

# **PUBLIC INTEREST DISCLOSURE POLICY**

## 1. Purpose

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We are committed to maintaining the highest standards of ethical and accountable conduct. We encourage the reporting of wrongdoing under the *Public Interest Disclosure Act 2013* (PID Act) and ensure that individuals who make public interest disclosures (“whistleblowing”) are provided with protections from reprisals or threats of reprisals as a result of making a disclosure.

This policy should be read in conjunction with the following policies:

- Code of Conduct;
- Gifts and Benefits Policy;
- Anti-Bribery and Corruption Policy;
- Transactional Anti-Bribery and Corruption Procedures;
- Conflict of Interest Policy;
- Confidentiality Policy;
- Incident and Issue Reporting Policy; and
- Workplace Bullying, Discrimination & Harassment Policy

The purpose of this policy along with the Public Interest Disclosure Procedures (Procedures) is to provide guidance to Public Officials belonging to the agency so that public interest disclosures are managed in accordance with our obligations under the PID Act.

The PID Act promotes integrity within the Commonwealth public sector by providing a framework for Commonwealth officials to report suspected wrongdoing and for agencies to investigate and respond to such disclosures.

The PID Act is not the only scheme for dealing with integrity. For example, the *National Anti-Corruption Commission Act 2022* provides for mandatory and voluntary referrals about corrupt conduct.

This policy sets out:

- who can make a Public Interest Disclosure (PID);
- what can be reported;
- how a PID can be made; and
- our approach to investigations.

## 2. Making a Public Interest Disclosure?

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### 2.1. Who can make a Public Interest Disclosure?

A current or former Public Official can make a PID.

### 2.2. What can be reported?

A current or former Public Official can disclose information that they believe on reasonable grounds tends to show Disclosable Conduct (eg conduct that contravenes the law or is corrupt).

### 2.3. How do I make a Public Interest Disclosure?

There are 5 types of PID under the PID Act:

- Internal Disclosures;
- External Disclosures;

- Emergency Disclosures;
- Legal Practitioner Disclosures; and
- NACC Disclosures.

#### Internal Disclosures

- Disclosures can be made in person, by telephone, or in writing, including by email or via the dedicated contact form on our website.
- The disclosure can be made either to the Discloser's supervisor (for current employees), the Principal Officer or to an Authorised Officer.

#### External Disclosures

- An External Disclosure will only be possible where:
  - an internal disclosure has previously been made;
  - a Discloser believes that the investigation or its outcome was inadequate;
  - on balance, the disclosure would not be contrary to the public interest;
  - it does not relate to intelligence information or an intelligence agency; and
  - only information reasonably necessary to identify wrongdoing is disclosed.

#### Emergency Disclosures

- In certain circumstances, a Discloser can make an Emergency Disclosure to an external party, where they believe on reasonable grounds the information concerns a substantial and imminent danger to the health or safety of a person, people or the environment.

#### Legal Practitioner Disclosures

- A disclosure can be made to an Australian Legal Practitioner for the purpose of obtaining legal advice in relation to making a PID.

#### NACC Disclosures

- A NACC disclosure is a referral made to, of the provision of evidence, information or documents to, the NACC, IGIS, or Inspector under the NACC Act.

## 2.4. Can I remain anonymous?

Disclosers are not required to identify themselves and can remain anonymous throughout the PID process. A disclosure will be treated as anonymous if the Discloser does not identify themselves and provides no contact details.

Disclosers may consider identifying themselves to an Authorised Officer or at the very least provide a means of contact for the reasons below:

- The PID Act requires us to keep a Discloser's identify confidential, subject to limited exceptions including the Discloser's consent. If the Discloser's identity needs to be disclosed or is likely to become apparent, we will usually discuss this with them.
- It may be difficult for us to ensure protection from reprisal if we do not know the Discloser's identity.
- A Principal Officer has the discretion not to investigate, or investigate further, if it is impractical for the disclosure to be investigated because the Discloser cannot be contacted for further information.

