

Public Interest Disclosure

An AITSL employee policy and procedure

Introduction

AITSL is committed to the highest standards of ethical and accountable conduct. In keeping with this commitment, AITSL encourages people who have a genuine concern relating to suspected wrongdoing within AITSL to report their concerns.

AITSL will ensure that those who disclose their concerns, or who are considering disclosing their concerns, are supported and protected from any adverse consequence relating to the disclosure.

This policy and procedure, and supporting documentation, reflect the process specified in the *Public Interest Disclosure Act 2013* (the 'PID Act') for the making and receiving of internal public interest disclosures under the PID Act.

What is a Public Interest Disclosure

The PID Act came into force on 15 January 2014 for the purpose of providing certain protections to whistle blowers disclosing wrongdoing within or related to the public sector ("Disclosable Conduct") provided they adhere to a particular set of procedures.

"Disclosable Conduct" under the PID Act includes illegal conduct, corruption, maladministration, wastage of public money, unreasonable danger to health or safety, danger to the environment or abuse of position or conduct which may constitute grounds for disciplinary action. For full details of what constitutes Disclosable Conduct see under the "Definitions" section on page 16 of this Policy and Procedure

Provided the whistle blower makes the disclosure in accordance with the procedures outlined under the PID Act, the person making the disclosures:

- a. Is protected from detrimental treatment or reprisal action by the organisation or person about whom the Disclosable Conduct is made; and
- b. Is granted immunities from criminal and administrative liability which might otherwise apply in relation to the disclosure of the Disclosable Conduct.

Protection from reprisals by the organisation or individual(s) about whom the disclosures are made is central to the PID scheme

Policy statement

This policy outlines how the PID Act will operate at AITSL, establishing clear and effective internal procedures for facilitating and responding to public interest disclosures.

AITSL recognises that it is important to have an effective system for reporting and investigating disclosable conduct. and for protecting disclosers from detrimental treatment or reprisal action.

Scope

This policy covers:

- AITSL employees and former employees
- All contracted service providers and their current and former employees who provide, or who have provided, services to AITSL under a contract with AITSL

These are collectively referred to as 'public officials' in the PID Act.

All public officials and former public officials are entitled to make a disclosure under the PID Act.

In the event of any inconsistency between this policy and procedure and the PID Act or the PID Standard, the PID Act and the PID Standard will apply to the extent of any such inconsistency

At a glance

- Employees can report disclosable conduct to their manager, an authorised PID officer or in some circumstances the Commonwealth Ombudsman
- Even though you may not know you have made reported disclosable conduct and met the requirements of the PID, you will still be provided with the protections of the PID Act
- Once a PID has been made AITSL is required to deal with that disclosure under the PID Act.(i.e. it cannot be withdrawn)
- PIDs can be made anonymously
- The processes for dealing with PID disclosures are to be strictly adhered to by all parties.
- PIDs will be investigated in as confidential a manner as possible
- A person who knowingly makes a false or misleading disclosure will not have any protections under the PID Act.
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Procedure

Application of procedure

These procedures apply to internal disclosures that relate to AITSL and are made by a current or former public official. An internal disclosure may be made to:

- the Manager of the discloser,
- an Authorised Officer of AITSL or
- the Commonwealth Ombudsman.

A disclosure must be made to one of these parties to gain the protections available under the PID Act.

Wrongdoing which amounts to disclosable conduct under the PID Act can include conduct engaged in by AITSL, an employee or officer of AITSL or a contractor to AITSL. It does not matter whether the person who engaged in the disclosed misconduct has ceased to be a employed or engaged by AITSL 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.

These procedures will apply regardless of whether the disclosable conduct occurred before or after 15 January 2014.

Making a disclosure under the PID Act

Where a public official is considering making a disclosure they should in the first instance contact one of AITSL's Authorised Officers to obtain information about the process of making a public interest disclosure under the PID Act.

The names and contact details of AITSL's Authorised Officers are available on the AITSL external website at <https://www.aitsl.edu.au/about-aitsl/public-interest-disclosures-about-aitsl>.

Authorised Officers in AITSL have been trained in receiving public interest disclosures and they can provide information about how to make a public interest disclosure and about the protections given to disclosers under the PID Act

AITSL employees may make a disclosure of disclosable conduct to their Manager, or to an Authorised Officer, or, in certain circumstances, to the Ombudsman. Former employees or officers of contracted service providers may make a disclosure of disclosable conduct to an Authorised Officer or, in certain circumstances, to the Ombudsman.

The Ombudsman may receive a disclosure in circumstances where the discloser has reasonable grounds for believing that it is not appropriate to make the disclosure directly to AITSL (for example where the disclosure believes that there are conflicts of interest, confidentiality or reprisal issues that cannot be reasonably managed by AITSL in relation to the disclosure).

