consider whether the disclosure would be better handled by another entity</p> <p>Does it relate to another entity's staff or resources?</p> <p>If yes, disclosure officer determines which entity the matter should be provided to for action</p>	<p><b>If yes:</b></p> <ul style="list-style-type: none"> <li>• Provide a referral form to notify the respective disclosure officer in the other entity of the decision; and</li> <li>• notify the discloser of the decision.</li> </ul> <p><b>This letter closes the process from the entity's perspective; however, the disclosure officer will be kept informed as they have now become the referring entity (Section 22).</b></p> <p><b>If No</b></p> <p>Move to Assess</p>
	<p><u>Assess</u></p> <p><b>Is the disclosure a PID?</b></p> <p>It is <b>imperative</b> for the disclosure officer to make a decision as to whether the disclosure is in-fact a PID.</p>	<p><b>If yes</b> – Check internal procedures &amp; notify. Move to Investigate.</p> <p>Disclosure officer must provide a copy of the PID to:</p> <ul style="list-style-type: none"> <li>• The head of each entity to which the PID relates; and</li> </ul>

	<p><b>If in doubt, engage an investigator or seek further procedural advice from the Commissioner or legal advice from GSO.</b></p>	<ul style="list-style-type: none"> <li>• The Commissioner.</li> </ul> <p><b>If No</b> – Disclosure officer must write to the discloser explaining why their disclosure is not a PID (see Section 20) and advise other avenues for their complaint to be examined eg. Grievance review, WorksafeACT etc</p> <p><b>This letter closes the process, subject to a request to review the decision.</b></p>
	<p><u>Investigate</u></p> <p>If the disclosure is assessed to be a PID, and the disclosure officer makes a decision to investigate the PID</p>	<p>Disclosure officer determines:</p> <ul style="list-style-type: none"> <li>• the matters to be resolved</li> <li>• resources required</li> <li>• how the investigation will be managed (external vs internal)</li> </ul> <p>Move to Manage the process</p>
	<p><u>Not investigate</u></p> <p>In certain circumstances the disclosure officer may make a decision not to investigate a PID. This is a decision that would end the process</p>	<p>An investigating entity may decide not to investigate a PID (Section 20) but they must provide <b>reasons</b> and <b>inform</b> discloser, head of the entity and Commissioner.</p> <p><b>This letter closes the process, subject to a request to review the decision.</b></p>
	<p><u>Manage the process</u></p> <p>The disclosure officer has the responsibility to <b>track</b> and manage the process from problem to solution, and to <b>notify</b> as required.</p>	<p>Move to Step 4</p>
<p><b>4: INVESTIGATE</b></p>	<p>Only occurs once the disclosure officer makes a decision that the matter is complex or an investigation is otherwise needed</p> <p>Clear and relevant Terms of Reference must be developed for the investigating entity</p>	<p>Develop <b>Terms of Reference (ToR)</b> for investigation</p> <ul style="list-style-type: none"> <li>• who is involved? when did it happen?</li> <li>• has disclosable conduct occurred?</li> <li>• what type of conduct?</li> <li>• what can be done to remedy the wrong</li> <li>• what can be done to ensure it doesn't happen again</li> <li>• timeframes</li> </ul> <p>Same ToR for internal and external investigations. Clarify timeframes for investigation.</p> <p><b>UPDATE discloser and Commissioner at least once every three months.</b></p> <p><b>Note: the discloser must be updated about the progress of the investigation at least every three months.</b></p> <p>Move to Step 5</p>
<p><b>5: FINAL DECISION</b></p>	<p>The Head of the entity (or their delegate i.e. the Senior Executive Responsible for Business Integrity and</p>	<p>The entity must take action to:</p> <ul style="list-style-type: none"> <li>• prevent the disclosable conduct continuing; and</li> </ul>

