

Public Interest Disclosure Procedures

Procedures for facilitating and dealing with Public Interest Disclosures relating to Food Standards Australia New Zealand

Declaration pursuant to section 59(3) of the *Public Interest Disclosure Act 2013*

I, Sandra Cuthbert, Chief Executive Officer and Principal Officer of Food Standards Australia New Zealand (the **Agency**), make the following procedures under section 59(3) of the *Public Interest Disclosure Act 2013 (PID Act)*.

These procedures support the Agency's commitment to:

- The highest standards of ethical and accountable conduct;
- Encouraging and investigating public interest disclosures; and
- Supporting and protecting persons who make public interest disclosures.

These procedures supersede any previous procedures and commence on 29 March 2024



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Chief Executive Officer

27 March 2024

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1. INTRODUCTION

Purpose

- 1.1 The *Public Interest Disclosure Act 2013* (Cth) (**PID Act**) promotes integrity and accountability in the Australian public sector by encouraging the disclosure of information about suspected wrongdoing, protecting people who make disclosures and requiring agencies to take action in relation to public interest disclosures.
- 1.2 The objectives of the PID Act are:
 - to promote the integrity and accountability of the Commonwealth public sector; and
 - to encourage and facilitate the making of public interest disclosures by public officials and former public officials; and
 - to ensure that public officials and former public officials who make public interest disclosures are supported and protected from adverse consequences relating to the disclosures; and
 - to ensure that disclosures by public officials are properly investigated and dealt with.
- 1.3 Officers with responsibilities under the PID Act (**PID officers**) also have obligations under the *National Anti-Corruption Commission Act 2022* (**NACC Act**). They must refer certain issues to the National Anti-Corruption Commission (**NACC**) so the Commissioner of the NACC (**Commissioner**) can decide whether or not to investigate. These obligations are called mandatory referral obligations. They are separate from the ability to make voluntary referrals under the NACC Act.
- 1.4 Section 59(3) of the PID Act requires the Chief Executive Officer (as a principal officer under the PID Act) to establish, by instrument in writing, procedures for facilitating and dealing with public interest disclosures relating to the Food Standards Australia New Zealand (the **Agency**).

Who to contact if you need help?

- 1.5 The Office of Legal Counsel manages and maintains the Agency's PID Framework and will provide help and assistance with these procedures and public interest disclosures. PID related enquiries should be sent to the following email address:
PID@foodstandards.gov.au.

What is a public interest disclosure?

- 1.6 There are five different types of disclosures that constitute a 'public interest disclosure' (**PID**) under the PID Act: an 'internal disclosure', an 'external disclosure', an 'emergency disclosure', a 'legal practitioner disclosure', and certain NACC disclosures.
- 1.7 Internal disclosures are the focus of these procedures.
- 1.8 A disclosure will be an **internal disclosure** if it meets the following requirements:
 - it is made by a 'public official' or a person who has been a 'public official';
 - it is made to the discloser's supervisor or manager, or an authorised officer of the Agency;
 - the information disclosed tends to show, or the discloser believes on reasonable grounds the information tends to show, one or more instances of 'disclosable conduct' as defined in the PID Act; and
 - PID the disclosure is not made in the course of performing the discloser's ordinary functions as a public official.
- 1.9 Under section 23 of the NACC Act, a person makes a **NACC disclosure** if the person:

- refers, or provides other information about, a corruption issue to the Commissioner or the Inspector-General of Intelligence and Security (IGIS) under Part 5 of the NACC Act;
- refers, or provides other information about, a NACC corruption issue to the Inspector under sections 202 or 203 of the NACC Act; or
- gives evidence or information, or produces a document or a thing, to the Commissioner, the IGIS or the Inspector in relation to a corruption issue, a NACC Act process, a NACC corruption issue or a complaint made in relation to NACC.

1.10 In practice, a NACC disclosure may include:

- a person who voluntarily refers a corruption issue to the Commissioner under section 32 of the NACC Act, regardless of whether the person is a public official;
- agency heads who refer corruption issues to the Commissioner or the IGIS under sections 33 or 34 of the NACC Act;
- staff members with functions under the PID Act who refer corruption issues to the Commissioner under section 35 of the NACC Act;
- persons who provide evidence to the Commissioner during a corruption investigation or public inquiry, whether voluntarily or in response to a notice to produce or a summons; and
- persons who make equivalent referrals, make complaints, or provide equivalent evidence to the Inspector in relation to NACC corruption issues, NACC corruption investigations or NACC complaint investigations.

1.11 A NACC disclosure will also be a PID in certain circumstances. Section 26(1A) of the PID Act provides that a disclosure of information is also PID if:

- the disclosure is made by a person who is, or has been, a public official; and
- the information tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of disclosable conduct; and
- the disclosure is a NACC disclosure.

Who is a public official?

1.12 The term 'public official' is defined in section 69 of the PID Act. The term includes, for example, a Commonwealth public servant, an individual who is a contracted service provider for a Commonwealth contract, and an officer or employee of a Commonwealth contracted service provider. Accordingly, the people who can make an 'internal disclosure' relating to the Agency include:

- employees of the Agency and former employees of the Agency; and
- contracted service providers and their employees who provide, or who have provided, services to the Agency under a contract with the Agency.

1.13 Generally, the fact that a person or organisation receives financial assistance from the Commonwealth pursuant to a grant arrangement will not make the person or a staff member of the organisation a 'public official' for the purposes of the PID Act.

1.14 An authorised officer can also determine, pursuant to section 70 of the PID Act, that an individual is deemed to be a public official for the purposes of the PID Act if they reasonably believe the individual has information that concerns disclosable conduct and the individual has disclosed, or proposes to disclose, the information to an authorised officer. If a person who is not, and has not been, a 'public official' wishes to make a disclosure relating to the Agency under the PID Act, they should contact an authorised officer of the Agency to request that the authorised officer consider making a determination under section 70 of the PID Act.

1.15 Where the discloser requests the authorised officer to make this determination, the authorised officer must make a decision on this request and must inform the discloser accordingly. If the authorised officer's decision is to decline the request to make a

determination under section 70, they must also give the discloser the reason(s) for their decision.

Who are the Agency's authorised officers?

1.16 The following people are authorised officers of the Agency:

- the Chief Executive Officer; and
- any Agency officer appointed in writing by the Chief Executive Officer (as the principal officer of the Agency) as an authorised officer for the purposes of the PID Act.

1.17 A list of authorised officers appointed by the Chief Executive Officer can be found on the Agency's external facing Internet site: <https://www.foodstandards.gov.au/about-us/corporate-information/public-interest-disclosure-act>

What is disclosable conduct?

1.18 A full definition of disclosable conduct is set out in section 29 of the PID Act. That definition applies for the purposes of these procedures.

1.19 In summary, disclosable conduct is conduct:

- that is engaged in by:
 - an agency; or
 - a public official in connection with his or her position as a public official; or
 - a contracted service provider for a Commonwealth contract, in connection with entering into, or giving effect to, that contract; and
- is conduct that:
 - a) contravenes a law of the Commonwealth, a State or a Territory, or
 - b) occurs in a foreign country and contravenes a law in force in that country that applies to the agency, public official or contracted service provider and that corresponds to a law in force in the Australian Capital Territory, or
 - c) perverts, or attempts to pervert, the course of justice or involves corruption of any other kind, or
 - d) constitutes maladministration, including conduct that:
 - i. is based on improper motives
 - ii. is unreasonable, unjust or oppressive, or
 - iii. is negligent, or
 - e) is an abuse of public trust, or
 - f) is fabrication, falsification, plagiarism or deception in relation to scientific research, or misconduct in relation to scientific analysis, evaluation or advice, or
 - g) results in the wastage of public money or public property or of the money or property of a prescribed authority, or
 - h) unreasonably results in a danger to the health and safety of a person or unreasonably results in or increases the risk of a danger to the health and safety of a person, or results in a danger to the environment or results in or increases the risk of a danger to the environment, or
 - i) is prescribed by the PID Rules, or
 - j) is conduct engaged in by a public official that:
 - i. involves abuse of the public official's position, or

- ii. could, if proved, give reasonable grounds for disciplinary action resulting in the termination of the official's engagement or appointment.
- 1.20 If a disclosure includes information that tends to show (or that may tend to show) disclosable conduct, the disclosure is not prevented from being a public interest disclosure only because:
 - a) the disclosure includes other information, and
 - b) the other information tends to show (or may tend to show) personal work-related conduct.
- 1.21 It does not matter whether the disclosable conduct occurred before or after 15 January 2014 (which is the date of the commencement of section 29 of the PID Act).
- 1.22 It does not matter whether the public official who carried out the alleged conduct has ceased to be a public official since the time the conduct is alleged to have occurred, but it is necessary that they carried out the conduct in connection with their position as a public official.

What is not disclosable conduct?

- 1.23 As set out in section 31 of the PID Act, conduct is not 'disclosable conduct' if it relates only to a disagreement with:
 - a policy or proposed policy of the Commonwealth Government; or
 - action that has, or is being, or is proposed to be, taken by a Minister, the Speaker of the House of Representatives, or the President of the Senate; or
 - amounts, purposes or priorities of expenditure or proposed expenditure relating to such a policy or proposed policy, or such action or proposed action.