Form and content of a disclosure

An internal disclosure may be made anonymously, verbally and/or in writing and may be made without a clear intention of making a public interest disclosure. If a disclosure is made verbally, it is recommended that the person receiving the report makes a record of the disclosure.

The information contained in a disclosure should be clear and factual, and should, as far as possible, avoid speculation, innuendo, supposition, rumor, 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.

In making a disclosure, the discloser should consider providing the following information to assist the Authorised Officer and/or Principal Officer to decide on how the disclosure should be handled:

- their name and contact details
- the nature of the suspected wrongdoing
- when and where the suspected wrongdoing occurred
- relevant events surrounding the issue
- if they did anything in response to the suspected wrongdoing
- whether others know about the suspected wrongdoing and have allowed it to continue
- whether they believe their information is a public interest disclosure under the PID Act
- if they are concerned about possible reprisal as a result of making a disclosure.

Process

A potential discloser should not investigate a matter themselves before making a disclosure. Those considering making a disclosure should be aware that making a disclosure does not entitle them to protection from the consequences of their own wrongdoing and a discloser is liable for knowingly making false or misleading statements.

Once a public interest disclosure has been made, AITSL is required to deal with that disclosure..

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. Discussions with these people will not be protected by the PID Act.

A person who knowingly makes a false or misleading disclosure will not have any protections under the PID Act.

A Manager or Authorised Officer who receives a disclosure of disclosable conduct from a public official must deal with the disclosure in accordance with the PID Act and in accordance with the *Public Interest Disclosure Standard 2013* and these procedures.

Procedures for Managers

Where a public official in AITSL discloses to their Manager information of actual or potential wrongdoing relating to AITSL, that Manager must, as soon as practicable, give the information to an Authorised Officer in AITSL. This is the case whether or not that Manager has reasonable grounds to believe that the information concerns, or could concern, disclosable conduct.

It is the responsibility of the AITSL Authorised officer to determine whether the information concerns disclosable conduct pursuant to the PID Act,

Where such a disclosure is made to a Manager that person must make a written record of the fact 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.

The person to whom the disclosure has been made must ask the discloser to sign the record of the disclosure, where this is practicable.

At the time a Manager gives information to an 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.

Where a Manager has given information to an Authorised Officer and where the Manager is able to contact the discloser, they must inform the discloser that they have given the information to an Authorised Officer in AITSL and advise the discloser of the name and contact details of that Authorised Officer.

The relevant Manager *may only disclose and/or use the identity of the discloser* (including information which would enable the identification of the discloser) for the purposes of the PID Act and must not disclose to anyone other than the Authorised Officer the disclosure or the identity of the person making the disclosure. Breach of this requirement constitutes an offence under the PID Act.

Procedures for Authorised Officers

An Authorised Officer must advise disclosers and potential disclosers about the PID Act where:

- a. 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
- b. the Authorised Officer has reasonable grounds to believe that the person may be unaware of what the PID Act requires for the disclosure to be an internal disclosure, and
- c. the Authorised Officer is aware of the contact details of the person,

the Authorised Officer must:

- a. inform the person that the disclosure could be treated as an internal disclosure for the PID Act
- b. explain to the person what the PID Act requires for a disclosure to be an internal disclosure
- c. explain to the person the protections provided by the PID Act to persons who make disclosures under the Act, and
- d. advise the person of any orders or directions that may affect disclosure of the information.

Authorised Officer must decide whether or not to allocate a disclosure

Where a public official, or a person who has been a public official, makes a disclosure of disclosable conduct directly to an Authorised Officer, the Authorised Officer must

- make a written record of the fact of the disclosure,
- 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 and ask the discloser to sign the written record of the disclosure, where this is practicable.
- use their best endeavors to decide on the allocation of the disclosure within 14 days after the disclosure is given to or made to the Authorised Officer.

Before making any allocation to handle the disclosure, the Authorised Officer who receives a disclosure must decide whether they are satisfied, on reasonable grounds, that the disclosure could be considered to be an internal disclosure.

A disclosure may not be considered an internal disclosure in circumstances where the Authorised Officer is satisfied that:

- that the disclosure has not been made by a person who is, or was, a public official;
- that the disclosure was not made to an authorised internal recipient or supervisor;
- that the disclosure is not about disclosable conduct;
- that the person who is alleged to have carried out the disclosable conduct was not a public official at the time they are alleged to have carried out that conduct; and
- that the disclosure is not otherwise a public interest disclosure within the meaning of the PID Act.

Where an Authorised Officer receives a disclosure, 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 whether the disclosure is an internal disclosure or not.