	<p>Risk) makes a decision based on the recommendations arising from the investigation and drafts a report documenting their decision.</p>	<ul style="list-style-type: none"> <li>discipline any person responsible for the disclosable conduct(Section 24)</li> </ul> <p><b>Document decision and reasons for making the decision.</b></p> <p>Following completion of the investigation, the discloser, Commissioner and head of the entity must be informed:</p> <ul style="list-style-type: none"> <li>of the outcome of any investigation; or</li> <li>if it is decided that the investigation will be ended, including the reason for this decision and how this complies with Section 20 of the Act.</li> </ul> <p>However, the discloser is not entitled to all the information obtained during the course of investigating a PID. The discloser does not have to be kept informed where this is likely to bring risk to a person’s safety or an investigation relating to the PID.</p> <p><b>This report closes the process, subject to a request to review the decision.</b></p>
<b>6: REPORT</b>	<p>Where relevant:</p> <ul style="list-style-type: none"> <li>number of PIDs made;</li> <li>number of investigations carried out;</li> <li>number of investigations completed and;</li> <li>average time taken for completed investigations</li> </ul>	<p>Provide information for entity Annual Report - check Section 45 of the Act.</p>
<b>7: REVIEW</b>	<p>Entities should periodically evaluate the effectiveness of their PID procedures and whether the outcomes are meeting the objective of the Act.</p>	<p>Entities should monitor and evaluate the effectiveness of their PID procedures.</p>
Best practice		
Commissioner	<p><b>Be aware</b> the Commissioner has a role in overseeing the actions taken by entities and will ensure all matters are handled fairly and properly. This includes:</p> <ul style="list-style-type: none"> <li>reviewing a decision by an investigating entity to refuse to investigate a PID or to end an investigation; and</li> <li>any action taken, or proposed to be taken in relation to a PID.</li> </ul>	<p>Entities must be aware that the Commissioner is informed at each significant stage in the process of handling a disclosure. Where irregularities occur or potentially insufficient actions are taken, the Commissioner will actively intervene in the handling of a disclosure.</p>

## 6.1 Step 1 – Receive

Under the Act, a person who has been designated as a disclosure officer is an **officer declared by the head of their respective entity to make decisions about PIDs**.

A disclosure officer has the responsibility to take care of the discloser and manage any repercussions arising from the disclosure. This includes notifying relevant entities, the Commissioner, and the discloser of any referrals and/or decisions made throughout the process as per the Act.

A *receiving officer*, must provide a disclosure to a disclosure officer **immediately**. The receiving officer must scribe the disclosure as accurately as possible using the discloser's words and provide this to the disclosure officer. Where possible, the discloser should be given the opportunity to edit the record of the conversation.

Under Section 27 of the Act, a disclosure officer must update a discloser within three months after the day the disclosure is made whether or not the disclosure will be investigated or dealt with under the Act.

*Entities should note that should this timeframe not be met, a discloser is able to make their disclosure to a member of the Legislative Assembly or a journalist.*

## 6.2 Step 2 – Acknowledge

Given the seriousness of making a disclosure, it should be acknowledged that the person making the disclosure will most likely be in a position of high stress. It is important that this is acknowledged and that they are commended for taking this action.

It is suggested the disclosure officer provide a letter of acknowledgement at this stage to demonstrate the acknowledgement of the discloser's courage and to outline the process the disclosure officer will undertake in relation to the disclosure.

The entity's procedure statement should also be provided to the discloser at this stage to ensure they understand the process involved in managing a disclosure.

## 6.3 Step 3 – Initial Assessments

### Refer

If a disclosure officer believes the disclosure should be in the hands of another entity, they should provide the disclosure to that entity.

The **disclosure officer must decide** if the disclosure is better handled in another entity. For example, if the PID:

- involves a staff member from another entity; or
- involves a program managed under another entity; or
- relates to an entity which is funded by another entity.

A *Referral Form* template is provided as an Appendix to these guidelines.