- A Discloser who does not provide a means of contact cannot be updated on the progress of the matter, including the outcome of the investigation.

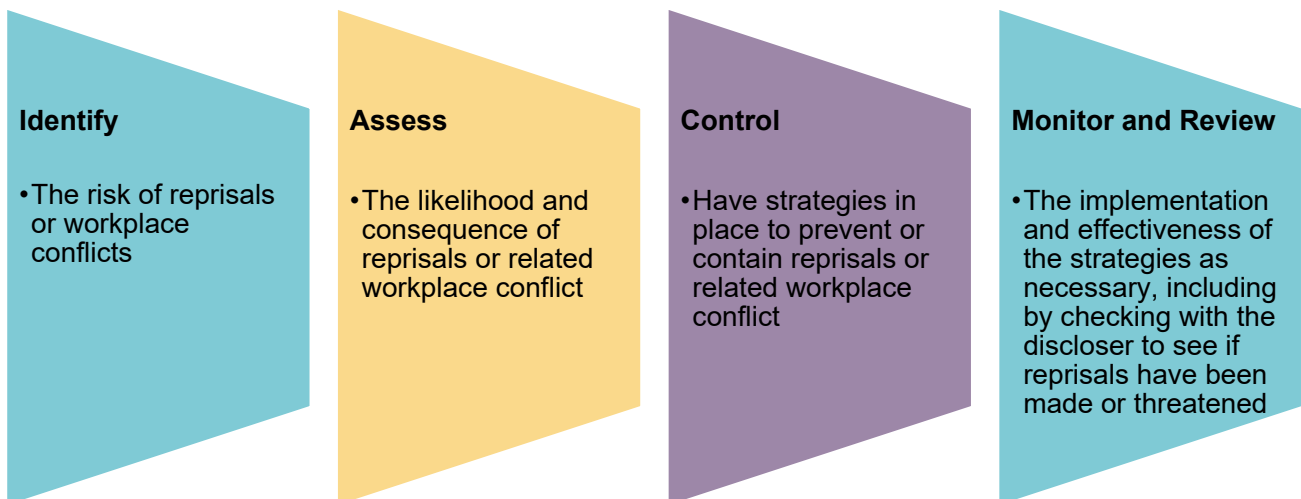
A Discloser who has made an anonymous disclosure may come forward at a later stage to disclose their identity and seek protection under the PID Act.

### 3. Assessment of risks of reprisal against the Discloser and others

When a PID is received and throughout the life of the PID, the risk of reprisals being taken against the Discloser and any other person will be assessed. This assessment involves looking at the specific behaviour and circumstances which may result in reprisals and then putting appropriate strategies in place to prevent or contain them.

This risk assessment for the Discloser will be undertaken as soon as possible after a PID is received and will be conducted by an Authorised Officer. If, however, a PID is made to a manager or supervisor, and the Discloser wishes their identity to remain anonymous, the manager or supervisor will conduct the risk assessment and provide a deidentified copy to the Authorised Officer. Risk assessments for other persons involved in the disclosure will occur when risks are identified throughout the duration of the investigation.

The risk assessment should cover the following four steps. The Procedures set out the detail of how Authorised Officers or managers or supervisors must undertake the risk assessment.



The person assessing the risk will consult with Risk & Compliance to plan and implement strategies to control the risks of reprisals or related workplace conflict. Where possible, the Discloser will be consulted before any decision is made.

The risk assessment will be monitored and reviewed by the risk assessor as necessary including by checking with the Discloser to see if reprisals have been made or threatened.

The Authorised Officer and Principal Officer will take all reasonable steps to protect the Discloser and other persons involved in the PID from reprisals.

### 4. Confidentiality

We make every reasonable effort to protect a Discloser’s identity.

It is a criminal offence for any person to use or disclose information that is likely to identify the Discloser, other than where permitted by the PID Act. For example, the PID Act permits identifying information to be used or disclosed in certain circumstances, including where the Discloser consents, or where it is for the purposes of another law.