Where an Authorised Officer decides that a disclosure that has been made to them is not to be allocated, they must, where the discloser's contact details are known to the Authorised Officer, advise the discloser in writing that the disclosure is not to be allocated, by sending to them a completed Form 1.

Where the Authorised Officer is aware of the contact details of the discloser, they must, as soon as practicable after receiving the disclosure and before allocating the disclosure, ask the discloser whether the discloser:

- a. consents to the Authorised Officer giving the discloser's name and contact details to the principal officer and to the principal officer's delegates, and
- b. wishes the disclosure to be investigated.

The Authorised Officer must make a written record of the discloser's responses (if any).

Where a discloser does not respond within 7 days to the question referred to:

- a. the discloser is taken not to have consented to the disclosure of their name and contact details to the principal officer and their delegates, and
- b. the discloser is taken to wish the disclosure to be investigated.

Where Authorised Officer allocates an internal disclosure

Where an Authorised Officer determines to allocate the handling of a disclosure, that Authorised Officer must do so in accordance with the PID Standard 2013.

- The disclosure can be allocated for handling to AITSL or, in certain circumstances, to another agency. The PID Standard requires the Authorised Officer to obtain the consent of an Authorised Officer in another agency before the first Authorised Officer can allocate an internal disclosure to that agency.
- The Authorised Officer must notify the AITSL CEO (the Principal Officer) of the allocation of the disclosure.
- The Authorised Officer must keep a written record of any decision to allocate the handling of the disclosure (including the details of the name of the agency allocated to

handle the disclosure), the reasons for their decision and where the agency is an external agency (i.e. where the disclosure has been allocated to an agency other than AITSL, the consent of that agency (PID Standard 6)

- Where an Authorised Officer in AITSL allocates a disclosure to an agency (including to AITSL) they must complete Form 2 and send it to the AITSL CEO or to the delegate nominated by the AITSL CEO (referred to as the “Principal Officer” in the PID Act). Form 2 must comply with PID Standard 44 “Giving notice of the allocation of decision” as outlined below:
 - The Authorised Officer must inform the Principal Officer of each agency to which the handling of the disclosure is allocated of:
 - The allocation to the agency, and
 - The information that was disclosed, and
 - The suspected disclosable conduct (if any) and
 - If the discloser’s name and contact details are known to the authorised officer and the discloser consents to the principal officer being informed – the discloser’s name and contact details
- The Authorised Officer must copy the completed Form 2 to the relevant contact officer in the Ombudsman’s Office.
- Where the Authorised Officer is aware of the contact details of the discloser the Authorised Officer must inform the discloser of the allocation using completed Form 3. Form 3 must also comply with PID Standard 44 as outlined below:
 - The authorised Officer must inform the discloser of the allocation
 - If, because of subsection 43(2), the authorised officer does not allocate the disclosure, the authorised officer must inform the discloser of the reasons why the disclosure has not been allocated to an agency and any other courses of action that might be available to the discloser under other laws of the Commonwealth (this does not apply if contact the discloser is not reasonably practicable).

Where an Authorised Officer in AITSL allocates a disclosure, they must also conduct a risk assessment 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.

In carrying out this risk assessment, the Authorised Officer must:

- (a) act promptly and confidentially to conduct the reprisal risk assessment;
- (b) inform themselves of the risk of reprisal or workplace conflict by making appropriate inquiries including by talking to the discloser;
- (c) broaden their assessment to look at others who may be at risk, including supervisors and colleagues;
- (d) communicate with the discloser to monitor their wellbeing;
- (e) mitigate harm and nominate a support person if appropriate;
- (f) reassess the risk throughout the PID process and apply further support and mitigations as necessary (e.g. when key witnesses are interviewed);
- (g) take proactive action to prevent or address reprisal or workplace conflict; and
- (h) adhere to the PID Act confidentiality and secrecy requirements.

The Ombudsman provide information on how to carry out a risk assessment

- “Agency Guide to the Public Interest Disclosure Act 2013”
(http://www.ombudsman.gov.au/data/assets/pdf_file/0020/37415/Agency_Guide_to_the_PID_Act_Version_2.pdf)
- “The Role of authorised officers”
(http://www.ombudsman.gov.au/data/assets/pdf_file/0014/28013/role_of_authorised_officers.pdf); and
- “Managing the Risk of Reprisal”
(http://www.ombudsman.gov.au/data/assets/pdf_file/0024/36825/PID-Guide-to-managing-reprisal-risk.pdf).

In certain circumstances, it is also possible that a disclosure made under the PID Act to another agency (for example the Ombudsman) can be allocated to AITSL from that other agency.