## Assess

**It is imperative for the disclosure officer to make a decision whether the disclosure is in-fact a PID.**

Part One of the guidelines will assist disclosure officers in making this decision.

Remember that PIDs are about serious and systemic concerns; personal or other relationship based problems alone will rarely amount to a PID.

Questions to consider include:

- What type of conduct has occurred?
- How serious it is?
- How many people are involved?
- What is the seniority of those involved or affected?
- Is the conduct of a type referred to in the Act or these Guidelines?
- Is the behaviour systemic?
- Are amounts involved substantial?

Situations that appear to involve false or vexatious allegations should be handled carefully. The starting point for any disclosure officer is to look at the concern and examine whether there is any substance to it. Every concern should be treated as made in good faith, unless it is subsequently found not to be. However, if it is found that the individual has maliciously raised a concern that they know is untrue, disciplinary proceedings, as articulated in the *Public Sector Management Act 1994*, may be commenced against that individual, and as a result, the protections provided under the PID Act can be removed.

Should the disclosure officer require further information to support their decision whether the disclosure is a PID, they should seek evidence by engaging an *investigating entity* or seek legal advice from GSO.

## Investigate

Once a disclosure officer has decided a disclosure is in-fact a PID and requires investigation, the head of the entity to which the PID relates is responsible for investigating the PID. It is suggested the head of an entity delegates investigative responsibilities to the disclosure officer upon designation<sup>9</sup>.

There are three cases where the head of an entity may not be responsible for investigating a disclosure. These are where a disclosure involves the head of the entity, the Head of Service, or the Commissioner. Where a PID relates to a head of entity, the Head of Service must investigate the disclosure. However, if a disclosure relates to the Head of Service, the ACT Ombudsman may investigate the disclosure or refer it to the head of another entity. Similarly, where a PID relates to the Commissioner, the Head of Service must investigate the disclosure.

Before the investigation is undertaken, the disclosure officer must:

- decide whether the investigation be conducted internally, or whether an external investigation is required; and
- develop clear terms of reference, including timeframes.

## Not investigate

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<sup>9</sup> See disclosure officer form at Appendix

In certain circumstances the disclosure officer may make a decision not to investigate a PID, specifically where:

- the discloser has withdrawn the PID and the investigating entity is reasonably satisfied that there are no further matters in the disclosure that warrant investigation;
- the discloser has not disclosed his or her name and contact details and the investigating entity is reasonably satisfied that this lack of information makes it impracticable for the disclosure to be investigated;
- the discloser fails, without reasonable excuse, to give assistance when requested from the investigating entity;
- the investigating entity is reasonably satisfied that the disclosure information is wrong in a material way and investigation of the disclosure is not warranted;
- the investigating entity is reasonably satisfied that the age of the disclosed information makes it impracticable for the disclosure to be investigated;
- the investigating entity is reasonably satisfied that the substance of the disclosure has already been investigated under the Act or another law in force in the ACT; or
- there is a more appropriate way reasonably available to deal with the disclosable conduct in the disclosure.

**If an entity declines to investigate a disclosure, they must provide reasons and inform the discloser as well as the Commissioner.**

### **Manage the process**

Each entity must establish a means of tracking PIDs and develop internal procedures to monitor a PID throughout the process. This information can also be used for reporting purposes in accordance with your entity's Annual Report (see Step 6 below, or Section 45 of the Act).

Under Section 17 of the Act, you must provide a copy of the PID to:

- the head of each entity to which the PID relates; and
- the Commissioner.

## **6.4 Step 4 – Investigate**

The investigation is undertaken as per the terms of reference. The basic framework for developing a terms of reference is to aim to answer **who-when-where-what-how** questions.

In conducting an investigation, entities must collect and document information in a fair and unbiased way; inform people of the nature of allegations and give them time to reflect on this information before seeking their input; allow people the opportunity to state their case and respond to subsequent allegations; avoid using investigators with a personal interest in an investigation; and ensure any investigation is and is perceived as being conducted fairly.