However, the Discloser’s identity, or information that would effectively identify them, may need to be disclosed to certain other people. This includes in the below circumstances:

- to investigate the PID effectively (for example, if it is not possible to investigate the wrongdoing without identifying the Discloser because they are the only witness); or

- to protect them against reprisals (for example, if there are concerns that it is impossible for them to remain in their current workplace).

If it is necessary or highly likely that the Discloser's identity will be revealed, the Discloser will be made aware of this, unless it is not reasonably practicable to do so.

## 5. Protections provided to the Discloser and others

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The PID Act provides the following protections for Disclosers and others involved in a PID:

- protection of a Discloser's identity (see above);
- immunity from civil, criminal or administrative liability for all witnesses and Disclosers;
- no contractual or other remedy may be enforced against, or sanction imposed on the Discloser and / or witness on the basis of making the PID;
- the Discloser and witness have absolute privilege (for the purpose of defamation proceedings) in respect of a PID;
- a contract to which the Discloser and / or witness is a party must not be terminated on the basis that the PID constitutes a breach of contract; and
- support and protection from reprisal or threats of reprisal for all public officials and Disclosers. This may include providing access to confidential advice, support and counselling through the Employee Assistance Program.

These protections do not protect a Discloser or witness in relation to their own wrongdoing, where they have been involved in the misconduct they are reporting.

These protections are also not available to a Discloser or witness who knowingly makes false or misleading PIDs.

## 6. Investigation

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Our Principal Officer is responsible for conducting an investigation and may delegate those powers and functions by an instrument.

Investigations under the PID Act will be conducted by an independent external or internal investigator skilled in conducting investigations, and familiar with the PID Act and any standards as required, especially the confidentiality requirements and the protections for the Discloser, witnesses and public officials.

The Principal Officer must take appropriate action in response to a recommendation and other matters contained in the investigation report.

## 7. Keeping the Discloser informed

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The Discloser will be notified at various stages in the process, provided the person's contact details are available. The Discloser must be advised:

- when the PID is either allocated for investigation, or not allocated because it has been determined not to be an Internal Disclosure or because it would be more appropriately investigated under another Commonwealth law or power;
- of information about our Principal Officer's obligation to investigate the disclosure, their discretionary powers to not investigate or their power to investigate the disclosure under a separate investigative power;
- if the Principal Officer cannot investigate, or further investigate, the disclosure because of a stop action direction under the *National Anti-Corruption Commission Act 2022*, and notice if the disclosure is no longer subject to the direction;
- if our organisation decides to investigate under the PID Act, the estimated length of the investigation;
- if our organisation decides not to investigate, the reasons for the decision and the actions taken or proposed to be taken by the Principal Officer (if any);

- if an investigation is conducted under the PID Act and an extension of time is granted by the Ombudsman, the progress of the investigation;
- when the investigation report is completed, and provided with a copy of the report.

## 8. Record keeping and reporting

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The Authorised Officer must securely keep records of how and when a PID was made and their decision to allocate, not allocate or refer the matter to another investigative agency. Each PID should be given a unique reference number. Details of the risk assessment of reprisal, allocation of the investigation, the investigation and notification to the Discloser will also be kept.

The record may be kept in hard copy or in an electronic form or in both. Access to these records is restricted to the Authorised Officers or their delegate or other Employees who may require access to perform some function under the PID Act or for the purposes of another law of the Commonwealth.

We are required to report to the Ombudsman on an annual basis the number of disclosures received, investigated and their subject matter and any other requested information.

## 9. Seeking assistance

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If you have any queries or need any assistance in relation to this policy or the Procedures, you may wish to discuss this with your manager or supervisor, the Chief Risk Officer or the Risk & Compliance team.

General information on the PID scheme is also available on the Commonwealth Ombudsman’s website.