Personal work-related conduct

- 1.24 'Personal work-related conduct' is defined in section 29 of the PID Act as conduct (by act or omission) which is engaged in by a public official (the **first official**) in relation to another public official (the **second official**), which has, or would tend to have, personal implications for the second official and occurs in relation to:
 - a) The second official's engagement or appointment as a public official; and/or
 - b) The second official's employment, or exercise of functions and powers as a public official;
- 1.25 Personal work-related conduct could include:
 - conduct relating to an interpersonal conflict between the first official and the second official (including, but not limited to, bullying or harassment);
 - conduct relating to the transfer or promotion of the second official;
 - conduct relating to the terms and conditions of engagement or appointment of the second official;
 - disciplinary action taken in relation to the second official;
 - the suspension or termination of the second official's employment or appointment as a public official; and
 - conduct in relation to which the second official is, or would have been, entitled to review under section 33 of the Public Service Act 1999 or under any comparable review process that forms, or formed, part of the second official's terms or conditions of engagement or appointment.
- 1.26 Personal work-related conduct is not disclosable conduct unless the conduct would constitute taking a reprisal against another person, or an offence under section 19, or
 - is of such a significant nature that it would undermine public confidence in an agency, or

OFFICIAL

- has other significant implications for an agency (or agencies).

OFFICIAL

2. MAKING A PUBLIC INTEREST DISCLOSURE

Making an internal disclosure to the Agency

- 2.1 A public interest disclosure relating to the Agency may be made orally or in writing. If a disclosure is made in writing, for example by email, the subject line should make reference to it being a PID.
- 2.2 Employees in the Agency may make a disclosure of disclosable conduct to their manager or their supervisor, or to an authorised officer, or in certain circumstances, to the Commonwealth Ombudsman (**Ombudsman**).
- 2.3 Agency employees are encouraged to make public interest disclosures to an authorised officer in the first instance, rather than a supervisor or manager.
- 2.4 Where a disclosure is made to the discloser's supervisor, the supervisor is required to inform the discloser of the PID process and forward the disclosure to an authorised officer if the supervisor has reasonable grounds to believe that the information disclosed concerns, or could concern, disclosable conduct.
- 2.5 The information contained in a disclosure should be clear and factual, and should, as far as possible, avoid speculation, personal attacks and emotive language. It should contain supporting evidence where that is available to the discloser and should, where possible, identify any witnesses to the disclosable conduct.
- 2.6 To help the authorised officer to determine whether the disclosure is an internal disclosure, the information provided by a discloser should include:
 - the discloser's name and contact details (this is optional);
 - information that will assist the authorised officer to assess whether the discloser is a 'public official' (for example, that the discloser is a current or former employee of the Agency);
 - any supporting documents and/or any information about witnesses;
 - details of the following matters:
 - the conduct the discloser believes amounts to the disclosable conduct identified;
 - who was involved in the conduct;
 - when and where the conduct occurred;
 - any relevant background information, including whether the conduct has been investigated in another forum or previously;
 - whether the discloser or anyone else has done anything in relation to the described conduct; and
 - whether anyone else is aware of the described conduct;
 - the type of 'disclosable conduct' the discloser wishes to disclose (that is, which of the categories of conduct set out in section 29 of the PID Act is relevant); and
 - if the discloser considers the alleged wrongdoing could also be considered corrupt conduct.
- 2.7 A potential discloser should not investigate a matter themselves before making a disclosure, however a discloser has a responsibility to provide reasonable help as required during any investigation.
- 2.8 Once a public interest disclosure has been made, it cannot be "withdrawn". However, a discloser may state that they do not wish the disclosure to be investigated and they may refuse to consent to their name and contact details being provided to the principal officer and/or a delegate. However, ultimately the principal officer or their delegate can only decide not to investigate the disclosure once it has been made if they are also satisfied, on reasonable grounds, that there are no matters concerning the disclosure that warrant

investigation. Accordingly, even if a discloser indicates that they do not wish for their disclosure to be pursued, the Agency may nonetheless be required under the PID Act to investigate (or to continue investigating) the disclosure.

- 2.9 A person who has made a disclosure under the PID Act should not discuss the details of their disclosure with anyone who does not have a need to know about it.
- 2.10 A manager or supervisor or authorised officer who receives a disclosure of disclosable conduct from a current or former public official must deal with the disclosure in accordance with the PID Act and in accordance with the *Public Interest Disclosure Standard 2013* (the **PID Standard**) and these procedures.

Anonymity

- 2.11 A person may choose to make a disclosure anonymously or through use of a pseudonym.
- 2.12 A disclosure is considered anonymous if the identity of the discloser is not revealed and if no contact details for the discloser are provided. A disclosure may also be considered anonymous if the discloser does not disclose their name but does provide anonymous contact details.
- 2.13 In deciding whether or not to make a disclosure anonymously or pseudonymously, a potential discloser should consider the following matters:
- it will be difficult for the Agency to protect the discloser from reprisals if the Agency does not know the discloser's identity.
 - if an authorised officer is satisfied on reasonable grounds that there is no reasonable basis on which the disclosure could be considered to be an internal disclosure (for example, because they cannot be satisfied the discloser is a current or former public official), the authorised officer is not required to allocate the disclosure for handling under the PID Act. Accordingly, if the authorised officer cannot contact the discloser to seek further information about the disclosure, the matter may not proceed.
 - if an authorised officer is satisfied that the discloser is not a public official, they will consider exercising their discretion under section 70 of the PID Act to determine that the PID Act has effect as if the individual were a public official. If the discloser does not provide their contact details, no determination may be able to be made because the authorised officer must be able to give written notice of the determination to the individual.
 - an authorised officer will seek the discloser's consent prior to providing the discloser's name and contact details (if known) to the principal officer (or delegate). A discloser may choose to provide their name and contact details to the authorised officer but not to the delegate, in which case the disclosure will be handled as anonymous from the point of allocation.
 - once a disclosure has been allocated for handling by an agency, the principal officer (or delegate) may decide not to investigate the disclosure if they consider it impracticable to do so because the discloser's name and contact details have not been disclosed.
 - if the discloser maintains anonymity, the Agency will be unable to update them on the progress and outcome of the investigation.
- 2.14 If a discloser does provide their name and contact details, the Agency will take all reasonable steps to maintain the confidentiality of that information. Further information on confidentiality and protecting the discloser's identity is set out at Part 3 of these procedures.
- 2.15 Where an authorised officer receives an anonymous or pseudonymous disclosure and it is not clear whether the discloser is a public official, they must consider whether to exercise the power in section 70 of the PID Act to determine that a person who has disclosed information to them is a public official in relation to making the disclosure.

Assistance with making a disclosure to the Agency

- 2.16 A public official can contact one of the Agency's authorised officers or the OLC to obtain further information on how to make an internal disclosure to the Agency.

Other types of public interest disclosures

- 2.17 As set out above at paragraph 1.61.6, in addition to 'internal disclosures' the PID Act covers the following four types of disclosures: external disclosures, emergency disclosures, legal practitioner disclosures, and certain NACC disclosures (if they are also PID disclosures).
- 2.18 Strict limitations apply to the circumstances in which a person can make each of these disclosures. A person who is considering disclosing information about disclosable conduct that relates to the Agency to any person outside the Agency (including a lawyer) should review the provisions of the PID Act and carefully consider whether the disclosure can be made in a way that attracts the protections of the PID Act.
- 2.19 In some instances, an authorised officer may be required to refer a corruption issue to the NACC. In that circumstance, the authorised officer will receive protections under the NACC Act that are substantially the same as the protections that PID disclosers receive under the PID Act.

3. SUPPORT, PROTECTED INFORMATION AND REPRISALS

Support for disclosers

- 3.1 The Agency encourages and supports the reporting of suspected wrongdoing by public officials in accordance with the PID Act.
- 3.2 The Agency will take steps to support persons who have made disclosures under the PID Act relating to the Agency, and to protect them from detriment or threats of detriment relating to the disclosure. This may include taking one or more of the following actions:
- appointing a support person to assist the discloser, who is responsible for checking on the wellbeing of the discloser regularly (with the consent of the discloser);
 - providing the discloser with information about their rights and obligations under the PID Act;
 - providing the discloser with information about the Agency's investigation procedures and any other relevant matter;
 - informing the discloser of the progress of the investigation;
 - advising the discloser of the availability of the Agency's Employee Assistance Program;
 - where there are concerns about the health and wellbeing of the discloser, liaising with officers responsible for work health and safety in the Agency;
 - transferring the discloser to a different area within the workplace (with the consent of the discloser).

Support for person against whom a disclosure has been made

- 3.3 Support may also be provided to any employee who is subject to an allegation of disclosable conduct. This may include taking one or more of the following actions:
- allowing the employee to have a support person during discussions;
 - providing the employee with information about their rights and obligations under the PID Act;
 - providing the employee with information about the agency's investigation procedures and any other relevant matter; including informing the employee of their right to procedural fairness;
 - informing the employee of the progress of any investigation;
 - ensuring the identity of the employee is kept confidential as far as reasonably practicable;
 - advising the employee of the availability of the Agency's Employee Assistance Program;
 - where there are concerns about the health and wellbeing of the employee, liaising with officers responsible for work health and safety in the Agency; and
 - transferring the employee to a different area within the workplace (with the consent of the employee).

Protection of information and confidentiality

- 3.4 Confidentiality will be maintained as far as reasonably possible in the handling of disclosures by the Agency.
- 3.5 Under the PID Act, a person commits an offence if they disclose or use information that is likely to enable the identification of the discloser as a person who has made a public

interest disclosure (that is, 'identifying information') unless the discloser consents or has acted in a way that is inconsistent with keeping their identity confidential, the identifying information has already been lawfully published, or the disclosure or use of the identifying information:

- is for the purposes of the PID Act;
- is required under another Commonwealth law or a prescribed State or Territory law; or
- is in connection with the Ombudsman's functions under s 5A of the *Ombudsman Act 1976* or the IGIS's functions under s 8A of the *Inspector-General of Intelligence and Security Act 1986*.

3.6 The steps that the Agency may take in order to protect a discloser's identity include:

- limiting the number of people who are aware of the discloser's identity or information that would tend to identify them;
- reminding each person who has the information that they should keep it confidential and that unauthorised disclosure may be a criminal offence;
- assessing whether anyone who is aware of the discloser's identity may have a motive to take reprisals against the discloser or impede the progress of the investigation, and monitor the situation; and
- ensuring the discloser can communicate with a support person, the authorised officer or investigator without alerting other staff.