The disclosure officer must be mindful of notifying requirements (by the investigating entity) under Sections 22, 23 and 25 of the Act, specifically, informing:

- the referring entity (where applicable);

- the discloser; and
- the Commissioner.

The investigating entity for a PID must refer the PID to the Chief Police Officer if satisfied on reasonable grounds that the disclosable conduct the subject of the PID involves, or could involve, an offence.

The outcome of an investigation into a PID results with the investigating entity providing recommendations to the disclosure officer.

If a disclosure officer decides to investigate a PID, and has informed the discloser of this decision, the disclosure officer must inform the discloser of the progress of the investigation at least once every three months.

## **6.5 Step 5 – Final Decision**

Upon completion of the investigation, the head of the entity (or their delegate ie. the Senior Executive Responsible for Business Integrity and Risk) may make a decision based on the recommendations provided by the investigating entity.

Disclosure officers should consider a graduated response, ie. any action taken should be commensurate with the seriousness of the incident.

Under Section 24 of the Act, the entity must take action to:

- prevent the disclosable conduct continuing; and
- discipline any person responsible for the disclosable conduct.

Bear in mind that a disclosure officer may have to outline how a PID was handled, and justify their decisions. Therefore management of a PID and tracking of the process used is paramount.

When coming to a decision, a disclosure officer should always act within the bounds of the legislation, apply the principles of natural justice, be consistent and reasonable, and make clear and documented decisions.

Once a disclosure officer has made a decision, a report must be made about the PID and provided to the discloser, head of the entity and Commissioner. For consistency across government, a template for a report is located at Appendix E. Disclosure officers must be aware of FOI requirements and privacy concerns when preparing reports.

A report is a chronology of events, an account of what was found during the investigation, and how a decision was reached. It should contain general information about the complaint or allegation, what happened in response and how the problem was fixed. It might also be useful to include information about whether any detrimental action occurred in response to the disclosure and what was done to manage this.

## 6.6 Report

Under Section 45 of the Act, the following information must be provided in an entity's Annual Report:

- number of PIDs made;
- number of investigations carried out;
- number of investigations completed; and
- average time taken for completed investigations.

***The annual report must not include protected information.***

## 6.7 Review

A review may not be necessary for all disclosures, however where a review occurs, those undertaking the review should not have been involved in the initial investigation.

### **Evaluation by entities**

Entities are encouraged to put in place procedures by which they will systematically review or otherwise evaluate their handling of disclosures with the aim of continuous improvement.

### **Oversight by the Commissioner**

The Commissioner has a role in overseeing the action taken once a PID has been made, and will ensure all matters are handled consistently, fairly and properly.

This includes:

- reviewing a decision by an investigating entity to refuse to investigate a PID or to end an investigation; and
- any action taken, or proposed to be taken in relation to a PID.

# 7. Role of the Commissioner

***Under Section 17(b) of the Act, the Commissioner must be provided a copy of a PID from the disclosure officer once received.***

## 7.1 Commissioner's functions

Under Part 6 of the Act, the Commissioner is given a broad oversight role in relation to the ACT public sector's management of PIDs. The Commissioner is obliged to provide advice about PIDs to entities, review the way they investigate and deal with PIDs, ensure just outcomes for people who make PIDs including preventing and remedying the effect of detrimental action against people because of disclosures; and provide education and training about PIDs.

The Commissioner may notify the ACT Ombudsman about a PID if the Commissioner believes it is appropriate for the ACT Ombudsman to know about the disclosure.



## **7.2 Commissioner may review decisions**

The Commissioner has strong powers to compel entities to act in certain ways in their management of PIDs. Under Section 29, the Commissioner has the power to review decisions made by entities in relation to disclosures and the way they are handled. Where an entity declines to investigate a disclosure the Commissioner may review and remake this decision. Likewise, the Commissioner may review and remake decisions made by entities to end the investigation of a disclosure as well as any action taken by an entity in response to disclosable conduct being found.