## 10. Roles and responsibilities

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Responsibilities include the following:

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| <b>Board</b>   | <ul style="list-style-type: none"> <li>• Approve this policy.</li> </ul>   |
| <b>Board Audit and Risk Committee (BARC)</b>           | <ul style="list-style-type: none"> <li>• Review this Policy and make recommendations to the Board regarding the approval of this Policy.</li> </ul>  |
| <b>Principal Officer (Managing Director &amp; CEO)</b> | <ul style="list-style-type: none"> <li>• Establish procedures to deal with PIDs.</li> <li>• Take reasonable steps to support and encourage Disclosers and Public Officials who assist with PIDs (and potential Disclosers and those who might assist).</li> <li>• Take reasonable steps to protect Public Officials belonging to the agency against reprisals that have been or may be taken in relation to PIDs that have been made, may have been made, are proposed to be made, or could be made.</li> <li>• Ensure employees are aware of the procedures and protections available.</li> <li>• Appoint Authorised Officers to receive PIDs and ensure Public Officials belonging to the agency are aware of their identity.</li> <li>• Ensure PIDs are properly investigated, and appropriate action is taken in response to an investigation report.</li> <li>• Take reasonable steps to provide ongoing training and education to Public Officials about the PID Act.</li> <li>• Take reasonable steps to ensure those performing roles under the PID Act are given training and education within a reasonable time after they are appointed.</li> <li>• Keep records in relation to the handling of PIDs as set out in our Procedures.</li> </ul> |

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|   | <ul style="list-style-type: none"> <li>• Provide information to the Ombudsman or IGIS if appropriate.</li> <li>• Make referrals to the National Anti-Corruption Commission where required.</li> </ul>   |
| <b>Authorised Officers<br/>(Members of the Executive)</b> | <ul style="list-style-type: none"> <li>• Receive PIDs from current or former Public Officials about disclosable conduct.</li> <li>• Determine where a person will be considered a Public Official to facilitate the making of a PID.</li> <li>• Inform a person who may be unaware of the PID Act requirements that information could be treated as an Internal Disclosure, explaining the requirements of the PID Act, advising them about the circumstances in which an Internal Disclosure must be referred elsewhere under another Commonwealth law, and advising the person of any designated publication restrictions that may affect their PID.</li> <li>• Assess reported information to determine if there are reasonable grounds to believe the information could be considered to be a PID or whether the conduct would be more appropriately investigated under another law.</li> <li>• Make any preliminary inquiries necessary to decide whether a PID will be investigated and who will investigate the PID (Allocation Decision).</li> <li>• Allocate all or part of the PID to our Principal Officer and/or another agency (with that agency’s consent) within 14 days of becoming aware of the disclosure.</li> <li>• Inform the Principal Officer of each relevant agency of Allocation Decisions and associated information.</li> <li>• Inform the Discloser of the Allocation Decision.</li> <li>• Consent to the allocation of a PID by an Authorised Officer of another agency.</li> <li>• Advise the Discloser of a decision not to allocate.</li> <li>• Keep records relating to the handling of PIDs in accordance with our Procedures.</li> <li>• Keep the identity of a Discloser and anyone against whom an allegation has been made confidential.</li> <li>• Make referrals to the National Anti-Corruption Commission where required.</li> </ul> |
| <b>Managers and supervisors</b>                           | <ul style="list-style-type: none"> <li>• If a manager or supervisor believes that the information given to them concerns, or could concern, Disclosable Conduct, they must give that information to an Authorised Officer as soon as reasonably practicable.</li> <li>• The manager or supervisor should ask the Discloser whether they consent to their identifying information being passed to the Authorised Officer. If the Discloser wishes to remain anonymous, the manager or supervisor must pass on as much of the information contained in the Disclosure as possible and in a manner that does not reveal the identity of the Discloser.</li> <li>• The manager or supervisor must inform the Discloser that the disclosure may be treated as a PID and explain to the discloser the procedures applicable.</li> <li>• Managers and supervisors should also: <ul style="list-style-type: none"> <li>• educate themselves about the PID Act and agency procedures, particularly in relation to confidentiality requirements;</li> </ul> </li> </ul>   |