3.7 The authorised officer and delegates of the principal officer will take all reasonable steps to protect the identity of a public official who has made a public interest disclosure from the time the disclosure is made.

3.8 Any investigation of a disclosure must be conducted in as confidential a manner as is possible. In particular, the identity of both the discloser and the person alleged to have engaged in disclosable conduct should not be revealed except where this is reasonably necessary for the effective investigation of the disclosure (including because of the need to afford procedural fairness).

3.9 Any interviews conducted with the discloser should be conducted in private and should be arranged so as to avoid the identification of the discloser by other staff of the Agency.

3.10 The principal officer is authorised under the PID Act to provide information in relation to a disclosure to the principal officer of another agency if the information is considered to be relevant to the destination agency's functions. The sharing agency may delete any material from the information to be provided if the sharing agency considers it appropriate to do so. The discloser's name and contact details will not be provided to the recipient agency if the discloser does not consent to the provision of those details.

3.11 Disclosers should also refrain from discussing the details of their disclosure under the PID Act with anyone who does not have a need to know. Discussions with these people will not be protected by the PID Act.

Protected information

3.12 Agency officials may be subject to statutory secrecy obligations under legislation that the Agency (or other Agencies) administers, including section 114 of the *Food Standards Australia New Zealand Act 1991* (Cth) (the FSANZ Act).

Secrecy Provisions

3.13 Secrecy provisions generally restrict the use, disclosure or recording of information which a public official obtains in the course of their duties. A breach of statutory secrecy provisions may attract criminal penalties, including imprisonment.

- 3.14 Notwithstanding the above, the disclosure, recording or use of information which is the subject of a Commonwealth secrecy provision is permitted under certain circumstances as outlined in the section 75 of the PID Act, namely
- a) where the disclosure, recording or use of information is:
 - i. in connection with the conduct of a disclosure investigation;
 - ii. for the purposes of the performance of the functions, or the exercise of the powers, conferred on a person by Part 3 or section 61 or 65 of the PID Act; or
 - iii. in connection with giving a person access to information for the purposes of, or in connection with, the performance of the functions, or the exercise of the powers, conferred on the person by Part 3 or section 61 or 65; and
 - b) where the disclosure recording or use is not:
 - i. contrary to a designated publication restriction; and
 - ii. in relation to information which is the subject of a secrecy provision which is enacted after the commencement of section 75 of the PID Act and expressed to take effect despite section 75 of the PID Act.
- 3.15 Agency officials or personnel who are involved in a PID process should consider the extent to which they are subject to a secrecy provision, and whether any disclosure, use, or recording of the information as part of a PID process is permitted under section 75 of the PID Act.
- 3.16 To the extent any use, disclosure or recording of information which is the subject of a secrecy provision does not fall within the circumstances in section 75 of the PID Act, individuals should:
- a) minimise the scope and extent of personal information used or disclosed to that information necessary to meet the requirements of the PID Act; and
 - b) redact any information the disclosure, recording or use of which is prohibited by secrecy provisions.

Immunity from liability

- 3.17 A person who makes a public interest disclosure, or a person who provides assistance in relation to a public interest disclosure, including witnesses are not subject to any civil, criminal or administrative liability (including disciplinary action). However, a person who makes a disclosure or provides assistance in relation to a disclosure is not protected from liability (including disciplinary action) for knowingly making a false or misleading statement, or knowingly making a disclosure that contravenes a designated publication restriction without reasonable excuse (see sections 11, 11A, 12A and 12B of the PID Act).
- 3.18 Making a public interest disclosure or providing assistance to a public interest disclosure does not entitle a person to protection from the consequences of their own wrongdoing (see section 12, 12A and 12B(5) of the PID Act).
- 3.19 A public official (or former public official) who makes a PID that is subsequently mandatorily referred to the NACC will not be protected under the NACC Act as the protections are for persons who make NACC disclosures. However, they will continue to be protected under the PID Act.
- 3.20 The situation is different for a public official (or former public official) who makes a voluntary referral to the Commissioner. They will be shielded by the protections and immunities established by the NACC Act and the PID Act. This is because, under s 26(1A) of the PID Act, a NACC disclosure is a type of PID as long as it was made by a current or former public official and the information disclosed tends to show disclosable conduct. In this way, a person who makes a voluntary referral to NACC will be protected under both the NACC Act and the PID Act in respect of that disclosure, regardless of whether they make a PID internally or a NACC disclosure.

Protection against reprisal action

- 3.21 Public officials are protected from reprisal that is taken because a person believed or suspected that they have made, may have made, propose to make or could make a public interest disclosure. A key protection is that it is an offence to take, or threaten to take, 'reprisal' action against a discloser (see section 19 of the PID Act).

What is a reprisal?

- 3.22 A reprisal occurs when someone engages in conduct that results in detriment to another person, or conduct that consists of, or results in, a threat to cause detriment to another person, and when the conduct is engaged in, the person believes or suspects that that person, or anyone else, has made, may have made, proposes to make or could make a PID and, that belief or suspicion is the reasons for engaging in the conduct.
- 3.23 Detriment includes (without limitation) any of the following (see section 13(2) of the PID Act):
- dismissal of an employee;
 - injury of an employee in their employment;
 - alteration of an employee's position to his or her disadvantage;
 - discrimination between an employee and other employees of the same employer;
 - harassment or intimidation of a person;
 - harm or injury to a person, including psychological harm;
 - damage to a person's property;
 - damage to a person's reputation;
 - damage to a person's business or financial position;
 - any other damage to a person.
- 3.24 The Agency will not tolerate any reprisal action against a person who makes a public interest disclosure.
- 3.25 Every allegation of reprisal will be taken seriously, recorded and responded to.
- 3.26 All those involved in handling the public interest disclosure and are aware of the discloser's identity for the purposes of the PID Act will monitor the work environment for signs of detriment and if necessary, take corrective action early.

What is not a reprisal?

- 3.27 Reasonable administrative action taken to protect a discloser from detriment is not a reprisal.
- 3.28 In addition, managers and supervisors are not prevented from taking legitimate disciplinary or management action to address unsatisfactory performance in the workplace where that action is unrelated to the discloser having made a disclosure.

Managing the risk of reprisal

- 3.29 A reprisal risk assessment will be conducted for each disclosure allocated to the Agency for handling. The assessment of reprisal risk assists in determining suitable strategies for controlling the risks and reasonable actions taken to protect public officials who belong to the Agency from detriment or the threat of detriment relating to the disclosure. Further information in relation to the risk assessment is included at Part 6 of these procedures.

Role of Reprisal Manager

- 3.30 Where a reprisal risk assessment has been conducted or updated and it is assessed that the risk of reprisal is either a complex matter or that the risk needs close monitoring and control, it may be deemed appropriate to appoint a reprisal manager.

- 3.31 A reprisal manager will generally be independent to the assessment and investigation of the PID (i.e. not the authorised officer or Investigator) and will be available to provide support and assistance to those at risk of reprisal.
- 3.32 If a reprisal manager is appointed, their key functions will generally include:
- Assessing, on an ongoing basis, the risk of reprisal and workplace conflict in connection with a PID, including a PID that is also a NACC disclosure
 - Identifying mitigation strategies and taking action to prevent harm;
 - Assessing whether any conduct that has caused, or is alleged to have caused, detriment to the discloser in fact constitutes a "reprisal" within the meaning in the PID Act and the NACC Act; and
 - If necessary, taking action to address harm and/or respond to any claims of reprisal on behalf of the Agency.
- 3.33 Please refer to the Agency's [Guide to Managing Public Interest Disclosures](#) for further information on reprisal risk and risk assessments.

4. MANDATORY REFERRAL TO THE NATIONAL ANTI-CORRUPTION COMMISSIONER

When to refer a PID to the NACC

- 4.1 The Chief Executive Officer, or their PID delegate (including a PID officer of any type, including an authorised officer, principal officer or investigator), must refer a corruption issue to the Commissioner if:
- they become aware of a corruption issue that concerns the conduct of a person who is, or was, a staff member of the Agency while they were in that role; and
 - they suspect that the corrupt conduct could involve corrupt conduct that is serious or systemic.
- 4.2 Section 12 of the NACC Act has a broad definition of 'staff member' and includes the Chief Executive Officer, an official, an employee, secondee, contractor and an officer or employee of a contracting entity.
- 4.3 A corruption issue of which awareness arises during a PID process does not need to be referred to the Commissioner, if the Chief Executive Officer believes the Commissioner is already aware of the matter or if the Commissioner has determined that referral is not required for the kind of corruption issue the PID involved or in the circumstances in which the PID arose (section 37 of the NACC Act).
- 4.4 A corruption issue of which awareness arises during a PID process does not need to be referred to the Commissioner if the alleged corrupt conduct does not meet the referral threshold – namely if it is not, corrupt conduct that is serious or systemic in nature.

What is corrupt conduct?

- 4.5 Under the NACC Act, corrupt conduct includes:
- any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly:
 - the honest or impartial exercise of any public official's powers as a public official; or
 - the honest or impartial performance of any public official's functions or duties as a public official;
 - any conduct of a public official that constitutes or involves a breach of public trust;
 - any conduct of a public official that constitutes, involves or is engaged in for the purpose of abuse of the person's office as a public official;
 - any conduct of a public official, or former public official, that constitutes or involves the misuse of information or documents acquired in the person's capacity as a public official.
- 4.6 The conduct may be conducted by a person who is, or was a staff member of the Agency, while that person is, or was, a staff member of the Agency.
- 4.7 If the PID, or investigative steps taken during the PID, discloses any of the above conduct by a staff member or former staff member, and the PID officer suspects conduct is of a serious or systemic nature, the corruption issue must be referred to the NACC (section 35 of the NACC Act).