**The Commissioner may ask anyone to give them information, including protected information, relevant to the investigation of the disclosure.**

An entity or public official must comply with a request made to the entity or official.

Under Section 29(4) of the Act, after review a decision, the Commissioner may:

- amend the decision; or
- set aside the decision and substitute a new decision; or
- take no action.

**After reviewing an action, or proposed action, the Commissioner may direct an entity or public official to take action (or cease an action) in relation to the disclosable conduct.**

## **7.3 Report by Commissioner**

Under Section 30 of the Act, the Commissioner may tell the Minister about an entity's PID procedures or how a PID is dealt with by an entity.

However, the principles of natural justice apply to these reports. Namely, the Commissioner must not include information that may be critical of a person unless the Commissioner has given the person an opportunity to be heard. Likewise, the Commissioner must not include information that is likely to endanger a person's safety or jeopardise an investigation relating to the disclosure.

**Under Section 30 (3), the Minister must present the report to the Legislative Assembly within nine sitting days after the day the report is given to the Minister.**

## **7.4 Commissioner must keep discloser informed**

The Commissioner is not immune to the requirement to keep the relevant parties informed about what is happening with a disclosure. If the Commissioner calls on the powers of review contained in Part 6 of the Act and substitutes or otherwise makes a decision about the way a disclosure is being handled or acted upon, the Commissioner must tell the discloser about the decision and what lead to that conclusion (unless the disclosure was made anonymously or the discloser has otherwise made it clear that they do not wish to be kept informed).

## **8.0 Public Interest Disclosure Tracking System**

A whole-of-government PID Tracking System commenced in June 2014. The PID Tracking System was developed by Canberra Connect and undertakes the following functions:

- a simple interface for disclosure officers to operate, and follows the processes outlined in these Guidelines;
- a reminder and escalation mechanism;
- a system that allows disclosure officer access to PIDs related to their entity only;
- an overarching view of all PIDs for the Commissioner;
- a means for entities to refer disclosures where necessary;
- provides automatic responses to potential disclosers; and
- automatically provides data for reporting in entity annual reports as required by the Act.

The PID Tracking System also provides notification to the Commissioner and respective heads of entity's that a disclosure has been received and tracks the movement of a disclosure through the relevant stages of the process. The PID Tracking System also notifies disclosure officers of their statutory obligations in regards to keeping in contact with the disclosure every three months, required under the Act.

## Glossary

Act	<i>Public Interest Disclosure Act 2012</i>
ACT Public Service (ACTPS)	the ACT Public Service is established under section 12(1) of the <i>Public Sector Management Act 1994</i> . The ACTPS is made up of the administrative units declared under the Administrative Arrangements.
ACT public sector entity (entity) <sup>10</sup>	<p>means those performing a function on behalf of the ACT government using public funds ie. all government agencies and their staff or contractors;</p> <p><i>administrative units</i> (eg. Chief Minister, Treasury and Economic Development Directorate, Justice and Community Safety Directorate, ACT Health, etc.);</p> <p><i>territory authorities</i> (bodies established for a public purpose under an Act, eg. Canberra Institute of Technology, Exhibition Park Corporation, ACT Insurance Authority, Teacher Quality Institute, Cemeteries Authority, etc);</p> <p><i>territory-owned corporations</i> or their subsidiaries (corporations established under the <i>Territory-Owned Corporations Act 1990</i> eg. ACTEW);</p> <p><i>territory instrumentalities</i> (corporations established under the <i>Corporations Act</i> or another Act or statutory instrument whose majority of employees are public employees, eg. Board of Senior Secondary Studies);</p> <p><i>statutory office holders</i> (eg. ACT Ombudsman, Auditor-General, Commissioner for Revenue, Director of Public Prosecutions, Registrar-General, Human Rights Commissioner, Public Trustee, Electoral Commissioner, Work Safety Commissioner, Conservator of Flora and Fauna etc.); or</p> <p>a member of, office of, or staff employed in the Legislative Assembly (eg. Chief Minister, Presiding Officer, the Clerk, Legislative Assembly Secretariat etc.).</p>
Commissioner	Commissioner for Public Administration established under the <i>Public Sector Management Act 1994</i> .
Disclosure Officer	officer designated by respective head of entity to be a decision-maker in relation to PIDs
Detrimental action	<p>discriminating against a person (including threats) by treating the person unfavourably in relation to reputation, career, profession, employment or trade; or</p> <p>harassing or intimidating a person; or injuring a person; or damaging a person’s property.</p>
Disclosable conduct	conduct that could amount to either a criminal offence or give grounds for disciplinary action, or activities that could amount to maladministration, misuse of public funds, or dangers to public health, safety or the environment. Includes: Theft of money; Theft of property; Bribes or kickbacks; Using official position to get personal services or favours; Giving unfair advantage to a contractor, consultant or supplier; Improper use of agency facilities or resources for private purposes; Rorting overtime or leave provisions; Making false or inflated claims for reimbursement; Failing to declare a financial interest in an agency venture; Intervening in a decision on behalf of a friend or relative; Improper involvement of a family business; Downloading pornography on a work computer; Being drunk or under the influence of illegal drugs at work; Sexual assault; Stalking (unwanted