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|                                       | <ul style="list-style-type: none"> <li>• be approachable to Employees who wish to raise concerns;</li> <li>• support the Employee who they know has made a PID and ensure that they are protected from reprisal;</li> <li>• increase management supervision of the workplace if necessary (for example, if workplace conflict occurs because a PID has been made or an investigation is under way);</li> <li>• ensure identified problems in the workplace are managed.</li> </ul>                  |
| <b>Risk &amp; Compliance</b>          | <ul style="list-style-type: none"> <li>• Ensure Employees complete relevant training as required.</li> <li>• Identify areas where there may be opportunities for wrongdoing to occur because of inadequate systems, procedures or controls, and proactively raise identified issues.</li> <li>• Maintain this policy and provide advice to Employees on this policy.</li> </ul>   |
| <b>Employees and public officials</b> | <ul style="list-style-type: none"> <li>• Comply with this policy.</li> <li>• Use best endeavours to assist the Principal Officer in the conduct of an investigation.</li> <li>• Use best endeavours to assist any other public official to exercise a right or perform a duty or function under this Act.</li> <li>• Report matters where there is evidence that shows or tends to show Disclosable Conduct.</li> <li>• Complete relevant training as may be required from time to time.</li> </ul> |

## Definitions

In this Policy:

**Authorised Officer** means the Principal Officer and an Authorised Officer appointed by the Principal Officer under the PID Act. Our Managing Director & Chief Executive Officer (CEO) has appointed as Authorised Officers of our organisation the members of the Executive (including persons from time to time holding, occupying or performing duties of the offices of the Executive) under an Instrument of Appointment.

**Disclosable Conduct** is conduct by an agency, a Public Official or a contracted Commonwealth service provider (in connection with the contract) that:

- contravenes the law
- is corrupt
- perverts the course of justice
- results in wastage of public funds
- is an abuse of public trust
- unreasonably endangers health and safety or endangers the environment
- is maladministration, including conduct that is unjust, oppressive or negligent
- is conduct by a Public Official that, if proved, would give rise to disciplinary conduct against the official resulting in the termination of the official's engagement or appointment.

It does not include:

- disagreeing with government policy, action or expenditure
- 'personal work-related conduct' unless it would constitute a reprisal or an offence under s 19 of the PID Act, is of such a significant nature that it would undermine public confidence in an agency, or would have other significant implications for an agency



- other conduct excluded by the PID Act.

**Discloser** means an individual who discloses information.

**Disclosure** means information disclosed by a Discloser.

**Employee** means persons employed by, or operating under, an employment contract with Export Finance Australia, including full time or part time employees of Export Finance Australia.

**IGIS** means the Inspector-General of Intelligence and Security.

**Personal work-related conduct** means conduct (by act or omission) engaged in by a public official in relation to another public official that:

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

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

- conduct relating to an interpersonal conflict between the public officials including, but not limited to, bullying or harassment
- conduct relating to transfers or promotions
- conduct relating to the terms and conditions of engagement or appointment
- disciplinary action, suspension or termination of employment or appointment as a public official.

**Principal Officer** means the Managing Director & Chief Executive Officer, or their delegate as appointed from time to time.

**Public Official** is defined broadly in s 69 of the PID Act and includes for example any person who is, or was:

- employed by the Australian Government, or a Commonwealth entity, company or agency;
- a service provider (or an employee of a service provider) under a Commonwealth contract;
- a person taken to be a Public Official;
- a Parliamentary Service employee; or
- a statutory officeholder.

**Reprisal** occurs when someone causes, by an act or omission, detriment or threatens to cause detriment to another person because they believe or suspect that person, or anyone else, may have made, could make, has made, or intends to make a PID. This could include but is not limited to an action or omission (or threat of action or omission), or detriment, that results in:

- dismissal, injury in their employment, discrimination between them and other employees or alteration of their position to their disadvantage;
- physical or psychological injury, including a stress-related injury;
- intimidation, harassment or victimisation;
- loss or damage to property; or
- disadvantage to a person's career.