When is corrupt conduct 'serious or systemic'

- 4.8 The NACC can investigate corrupt conduct that it considers could be serious or systemic. Whether the conduct is serious or systemic is a matter of judgement and will depend on the nature of the conduct and the circumstances in which it occurred.

- 4.9 The terms serious and systemic are not defined in the NACC Act. Conduct may be considered to be serious if it is significant or worrying, not slight or negligible, but it does not have to be 'severe' or 'grave'. This may include conduct where, if proven, it would constitute a criminal offence, such as bribery, abuse of office and related offences under Part 7.6 of the Criminal Code.
- 4.10 Conduct may be considered systemic if it relates to or affects a system (including an organisation) as a whole or that involves a pattern of conduct. Conduct may still be systemic whether it involves a single individual or multiple individuals, and whether or not it is coordinated.
- 4.11 For more information on what constitutes corrupt conduct, and corrupt conduct that is potentially serious or systemic, see the guidance published by the Attorney-General's Agency here: [What is corrupt conduct?](#)

Timing and information requirements

- 4.12 If the Chief Executive Officer (or their delegate) is required to refer a corruption issue to the Commissioner:
- the referral must be made as soon as reasonably practicable;
 - the referral notice must state the reasons why they suspect the matter could involve corrupt conduct that is serious or systemic;
 - the referral must include all information relevant to the corruption issue that is in their possession or control at the time the referral is made (see section 38 of the NACC Act);
 - general secrecy provisions do not prevent information being included in a referral made to the NACC, except if the information is protected from disclosure under an 'exempt secrecy provision' within the meaning of section 7 of the NACC Act. (Note: section 114 of the FSANZ Act is not an exempt secrecy provision)
- 4.13 After a referral has been made to the Commissioner, the Chief Executive Officer, or their delegate, must:
- continue to follow the PID Procedures unless the Commissioner issues a direction to the Agency to stop taking action in relation to the PID;
 - give any further relevant information that the Chief Executive Officer, or their delegate receives to the Commissioner as soon as reasonably practicable, unless otherwise directed by the Commissioner (section 38 of the NACC Act);
 - notify the PID discloser of the Chief Executive Officer, or their delegate's referral of the issue as soon as reasonably practicable (section 35 of the NACC Act). They should use the Agency's notification form for this purpose.

Stop action directions

- 4.14 After corrupt conduct has been reported to the Commissioner, the Commissioner may direct an agency head to stop the agency taking specified action in relation to a corruption issue that concerns the agency, unless the action is permitted by the Commissioner (see section 43 of the NACC Act). Such a direction may require the Agency to stop dealing with a PID or undertaking a Code of Conduct investigation.
- 4.15 If a PID is not allocated internally because a stop action direction has been received by the Commissioner, the authorised officer must, as soon as reasonably practicable, give written notice to the Ombudsman of the following (as outlined in section 44B of the PID Act):
- the information that was disclosed;
 - the conduct disclosed;
 - if the discloser's name and contact details are known, and the discloser consents to the Ombudsman being informed, the discloser's name and contact details; and

- the stop action direction under the NACC Act that prevents allocation of some or all of the disclosure.
- 4.16 If the disclosure cannot be investigated or further investigated because of a stop action direction issued by the Commissioner, the principal officer or their delegate must give written notice to the discloser as soon as reasonably practicable (section 50(1)(c) of the PID Act).
- 4.17 If a stop action direction is issued by the Commissioner, this will likely have specific terms which may or may not be able to be provided to the discloser. At this stage, the NACC will be interested in the matter, even if not formally investigating it, and the Agency will need to take considerable care in responding to any NACC related requirements or requests. Any notice of a stop action direction to a discloser might only be a very simple document, outlining that a stop action notice has been received and that the PID investigation will be halted, or that certain steps will not be taken, unless or until the notice is revoked or amended.
- 4.18 If the disclosure is no longer subject to a stop action direction, the principal officer must, as soon as practicable, inform the discloser if they investigate or further investigate that disclosure (section 50(4A) of the PID Act).
- 4.19 If the disclosure has not yet been allocated, the 14 day timeframe for allocation starts again on the day after the authorised officer becomes aware that a NACC stop action direction no longer applies.
- 4.20 Any recommencement notice following the revocation or amendment of a stop action direction should outline that the stop action has been revoked/amended such that the PID investigation may recommence or that certain steps may now be taken. It should also provide updated conclusion date for the investigation period where relevant.
- 4.21 As outlined in section 50A(4) of the PID Act, if a stop action direction has been received by the Commissioner, that prevents the principal officer or their delegate from investigating, or further investigating, the principal officer must give written notice to the Ombudsman of the stop action direction.

5. PROCEDURES FOR MANAGERS AND SUPERVISORS

Role of Managers and Supervisors

- 5.1 Where a public official in the Agency discloses information to their manager or supervisor and that person has reasonable grounds to believe that the information concerns, or could concern, disclosable conduct, the manager or supervisor must inform disclosers of the PID process, including:
 - that their disclosure could be treated as an internal disclosure; the next steps in the PID process - referring their disclosure to the authorised officer, the potential allocation of the PID, and investigation of the PID;
 - the circumstances in which a PID must be referred to an agency, or other person or body, under another law of the Commonwealth;
 - the civil and criminal protections the PID Act provide to disclosers, and those assisting with the handling of a PID;
 - whether their internal disclosure requires mandatory referral to the NACC and, if so, explain the information sharing process with the NACC and that this may include their identity; and
 - that, if their internal disclosure requires mandatory referral to the NACC, they will remain protected under the PID Act.
- 5.2 The manager or supervisor must as soon as practicable, give the information to an authorised officer in the Agency.
- 5.3 Where a disclosure is made to a manager or supervisor, that person must make a written record of the disclosure, and if the disclosure is not in writing, they must make a written record of the substance of the disclosure and of the time and date of the disclosure.
- 5.4 The person to whom the disclosure has been made must ask the discloser to sign the record of the disclosure, where this is practicable.
- 5.5 At the time the manager or supervisor gives information to the authorised officer they must also give the authorised officer their written assessment of any risks that reprisal action might be taken against the person who disclosed the information to the manager or supervisor. Further information on how to conduct a risk reprisal assessment is provided below under the heading 'Reprisal risk assessment'.
- 5.6 Where a manager or supervisor has given the information to the authorised officer, and where the manager or supervisor is able to contact the discloser, they must inform the discloser that they have given the information to an authorised officer in the Agency and advise the discloser of the name and contact details of that authorised officer
- 5.7 Managers and supervisors should also understand the requirements of the NACC Act, including when they are required to refer corruption issues to the Commissioner. There is a mandatory obligation to refer corruption issues to the Commissioner which arises during the course of exercising functions or powers under the PID Act if the supervisor suspects the corruption issue involves serious or systemic corrupt conduct by a current or former member of staff at the Agency while they were a staff member.
- 5.8 Any member of staff, including supervisors and managers, can also make a voluntary referral to NACC in respect to any issues of corruption. The standard of proof for a voluntary referral does not require a supervisor (or any public official or member of the public) to know or suspect the issue involves serious or systemic corrupt conduct. Rather, the supervisor need merely report the issue to be "about" corruption and can make the referral anonymously.
- 5.9 The obligation to refer certain issues to the Commissioner must be complied with regardless of whether a voluntary referral can or is otherwise made.

6. PROCEDURES FOR AUTHORISED OFFICERS

Authorised officer must advise disclosers and potential disclosers about the PID Act

6.1 Where:

- a person discloses, or is proposing to disclose, information to an authorised officer which the authorised officer has reasonable grounds to believe may be disclosable conduct, and
- the authorised officer has reasonable grounds to believe that the person may be unaware of the consequences of making the disclosure, and
- the authorised officer is aware of the contact details of the person,

6.2 the authorised officer must:

- inform the person that the disclosure could be treated as an internal disclosure for the purposes of the PID Act; and
- explain to the person what the PID Act requires for a disclosure to be an internal disclosure; and
- inform the person about the principal officer's (or their delegate's) powers to decide not to investigate the disclosure or decide not to investigate the disclosure further; and
- advise the person about the circumstances (if any) in which a public interest disclosure must be referred to an agency, or another person or body under another law of the Commonwealth; and
- advise the person of any orders or directions that may affect disclosure of the information to another agency, person or body under another law of the Commonwealth.

6.3 Authorised officers also have strict obligations under the NACC Act and must, as soon as reasonably practicable after they become aware of it, refer a corruption issue to the Commissioner if:

- they become aware that the corruption issue concerns the conduct of a person who is, or was, a staff member of the Agency while they were in that role; and
- they suspect that the corrupt conduct could involve corrupt conduct that is serious or systemic.

6.4 'Staff member' is defined by section 12 of the NACC Act and includes the Chief Executive Officer, an official, an employee, secondee, contractor and an officer or employee of a contracting entity.

6.5 The referral must be made as soon as reasonably practicable after the authorised officer becomes aware of the corruption issue.

6.6 If the PID does not disclose corrupt conduct, or if it does disclose such conduct but it is not serious or systemic in nature, the PID does not need to be referred to the NACC. There is, however, a continuous obligation to consider the requirement for referral to the NACC.

Receipt of disclosure from discloser

6.7 Where a person makes a disclosure directly to an authorised officer, the authorised officer must make a written record of the disclosure including:

- the substance of the disclosure if the disclosure is not in writing, and
 - the time and date of the disclosure
- 6.8 The authorised officer must ask the discloser to sign the written record of the disclosure, where this is practicable.
- 6.9 In addition, the authorised officer should inform the discloser of the options to deal with the Agency throughout the course of the investigation anonymously or pseudonymously, and provide the discloser with a copy of the Agency's [APP 5 Notice](#).
- 6.10 The authorised officer is required to contact the Office of Legal Counsel (OLC) upon receiving a potential PID. OLC will track the progress of the PID and the Agency's compliance with the PID Act and NACC Act.