<sup>10</sup> Section 9(1) of the Act

	following or intrusion into personal life); Sexual harassment; Racial discrimination against a member of the public; Misuse of confidential information; Incompetent or negligent decision making; Failure to correct serious mistakes; Endangering public health or safety; Producing or using unsafe products; Acting against organisational policy, regulations or laws; Waste of work funds; Inadequate record keeping; Negligent purchases or leases; Covering up poor performance; Misleading or false reporting of agency activity; Covering up corruption; Hindering an official investigation; Unlawfully altering or destroying official records; Racial discrimination against a staff member; Allowing dangerous or harmful working conditions; Unfair dismissal; Failure to follow correct staff-selection procedures; Favouritism in selection or promotion; Bullying of staff; Reprisal against whistleblowers.
Discloser	a person who makes a PID by providing information about wrongdoing or suspected wrongdoing
Investigating entity	means the Head of an entity. Generally, the function of investigating a disclosure will be delegated, but it is important to recognise that ultimately, the head of an entity is responsible for the way a PID is handled.
Protected information	information about a person that is disclosed to, or obtained by, a person to whom section 45 of the Act applies because of the exercise of a function under the Act by the person or someone else
Public Interest Disclosure (PID)	means a disclosure of information about disclosable conduct (wrongdoing or suspected wrongdoing in the public sector)
Receiving officer	means a person (eg. supervisor or manager) who receives a PID, but is not necessarily a disclosure officer Note that receiving officers are <i>not</i> decision makers in relation to PIDs
Senior Executives with Responsibility for Business Integrity and Risk (SERBIR)	a group of senior executives which meets quarterly tasked with upholding and managing risks to public sector integrity

## References

Commonwealth Ombudsman [\*Better practice guide to complaint handling\*](#)

<<http://www.ombudsman.gov.au/pages/publications-and-media/better-practice-guides/complaint-handling.php>>

Australia and New Zealand School of Government

[\*Good practice guide for managing internal reporting of wrongdoing in public sector organisations.\*](#)

<[http://epress.anu.edu.au/titles/australia-and-new-zealand-school-of-government-anzsog-2/whistling\\_citation](http://epress.anu.edu.au/titles/australia-and-new-zealand-school-of-government-anzsog-2/whistling_citation)>

# Appendix A

## **Disclosure officer notification form - template for designating a disclosure officer**

### **DISCLOSURE OFFICER DECLARATION**

*Under the Public Interest Disclosure Act 2012*

**To be signed by the relevant head of the entity (e.g. Director-General, Director CIT, or other statutory office holder)**

Entity:	
<b>DISCLOSURE OFFICER</b>	
Surname:	Given name:
Position Title: Level: Is this officer a member of the Senior Executives with Responsibility for Business Integrity and Risk (SERBIR)? Yes / No	
Email:	

Under the *Public Interest Disclosure Act 2012* (Act), I declare the above officer the disclosure officer for the <eg. Chief Minister and Treasury Directorate>.

I also delegate to the above named my power as investigating entity under section 18 of the Act.

The disclosure officer is responsible for:

- receiving, referring (if necessary) and tracking the course of disclosures;
- making decisions about disclosures;
- investigating disclosures on my behalf;
- ensuring appropriate action is taken on disclosures;
- supporting disclosers; and
- processing disclosures to conclusion.

Signed.....DATE.... /... /....  
<Insert name of head of entity>

## Appendix B

### ***Acknowledgement letter – suggested template for use on receipt of a disclosure***

<INSERT LETTERHEAD>

Name

Address

Dear <name of discloser>

Thank you for your letter/email/phone call of <date> about <insert details of disclosure>.

I am writing to thank you for bringing this matter to my attention.

I am currently assessing whether it can be dealt with under the *Public Interest Disclosure Act 2012*.

Under the section 23(c) of the Act, I will notify you about how this matter is being handled within three months from the date of this letter.

If you require any further information or assistance, please do not hesitate to contact me.

Yours sincerely

Name

Disclosure Officer

<name of entity>

CC     Commissioner for Public Administration

CC     <head of relevant entity>

## Appendix C

### ***Referral letter – suggested template for use in providing a disclosure to other entity***

<INSERT LETTERHEAD>

#### **Referral of a disclosure to another ACT public sector entity**

Under section 19 of the *Public Interest Disclosure Act 2012*

<insert recipient/address>

Dear <insert head of entity>

On <insert date>, <insert name of entity that received the disclosure> received a disclosure from <insert name of discloser>. The disclosure was about <insert details of disclosure>. I have attached the disclosure for your information.

Under section 19 of the *Public Interest Disclosure Act 2012* (the Act) it is my opinion that this matter falls within the portfolio responsibilities of your entity as it involves staff in your entity <or> involves a program under your control <or> involves funds under your control <delete as appropriate>.

Under the Act, you should note that you have an obligation to keep the discloser, myself (as the referring entity) and the Commissioner for Public Administration informed about any actions or decisions you make about this matter at least once every three months or at significant points should you decide to investigate the matter.

Thank you for your consideration of this referral.

signed

<insert head of entity name - referring entity - date>

CC     Commissioner for Public Administration

This section to be completed by the head of the entity to which the disclosure has been referred:

agree / not agree    signed...../ /



## Appendix D

Information to include in annual report

Under Section 45 of the *Public Interest Disclosure Act 2012* all ACT public sector entities with reporting responsibilities under the *Annual Reports (Government Agencies) Act 2004* are required to report on the public interest disclosures they deal with each year.

<INSERT NAME OF ENTITY>	<INSERT YEAR>	<INSERT YEAR>	<INSERT YEAR>
No. of PIDs made <u>directly</u> to the entity (that relate to the entity's conduct)			
No. of PIDs <u>referred</u> to the entity			
No. of investigations conducted			
No. of investigations complete			
Average time taken to complete investigation (in months)			

Directorates should include a statement in their annual report under the heading *Public Interest Disclosures* which captures the above information.

e.g.

"The *Public Interest Disclosure Act 2012* provides the mechanism for people to report wrongdoing by ACT public sector entities, including their staff, contractors and volunteers.

The Directorate did not receive any public interest disclosures during the reporting period."

or

"The *Public Interest Disclosure Act 2012* provides the mechanism for people to report wrongdoing by ACT public sector entities, including their staff, contractors and volunteers.

The Directorate received a number of public interest disclosures during the reporting period, as detailed in the table below.

<insert table>"