Initial consideration and allocation

- 6.11 When an authorised officer receives a disclosure of information, he or she will consider the information disclosed and decide whether there are reasonable grounds on which the disclosure could be considered to be an internal disclosure made in accordance with the PID Act.
- 6.12 The authorised officer may obtain information and may make such inquiries as they think fit for the purposes of deciding the allocation of the disclosure, including for the purposes of deciding to allocate the disclosure to an agency within the same portfolio as the recipient agency if it would be better able to handle the disclosure, or deciding whether the disclosure is an internal disclosure or not.
- 6.13 If the authorised officer is satisfied, on reasonable grounds, that the conduct disclosed would be more appropriately investigated under another law or power, the authorised officer must, as soon as reasonably practicable, take reasonable steps to refer the conduct disclosed, or to facilitate its referral, for investigation under another law or power.
- 6.14 The authorised officer must use their best endeavours to decide on the allocation of the disclosure within 14 days after the disclosure is received by the authorised officer or 14 days after:
- a) if the decision is made following the reconsideration of a previous decision about the allocation in response to a recommendation by the Ombudsman or the IGIS under section 55—the day the principal officer receives the recommendation under that section;
 - b) if a stop action direction under the NACC Act prevented the allocation of the disclosure—the day when the authorised officer becomes aware that the direction no longer applies.

Deciding not to allocate a disclosure

- 6.15 This could be because the authorised officer is satisfied, for example, that:
- the disclosure has not been made by a person who is, or was, a public official;
 - the disclosure was not made to an authorised internal recipient or the discloser's supervisor; and/or
 - the information disclosed does not tend to show, and the discloser does not have reasonable grounds to believe that the information tends to show, one or more instances of disclosable conduct;
 - the conduct disclosed would be more appropriately investigated under another law or power.
- 6.16 Where an authorised officer decides that a disclosure is not to be allocated, they must as soon as reasonably practicable, advise the discloser (where it is reasonably practicable to do so) in writing of:
- the reasons why the disclosure has not been allocated; and

- any steps taken, or proposed to be taken to refer the disclosure for investigation under another law or power, the other law or power and the agency or other person who the conduct has, or will be referred to; or
 - any other course of action that may be available under other laws of the Commonwealth.
- 6.17 The authorised officer must keep appropriate records of whether the discloser was informed of the decision not to allocate the disclosure and, if so, of:
- the day and time the discloser was notified; and
 - the means by which the discloser was notified; and
 - the content of the notification.
- 6.18 If it is not reasonably practicable to provide the notification to the discloser, the authorised officer must keep a record to indicate why, along with a record of the matters set out above at paragraph 6.16.
- 6.19 If the authorised officer decides not to allocate a disclosure to an agency (including the Agency itself), they must inform the Ombudsman of the allocation in writing.
- 6.20 If the authorised officer does not allocate the disclosure because of a stop action direction issued by the Commissioner, the authorised officer must give written notice to the Ombudsman of the following (as set out at section 44B(3) of the PID Act):
- the information that was disclosed to them by the discloser;
 - the suspected disclosable conduct (if any);
 - if the discloser's name and contact details are known to the authorised officer, and the discloser consents to the Ombudsman being informed—the discloser's name and contact details; and
 - the stop action direction issued under the NACC Act that prevents allocation of the disclosure.

Deciding to allocate a disclosure

- 6.21 If the authorised officer is satisfied that there is a reasonable basis on which the disclosure could be considered to be an internal disclosure under the PID Act, they must allocate the disclosure for handling by an agency.
- 6.22 The authorised officer must decide whether to allocate all or part of the disclosure to either the Agency and/or another agency, having regard to the matters set out in section 43(5) of the PID Act.
- 6.23 An authorised officer must obtain the consent of an authorised officer in another agency before allocating an internal disclosure for handling by that agency.
- 6.24 The authorised officer may, after making a decision allocating the disclosure, decide to reallocate the disclosure to one or more agencies (which may be an agency to which the disclosure had previously been allocated). Subsections 43(5) to (12) and section 44 apply in relation to a decision under this section, in the same way they apply in relation to the original decision.

Requesting consent from discloser

- 6.25 Where the authorised officer is aware of the contact details of the discloser, they should ask the discloser to advise in writing within 7 days whether the discloser consents to the authorised officer giving the discloser's name and contact details to the principal officer and to the principal officer's delegate.
- 6.26 The authorised officer should make a written record of the discloser's response (if any) to these questions. Where a discloser does not respond within 7 days, the discloser is taken not to have consented to the disclosure of their name and contact details to the principal officer and their delegate and care should be taken in relation to the provision of information that identifies them.

Informing relevant persons of allocation

Informing the receiving agency

6.27 Where an authorised officer in the Agency allocates a disclosure to an agency (including to the Agency) they must inform the principal officer of that agency of:

- the allocation to the agency;
- the information that was disclosed;
- the conduct disclosed;
- if the discloser's name and contact details are known to the authorised officer, and the discloser has consented to the principal officer and other relevant bodies being informed – the discloser's name and contact details.

Informing other relevant bodies

6.28 If the authorised officer allocates a disclosure to an agency (including the Agency itself), that is not the Ombudsman, the IGIS or an intelligence agency, he or she must inform the Ombudsman of the allocation in writing. If the disclosure is allocated to an intelligence agency, the Authorised Officer must inform the IGIS of this in writing.

Informing the discloser

6.29 As soon as reasonably practicable after allocation, the authorised officer must inform the discloser (where it is reasonably practicable to do so), in writing, of:

- the allocation;
- the information that has been provided to the principal officer of the relevant agency, including a copy of the allocation notice to the Ombudsman; and
- if the disclosure has been allocated to the Agency—that the principal officer (or their delegate) has the power, in certain circumstances, to decide:
 - not to investigate the disclosure; or
 - not to investigate the disclosure further; or
 - refer the conduct disclosed for investigation under another law or power.

Record of allocating the handling of a disclosure

6.30 When an authorised officer allocates the handling of a disclosure to one or more agencies, he or she must keep an appropriate record of:

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

6.31 The Authorised Officer must also keep appropriate records of whether the discloser was informed of the allocation decision and, if so, of:

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

6.32 If it is not reasonably practicable to provide the notification to the discloser, the authorised officer must keep a record to indicate why, along with a record of the matters set out above at paragraph 6.30.

6.33 Further information on record keeping is at Section 8: Records Management, Monitoring and Evaluation.

Reprisal risk assessment

Conducting a risk assessment

- 6.34 Where an authorised officer allocates a disclosure for handling by the Agency, they must conduct a risk assessment on the likelihood that reprisals may be taken against the discloser.
- 6.35 The risk assessment must be undertaken based on a checklist of risk factors, and having regard to any assessment of risk provided under these procedures by the discloser's supervisor or manager. A checklist of relevant risk factors includes:
- the likelihood of the discloser being identified;
 - the number of people implicated in the disclosure;
 - the subject matter of the disclosure;
 - the number of people who are aware, or likely to become aware, of the disclosure;
 - the culture of the workplace;
 - whether any specific threats against the discloser have been received;
 - whether there is a history of conflict between the parties;
 - whether the disclosure can be investigated while maintaining confidentiality;
 - the likely outcome if the conduct disclosed is substantiated;
 - whether the discloser is isolated;
 - whether the discloser is employed on a full time, part time or casual basis; and
 - the positions of the parties.
- 6.36 In conducting the risk assessment, authorised officers will adopt the following framework which entails four steps:
- Identifying: Are reprisals or related workplace conflict problems in the workplace, or do they have the potential to be problems?
 - Assessing: What is the likelihood and consequence of reprisals or related workplace conflict?
 - Controlling: What strategies should be put in place to prevent or contain reprisals or related workplace conflict?
 - Monitoring and reviewing: Have the strategies been implemented and were they effective?
- 6.37 Further information on how the risk assessment should be conducted is available in the Agency's [Guide to Managing Public Interest Disclosures](#).

Developing a risk mitigation plan

- 6.38 Where the risk level is assessed as anything greater than low, a risk management strategy must be developed for mitigating the risk of reprisals being taken against the discloser.
- 6.39 Generally, the risk management strategy would be developed by the authorised officer who made the allocation decision. However, an authorised officer may consider it more appropriate for a strategy to be developed by a separate Reprisal Manager, having regard to the assessed risk rating.
- 6.40 This strategy may include some or all of the support measures set out at Part 3 of these procedures. In some cases, where there is a serious risk of reprisal action, it may be appropriate to adjust the working and supervision arrangements to protect the discloser or other persons who are at risk of reprisal action.

Monitoring and reviewing risks

- 6.41 The authorised officer or reprisal manager (as applicable) should monitor and review the risk assessment and any mitigation plan as necessary throughout the investigation process.

- 6.42 The investigator may be able to provide useful information about the risk environment over the course of the investigation.

7. PROCEDURES FOR THE PRINCIPAL OFFICER (AND DELEGATE)

Deciding whether or not to investigate

- 7.1 The principal officer or their delegate must, where it is reasonably practicable to do so, within 14 days after a disclosure is allocated to the Agency, inform the discloser in writing that, under section 48 of the PID Act, the principal officer or delegate may decide:
- not to investigate the disclosure; or
 - not to investigate the disclosure further; or
 - that the conduct disclosed would be more appropriately investigated under another law or power.
- 7.2 The discloser must also be informed of the grounds on which that decision can be taken. Ordinarily, this information will have been provided to the discloser by the authorised officer at the time of allocation.
- 7.3 The principal officer or delegate must, as soon as practicable after receiving an allocation of a disclosure from an authorised officer consider whether to exercise the discretion under section 48 of the PID Act not to investigate the disclosure under the PID Act.
- 7.4 In broad terms, the principal officer or delegate may decide not to investigate if:
- the discloser is not a current or former public official (and a determination has not been made under section 70 of the PID Act); or
 - the information does not to any extent concern serious disclosable conduct; or
 - the disclosure is frivolous or vexatious; or
 - the information is the same or substantially the same as a disclosure that has been investigated under the PID Act; and
 - a decision was previously made under to not investigate the earlier disclosure, or not to investigate the earlier disclosure further; or
 - the earlier disclosure has been, or is being, investigated as a disclosure investigation; or
 - the conduct disclosed, or substantially the same conduct, is being investigated under another law or power, and the principal officer is satisfied, on reasonable grounds, that it would be inappropriate to conduct an investigation under the PID Act at the same time; or
 - the conduct disclosed, or substantially the same conduct, has been investigated under another law or power, and the principal officer is satisfied, on reasonable grounds, that there are no further matters concerning the conduct that warrant investigation; or
 - the principal officer is satisfied, on reasonable grounds, that the conduct disclosed would be more appropriately investigated under another law or power (but not only because the conduct disclosed raises a corruption issue); or
 - both:
 - the principal officer has been informed by the discloser, an authorised officer of the Agency or a principal officer or authorised officer of another agency that the discloser does not wish the investigation of the disclosure to be pursued; and
 - the first-mentioned principal officer is satisfied, on reasonable grounds, that there are no matters concerning the disclosure that warrant investigation; or
 - it is impracticable to investigate the disclosure because:
 - the discloser's name and contact details have not been disclosed; or

- the discloser has refused or has failed or is unable to give the investigator the information or assistance the investigator has requested; or
 - of the age of the information.
- 7.5 If none of the above grounds apply, the principal officer (or delegate) is required to conduct an investigation.
- 7.6 Section 73 of the PID Act provides that the Chief Executive Officer is the principal officer of the Agency. The principal officer, in addition to authorised officers, must also consider whether a disclosure must be referred to the NACC if the principal officer becomes aware of a corruption issue in the course of performing or exercising functions or powers under the PID Act. To enliven the mandatory referral obligation, the corruption issue must be one that:
- concerns the conduct of a person who is or was a **member of staff** at the Agency, at the time of the conduct; and
 - the principal officer suspects the issue could involve **serious or systemic corrupt conduct**.
- 7.7 The obligation to refer certain corruption issues to the NACC is a continuing obligation that applies throughout the course of the PID matter (see Part 4 of these procedures).
- 7.8 This obligation is separate to the obligation under section 33 under the NACC Act for agency heads to refer corruption issues to the NACC. The Chief Executive Officer, as the Agency's agency head must also refer certain corruption issues to the NACC.

Notifying the discloser and the Ombudsman

Decision not to investigate

- 7.9 Where the principal officer or their delegate decides under section 48 of the PID Act not to investigate a disclosure, they must:
- if it is reasonably practicable to contact the discloser—as soon as reasonably practicable, inform the discloser that they have decided not to investigate the disclosure, and identify the reasons for that decision (other than those reasons that may be deleted pursuant to section 50(3) of the PID Act); and
 - provide reasons for the decision;
 - if the principal officer has taken action, or proposes to take action, under section 50AA in relation to the referral of conduct disclosed for investigation under another law or power, they must include:
 - details of the other law or power,
 - the agency or other person or body to which the conduct has been, or is to be, referred, and
 - the steps taken, or proposed to be taken, for the conduct to be referred or to facilitate its referral; or
 - detail any other courses of action that may be available to the discloser under other laws of the Commonwealth; and
 - inform the Ombudsman of the decision not to investigate and the reasons for that decision and:
 - whether the principal officer has taken action, or proposes to take action, under section 50AA in relation to the referral of conduct disclosed for investigation under another law or power and, if so, include
 - details of the other law or power,
 - the agency or other person or body to which the conduct has been, or is to be, referred, and
 - the steps taken, or proposed to be taken, for the conduct to be referred or to facilitate its referral.

Where the disclosure is to be investigated

- 7.10 Where a matter is required to be investigated, the principal officer or their delegate must inform the discloser as soon as reasonably practicable (and where it is reasonably practicable to do so) that they are required to investigate the disclosure, and inform the discloser of the estimated length of the investigation.
- 7.11 If during the course of the investigation the principal officer or delegate decides not to investigate the disclosure further under section 48 of the PID Act, the principal officer or delegate must:
- if it is reasonably practicable to contact the discloser—as soon as reasonably practicable, inform the discloser:
 - that they have decided not to investigate the disclosure further,
 - the reasons for the decision (other than those reasons that may be deleted pursuant to section 50(3) of the PID Act),
 - whether the principal officer has taken action, or proposes to take action, under section 50AA in relation to the referral of conduct disclosed for investigation under another law or power, including details of:
 - the other law or power,
 - the agency or other person or body to which the conduct has been, or is to be, referred, and
 - the steps taken, or proposed to be taken, for the conduct to be referred or to facilitate its referral.
 - any other courses of action that might be available to the discloser under other laws of the Commonwealth; and
 - inform the Ombudsman of the decision not to investigate the disclosure further and the reasons for that decision.

Stop action direction from the NACC

- 7.12 The Commissioner can direct the Agency to stop taking action in relation to a corruption issue. This is called a stop action direction. A stop action direction can prevent the Agency from taking particular action in relation to the issue, or from taking any action at all.
- 7.13 Where the principal officer or their delegate cannot investigate, or further investigate, the disclosure because of a stop action direction under the NACC Act, the principal officer or delegate must give written notice to the Ombudsman and the discloser—as soon as reasonably practicable (and where it is reasonably practicable to do so).
- 7.14 If a disclosure is no longer subject to a stop action direction under the NACC Act, the principal officer or delegate must, as soon as reasonably practicable (and where it is reasonably practicable to do so), give written notice to the discloser if the principal officer investigates, or further investigates, the disclosure.
- 7.15 The Commissioner will consult with the Chief Executive Officer prior to issuing any direction to stop taking action in relation to a PID.

Conducting the investigation

- 7.16 If the principal officer (or delegate) decides to investigate, the principal officer (or delegate) will investigate whether one or more instances of disclosable conduct has occurred.
- 7.17 The principal officer (or delegate) may conduct the investigation as they see fit, provided it is not inconsistent with the PID Standards. This may include appointing an investigator to assist them to conduct the investigation.

Provision of APP 5 Notice to the discloser

- 7.18 Following the disclosure, the discloser should be provided with an APP 5 Notice.

General principles

7.19 The following general principles apply to the conduct of investigations:

- maintaining the confidentiality of the identity of the discloser will be paramount when conducting the investigation
- a decision whether evidence is sufficient to prove a fact must be determined on the balance of probabilities;¹
- the principal officer or delegate must be independent and unbiased in investigating the matter. They must ensure that they do not have an actual or perceived conflict of interest;
- the principal officer or delegate may, for the purposes of the investigation, obtain information from such persons, and make such inquiries, as they think fit.

Additional procedures required in particular circumstances

7.20 The principal officer or delegate, in conducting an investigation under these procedures, must also comply with:

- the PID Act;
- the PID Standard;
- these procedures;
- the NACC Act (and any directions made by the Commissioner);
- any rules relating to fraud that are made for the purposes of the Public Governance, Performance and Accountability Act 2013 (Cth) and the Australian Government Investigation Standards (**AGIS**) (if relevant to the matter being investigated);
- the Agency's procedures for determining breaches of the APS Code of Conduct, established under s 15(3) of the Public Service Act 1999 (Cth) (if relevant to the matter being investigated).

7.21 As part of the investigation, the principal officer (or delegate) may consider whether a different investigation should be conducted by the Agency or another body under another law of the Commonwealth. In particular:

- If the suspected disclosable conduct relates to fraud, the disclosure should be referred to the People Services Section for investigation pursuant to the Commonwealth Fraud Control Policy; and/or
- If the suspected disclosable conduct relates to alleged breaches of the APS Code of Conduct, the disclosure should be referred to the People Services section for investigation pursuant to the Agency's Code of Conduct procedures.

7.22 The principal officer conducting an investigation may, for the purposes of the investigation, adopt a finding set out in the report of an investigation or inquiry under another law or power, or another investigation under the PID Act.

Interviewing witnesses

7.23 Subject to any restrictions imposed by a law of the Commonwealth other than the PID Act, the investigator must ensure that, if a person is interviewed as part of the investigation of a public interest disclosure, that person is informed of the following matters:

- the identity and function of each person conducting the interview, and
- the process of conducting an investigation, and
- the authority of the investigator under the PID Act to conduct an investigation, and

¹ Note: This is the standard applied in civil proceedings. Summarised broadly, a fact is taken to have been proved on the balance of probabilities if the Principal Officer is satisfied it is more likely than not that the fact is true.

- the protections provided to the witnesses under section 12A of the PID Act, and
- whether an audio or visual recording of the interview will be made, and
- the interviewee's duty as follows:
 - if they are a public official, to use their best endeavours to assist the investigator in the conduct of an investigation under the PID Act (subject to the public official's privilege against self-incrimination or exposing themselves to a penalty); and
 - not to take or threaten to take reprisal action against the discloser; and
 - subject to the PID Act, not to disclose the identity of the person who made the disclosure.

- 7.24 Prior to interviewing a witness, investigators should provide the witness with an APP 5 Notice.
- 7.25 At the end of any interview, the interviewee must be given an opportunity to make a final statement or comment or express an opinion. The investigator must include any final statement, comment or position in the record of interview.
- 7.26 Any interviews conducted with the discloser should be conducted in private and should be arranged so as to avoid the identification of the discloser by other staff of the Agency.

Procedural fairness

- 7.27 Procedural fairness does not require that a person against whom allegations are made be advised as soon as the disclosure is received or as soon as an investigation is commenced.
- 7.28 Procedural fairness may require that the discloser's identity be revealed to the person who is subject of the disclosure so that the subject can meaningfully understand the allegations being made against them.
- 7.29 Where the investigator proposes to make a finding of fact or express an opinion that is adverse to the discloser, or to a public official who is a subject of the disclosure, the investigator must advise the person who is the subject of the proposed finding or opinion of the adverse material that is relevant to that proposed finding or opinion and must give the person a reasonable opportunity to respond to it.²
- 7.30 If it appears that the proposed finding or opinion would affect adversely the rights or interests of someone other than the discloser or a public official who is subject of the disclosure, then the investigator should consider (including by consulting with the Office of Legal Counsel) whether that person should be given the opportunity to comment.

Timeframe for completion of an investigation

- 7.31 An investigation must be completed within 90 days after the day:
- a disclosure was initially allocated; or
 - a disclosure was reallocated; or
 - the principal officer of the Agency decided to reinvestigate the relevant disclosure; or
 - the principal officers becomes aware that a stop action direction under the NACC Act no longer applies.
- 7.32 The investigation is completed when the principal officer (or delegate) has prepared the report of the investigation.
- 7.33 It is possible to seek one or more extensions of time from the Ombudsman.

² This paragraph does not apply where the investigator does not make substantive findings or express adverse opinions but instead simply recommends that further investigation action should or should not be taken.

- 7.34 Extension applications must be made at least 10 days before the 90 day period expires. The Ombudsman cannot grant an extension after the 90 day deadline has passed.

Privacy of witnesses

- 7.35 Where practicable, the Agency should provide witnesses (including the discloser, where relevant) the option to deal with the Agency anonymously or pseudonymously during the course of an investigation.
- 7.36 Where, as part of an investigation, the Agency is otherwise required to collect or disclose personal information (as defined in the Privacy Act 1988 (Cth)) the Agency should only collect or disclose the minimum amount of personal information necessary to effectively carry out the investigation.
- 7.37 With respect to a PID which has been mandatorily referred to the NACC as a NACC disclosure, the PID officer is required to disclose all information which is relevant to the complaint and is within their possession and control at the time of the referral. Relevantly, if the information before them at the time of referral includes the discloser's identity, then the discloser's identity (and the identify of any named witnesses etc) may be 'relevant information' that needs to be provided to NACC as part of the referral. This may be necessary even where the disclosure of identifying information is otherwise prohibited under the PID Act because the obligation to make a referral to the NACC applies despite any secrecy provision other than exempt secrecy provisions.
- 7.38 The NACC Act also vests the Commissioner with the powers to make any necessary arrangements to protect the safety of any person who is, or was, called as a witness in relation to the NACC disclosure or who is or has been called to respond to notice to produce to the same. The Commissioner can also protect a witness or responder to a notice to produce from intimidation or harassment by, if necessary, making arrangements with the Minister, AFP Commissioner or the police force of any state or territory (see: section 116 of the NACC Act).

Accuracy of personal information

- 7.39 Investigators should continually assess (for so long as a public interest disclosure investigation is ongoing) whether personal information collected as part of a public interest disclosure is inaccurate, incomplete, irrelevant or not up to date, in light of new information arising. Where personal information has been found to be inaccurate, incomplete, irrelevant, or not up to date, the investigator should not use or disclose the personal information, unless required to do so under the PID Act.
- 7.40 Investigators should record any decision to not use or disclose personal information contained in a public interest disclosure as a result of these procedures.

Correction of personal information

- 7.41 Having regard to the purpose for which the personal information is held, the principal officer must:
- ensure that personal information in a record of a public interest disclosure is corrected where the principal officer becomes aware that the information is inaccurate, out of date, incomplete, irrelevant or misleading; and
 - ensure that requests for the correction of personal information in a record of a public interest disclosure are implemented.
- 7.42 In particular, names and email addresses should be monitored for accuracy so that information is not inadvertently sent or shared to the incorrect recipient. If incorrect information was identified, this must be shared with those working on the matter.
- 7.43 Where the principal officer becomes aware of personal information in a record of a PID being inaccurate, out of date, incomplete, irrelevant or misleading, and the relevant PID has been disclosed to another agency, the principal officer must notify relevant agencies of the correction of personal information.

Report of investigation

- 7.44 In preparing a report of a public interest disclosure investigation, the investigator must comply with the PID Act, the PID Standard and these procedures. A report of an investigation conducted under the PID Act must set out:
- the matters considered in the course of the investigation;
 - the duration of the investigation;
 - the principal officer's findings (if any);
 - the action (if any) that has been, is being or is recommended to be taken; and
 - claims of any reprisal taken against the discloser, or any other person, that relates to the matters considered in the course of the investigation, together with any related evidence; and
 - the Agency's response to any claims or evidence of any reprisal taken against the discloser.
- 7.45 The report must also:
- identify, where relevant, whether there have been one or more instances of disclosable conduct;
 - identify, where relevant, any regulations, rules, administrative requirements or similar matters to which the disclosable conduct (if any) relates;
 - explain the steps taken to gather evidence; and
 - set out a summary of the evidence used to make a finding or recommendation, as well as any findings and recommendations made based on that evidence.
- 7.46 Where the principal officer (or delegate) has completed a report of an investigation under the PID Act, within a reasonable time after preparing the report, the principal officer (or delegate) must give a copy of the report to the discloser (where reasonably practicable), and the Ombudsman.
- 7.47 The investigator may delete from the copy of the report given to the discloser any material:
- that is likely to enable the identification of the discloser or another person, or
 - the inclusion of which would:
 - result in the copy being a document that is exempt for the purposes of Part IV of the *Freedom of Information Act 1982* (Cth); or
 - result in the copy being a document having, or being required to have, a national security or other protective security classification; or
 - result in the copy being a document containing intelligence information; or
 - contravene a designated publication restriction.
- 7.48 The investigator may delete from the copy of the report given to the Ombudsman any material:
- that is likely to enable the identification of the discloser or another person; or
 - the inclusion of which would contravene a designated publication restriction.
- 7.49 If a principal officer or their delegate is relying on section 43 to refer a matter raised during a PID investigation to another agency, the principal officer (or delegate) must ensure that any disclosure occurs in accordance with applicable Secrecy Provisions (see Annexure A).

8. RECORDS MANAGEMENT, MONITORING AND EVALUATION

Records management

- 8.1 Authorised officers and principal officers are to contact OLC when dealing with a PID. A folder will be allocated for the storing of records relating to the PID.
- 8.2 Where an authorised officer is required to keep a record under these procedures, the record is to be in an electronic form and stored in a restricted folder in a document library within the People Services sharepoint site.
- 8.3 Access to these records must be restricted to the authorised officer, delegates of the principal officer and other employees in the Agency who require access in order to perform some function under the PID Act or for the purposes of another law of the Commonwealth (for example under the *Work Health and Safety Act 2011* (Cth) or the *Public Service Act 1999* (Cth)).
- 8.4 Where a form or notification is required to be sent under these procedures, a copy of the form or notification must be kept.
- 8.5 Any email messages sent by authorised officers or delegates that contain identifying information must be clearly marked 'for addressee's eyes only'.
- 8.6 Where a person will cease being an authorised officer in the Agency (including because of resignation or movement to another agency), their PID records must be transferred to another authorised officer in the Agency.
- 8.7 Authorised officers and delegates of the principal officer should, where they are aware of the fact, ensure they maintain records of:
 - any claims made about, and evidence of, reprisal or threatened reprisal; and
 - any actions taken by the Agency to address such claims.
- 8.8 Records must only be disposed of in a manner consistent with the General Records Authority 39 2016/00471400.

Monitoring and Evaluation

- 8.9 Investigators and authorised officers are required to provide regular updates on the progress of their assessments or PID investigations, to OLC.
- 8.10 Authorised officers are required to inform OLC, as soon as reasonably practicable, when they receive a potential PID.
- 8.11 Authorised officers are also required to notify OLC when they make a decision regarding the PID and the outcome of that decision.
- 8.12 The principal officer and section 77 delegated officers are required to inform OLC when they are notified that a PID has been allocated to the Agency.
- 8.13 PID officers (being staff members of a Commonwealth agency) have ongoing mandatory referral obligations to the NACC under sections 35 and 38 of the NACC Act. If information is provided at any stage during the handling of a PID, and that information concerns conduct of a person who was or is a staff member of the Agency and the issue may involve serious or systemic corrupt conduct, the PID officer must refer the matter to the NACC.

Information and assistance to the Ombudsman

- 8.14 The principal officer (or a delegate) must provide a report on disclosures received by the Agency for the purpose of preparing the Ombudsman's six-monthly report and annual report under the PID Act.

8.15 The Office of Legal Counsel will prepare reports on behalf of the Agency on all disclosures made during the financial year. For this purpose:

- Authorised officers must provide a report to OLC specifying the number of public interest disclosures received by the authorised officer and the nature of the disclosable conduct for each disclosure (by reference to the relevant item or paragraph in the definition in section 29 of the PID Act).
- The report must also include any disclosures that have been allocated to the Agency by another agency's authorised officer.
- Delegates within the Agency must advise OLC of all decisions made to not investigate a disclosure or not investigate a disclosure further under section 48 of the PID Act during the financial year.
- Investigators must provide a report to OLC specifying the number of investigations they have completed, or are in the process of conducting. For completed investigations, the report must include whether a finding of disclosable conduct was made and what recommendations were made, if any, in response to such findings.
- Reports, upon request, must also be made to OLC by each delegate of the principal officer who takes action in response to a recommendation made in an investigation report.
- The principal officer or their delegate will give the Ombudsman such information and assistance as the Ombudsman reasonably requires in order to prepare the six-monthly report and the annual report under sections 76 and 76A of the PID Act.

Key Legislation and Policy

The following documents directly relate these procedures and must be reviewed in context to this document:

- Commonwealth Ombudsman's Agency Guide to the PID Act (Cth)
- *Public Interest Disclosure Act 2013* (Cth)
- *Public Interest Disclosure Standard 2013* (Cth)
- *National Anti-Corruption Commission Act 2022* (Cth)
- *Public Governance, Performance and Accountability Act 2013* (Cth)
- *Public Governance, Performance and Accountability Act Rule 2014* (Cth)
- *Commonwealth Fraud Control Framework 2017* (Cth)
- *Australian Government Investigation Standards 2022* (Cth)
- *Public Service Act 1999* (Cth)
- FSANZ [Procedures for determining suspected breaches of the Australian Public Service Code of Conduct](#)
- FSANZ [Procedures for determining suspected breaches of the Food Standards Australia New Zealand Code of Conduct](#)

Annex A – Secrecy Provisions

This table sets out a summary of the key secrecy provisions that may apply to Agency officials when handling PID matters. This is not an exhaustive list of all secrecy provisions and that care needs to be taken to identify any other secrecy provisions that may apply in particular circumstances.

This table does not contain an assessment as to whether or not the relevant obligation is enlivened in any specific circumstances.

ACT	REF.	OBLIGATION	SUMMARY OF EXCEPTIONS
<i>Public Interest Disclosure Act 2013 (Cth)</i>	s 20	A person must not disclose or use identifying information relating to another person's public interest disclosure.	- the disclosure or use of the identifying information is for the purposes of the PID Act; - the disclosure or use of the identifying information is in connection with the performance of a function conferred on the Ombudsman by section 5A of the <i>Ombudsman Act 1976 (Cth)</i>; - the disclosure or use of the identifying information is in connection with the performance of a function conferred on the IGIS by section 8A of the <i>Inspector-General of Intelligence and Security Act 1986 (Cth)</i>; - the disclosure or use of the identifying information is for the purposes of: - a law of the Commonwealth; or - a prescribed law of a State or a Territory;

ACT	REF.	OBLIGATION	SUMMARY OF EXCEPTIONS
			- the person who is likely to be identified by the identifying information has consented to the disclosure or use of the identifying information, or acted in a way that is inconsistent with keeping that person's identity confidential; - the identifying information has previously been lawfully published.
	s 67	A person must not use or disclose information they obtained in their capacity as the recipient of a legal practitioner disclosure (see s 26 of the PID Act for definition of legal practitioner disclosure).	- the disclosure or use of the information is for the purpose of providing legal advice, or professional assistance, relating to a public interest disclosure (other than a legal practitioner disclosure) made, or proposed to be made, by the person who made the legal practitioner disclosure referred to in paragraph (1)(a); or - the information has previously been lawfully published.
	s 75	Not an obligation: This provision restricts the application of Commonwealth law that prohibits the disclosure, recording or use of information to the extent the disclosure, recording or use is: in connection with the conduct of a disclosure investigation,	This section does not apply if: - the provision is enacted after the commencement of this section; and - the provision is expressed to have effect despite this section.

ACT	REF.	OBLIGATION	SUMMARY OF EXCEPTIONS
		- for the purpose of the performance of the functions, or exercise or powers conferred on a person by Part 3 or sections 61 or 65 of the PID Act, - in connection with giving a person access to information for the purposes of, or in connection with, the performance of the functions, or the exercise of the powers, conferred on the person by Part 3 or sections 61 or 65 of the PID Act, AND - the disclosure, recording or use is not contrary to a designated publication restriction.	
	s 80	The PID Act does not affect the law relating to legal professional privilege.	No
<i>Food Standards Australia New Zealand 1991 (Cth)</i>	s 114 (1)	It is the duty of a person who is a member of staff of the Authority, a Board member, a member of a committee or a person engaged as a consultant under s 136 of the <i>FSANZ Act</i> not to disclose any confidential commercial information in respect of food that has been acquired by the person because of being such a member or consultant.	Section 114 (1) does not: - apply to anything done in the performance of duties, or in the exercise of powers or functions, under the <i>FSANZ Act</i>. - preclude the disclosure of confidential information in respect of food to any court in any proceeding. However, the Authority must apply to the court for an order preventing disclosure of that information to any other person

ACT	REF.	OBLIGATION	SUMMARY OF EXCEPTIONS
			otherwise than for the purpose of the proceedings, if it is within the jurisdiction of the court to make such an order;
			• prohibit disclosure of information to a specified person if the Minister certifies, by instrument, that it is necessary in the public interest that the information should be disclosed to that person; or • prohibit disclosure of information to a prescribed authority or person if the Minister certifies, by instrument, that it is necessary in the public interest that the information should be disclosed to that prescribed authority or person; or • prohibit disclosure of information to a person or body who, in the opinion of the CEO, is expressly or impliedly authorised to obtain that information by the applicant for the developmental or variation of a food regulatory measure, in respect of the food concerned.
			However, the CEO must not disclose any confidential commercial information under any of the above exceptions unless the CEO: (a) has advised the person, in writing of

ACT	REF.	OBLIGATION	SUMMARY OF EXCEPTIONS
			the intention to disclose the information and the reasons for disclosing that information; and (b) has given the person a reasonable opportunity to communicate their view about the proposed disclosure; and (c) has taken into account any views so communicated. Additionally, the CEO may (for the purpose of enabling an authority or body to perform any arrangements made with the Authority in accordance with section 137) permit CCI in respect of food to be disclosed to either an Agency Head or Chief Officer of a Commonwealth authority; the Secretary of the Department of a Public Service of a State or Territory or the Chief Officer of a State or Territory authority; the chief executive of a Department of State of New Zealand or the Chief Officer of a New Zealand authority; or the Chief Officer of any other authority or body.

Attachment C - Comments received during consultation

Comments received on the draft PID procedures are set out below.

No change to the PID procedures is recommended as result of the comments received.

Publication of PID procedures and authorised officers

Submitter A raised an administrative issue – a request that the FSANZ authorised officers be listed on the Agency's PID internet page, rather than on both the internet and the intranet.

The commenter suggests that a link to the list on the internet page be placed on intranet – ie, the Integrity share point page.

This is an implementation issue. OLC recommends you agree to this suggestion.

Submitter B raised two issues

Protecting the identity of those who inquire about making a disclosure (but may not), and provision of support to the latter

The comment was

"At 2.16 - Is it possible to add something like the below to reassure people that their identity will be protected at this point as well? I note that 3.7 only says from the time a disclosure is made which doesn't really give a sense of support during the initial phases of determining how to disclose which people might be looking for.

The Agency's authorised officers and OLC will take all reasonable steps to protect the identity of a public official who has sort assistance with making an internal disclosure.

OLC response

The PID Act and PID Standard already address this issue. For example:

- Section 59 of the PID Act require the CEO as principal officer (and any delegate) to support for those considering making a disclosure. For example,

To take reasonable steps to encourage and support public officials who make, or are considering making, public interest disclosures relating to the agency (subsection 59(2))

To take reasonable steps to protect public officials who belong to the agency against actual or potential reprisals taken in relation to public interest disclosures including those are *proposed* to be made or that *could* be made.
- Section 19 of the PID Act makes it a criminal offence for a person to take reprisal action (as defined) against another person on the basis that the first person believes or suspects the second person may have make, *proposes to make* or could have made a public interest disclosure.
- Section 20 of the PID Act makes it a criminal offence for a person to disclose or use information that is likely to enable the identification of another person as one who has

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made a PID (ie, in the event that the inquiry about how to make a PID results in one).

These obligations apply or arise when a FSANZ staff member inquires about making a public interest disclosure (eg, how, to whom, subject matter etc).

Obligations imposed by other laws may also apply. For example, the obligations imposed by the Criminal Code on Commonwealth officials relating to the use or disclosure of information provided to them in the course of their duties. The APS Code of Conduct would also be applicable in terms of dealing with and disclosing information.

Advising a discloser who else in the agency knows of the discloser's PID and the discloser's identity

The comment was:

Not too sure where this might fit: Letting the person who made the disclosure know who in their Agency has knowledge of the PID and their identity might be helpful for some to manage associated stress of making a PID, but maybe not for others. I am not sure if there could be an option, if requested, for the person who made the disclosure to be informed of those in the Agency who are to need to be made aware of their identity and the PID?"

OLC response

This is best addressed on a case by case basis in accordance with the support and protection obligations outlined above – as opposed to dealing with it in the PID procedures. The less prescription and more flexibility the better

The following should be noted:

- Providing this information to potential disclosers is not a requirement under the PID Act or the PID Standard, and it is not suggested in any guidance provided by the Ombudsman.
- While there is an obligation to support and protect a discloser, there is also a requirement to consider whether and why a discloser should know or needs to know in each case the details of each person in the agency who knows or could know about their PID
- The privacy of 'those who know' and are working on the investigation and response need to be considered.
- The efficient and effective management of the PID response also needs to be considered. Potential scenarios include a discloser approaching and seeking to discuss or debate their PID with 'those who know' other than their supervisor, support person, CEO/Authorised Officer/internal investigator; or the discloser interfering with or seeking to influence the PID response and/or asserting that 'person X has/had no right to know' and alleging a section 20 offence has occurred.

Recommended response to Submitter B

It is recommended that a response be provided to Submitter B to: thank them for their contribution; and to explain that the PID Act imposes obligations to protect and support persons who come forward to inquire about making a PID and that, as such, there is no need for the PID procedures to cover the same ground.

It is recommended that the CEO provide this response

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