If the Authorised Officer dealing with the matter within AITSL reasonably believes the allocated disclosure relates to AITSL, that Authorised Officer will accept the allocation and deal with the disclosure in accordance with these procedures.

Anonymous Disclosures

Public interest disclosures may be made anonymously.

A disclosure is anonymous if the identity of the discloser is not revealed and if no contact details for the discloser are provided. It is also anonymous if the discloser does not disclose their name but does provide anonymous contact details.

Where a Manager receives an anonymous disclosure, they must refer it to an Authorised Officer as soon as is reasonably practicable.

The Ombudsman has noted that unless the evidence suggests otherwise, Authorised Officers can assume that an anonymous discloser is a public official, however, Authorised Officers should consult with AITSL’s legal area in relation to the status of the discloser.

Deciding whether or not to investigate and CEO responsibilities

The PID Act imposes a number of obligations on AITSL’s CEO (the Principal Officer under the PID Act) in relation to disclosures.

The Principal Officer’s obligations include ensuring that disclosures are properly investigated either in person or through an appointed investigator and to minimise the risk of any detrimental or reprisal action being taken against a discloser.

Where an Authorised Officer allocates an internal disclosure to the CEO or nominated delegate and the CEO or delegate has been given the contact details of the discloser, the CEO or delegate must, within 14 days after the disclosure was allocated to AITSL, inform the discloser in writing using Form 3A that the CEO or delegate may decide:

- a. not to investigate the disclosure, or
- b. not to investigate the disclosure further

and the CEO or delegate must inform the discloser of the grounds on which that decision may be taken.

The CEO or delegate must, as soon as practicable after receiving an allocation of a disclosure from an Authorised Officer (whether from within or without AITSL) consider whether to exercise the discretion under section 48 of the PID Act not to investigate the disclosure under the PID Act.

Reasons not to investigate

The CEO or delegate must, as soon as practicable after receiving an allocation of a disclosure from an Authorised Officer (whether from within or without AITSL) consider whether to exercise the discretion under section 48 of the PID Act not to investigate the disclosure under the PID Act.

In broad terms, the CEO or delegate may decide not to investigate (or may decide to discontinue an investigation already begun) if:

- a. 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
- b. the information does not to any extent concern serious disclosable conduct, or
- c. the disclosure is frivolous or vexatious, or
- d. the disclosure is substantially the same as a disclosure that has been investigated under the PID Act, or
- e. the disclosure is substantially the same as a disclosure that has already been investigated, or is currently being investigated, under another law of the Commonwealth, and
 - it would be inappropriate to conduct another investigation at the same time, or
 - the principal officer is reasonably satisfied that there are no matters that warrant further investigation, or
- f. the discloser has informed the principal officer that they do not wish the disclosure to be pursued and the principal officer is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation, or
- g. it is impracticable to investigate the disclosure because:
 - the discloser has not revealed their name and contact details, or
 - the discloser has refused or has failed or is unable to give the investigator the information they requested, or
 - of the age of the information.

Guidance on factors that might go towards the exercise of the power in section 48 is provided in the Ombudsman's '[Agency Guide to the Public Interest Disclosure Act 2013](http://www.ombudsman.gov.au/data/assets/pdf_file/0020/37415/Agency_Guide_to_the_PID_Act_Version_2.pdf)'. (http://www.ombudsman.gov.au/data/assets/pdf_file/0020/37415/Agency_Guide_to_the_PID_Act_Version_2.pdf).

Decision not to investigate

Where the CEO or delegate decides under section 48 of the PID Act not to investigate a disclosure under Division 2 of Part 3 of the PID Act, the CEO or delegate must, as soon as reasonably practicable, inform the Ombudsman of that decision, and of the reasons for that decision, by completing Form 6 and sending it to the relevant contact in the Ombudsman's Office.

Where the CEO or delegate decides under section 48 of the PID Act not to investigate a disclosure, and where they have been given the name and contact details of the discloser, the CEO or delegate must, as soon as reasonably practicable, inform the discloser of that decision, of the reasons for that decision and of other courses of action that may be available

to the discloser under other laws of the Commonwealth, by completing Form 4 and sending it to the discloser.

Decision to investigate

Where the CEO or delegate has considered exercising the discretion under section 48 of the PID Act and has decided that they are required to investigate the disclosure, and where the CEO or delegate has been given the name and contact details of the discloser, the CEO or delegate must inform the discloser that they are required to investigate the disclosure, and inform the discloser of the estimated length of the investigation by completing Form 5 and sending it to the discloser.

If the CEO or delegate decides to investigate the disclosure and starts to investigate the disclosure but then decides not to investigate the disclosure further under section 48, the CEO or delegate must inform:

- a. the discloser of that decision, or the reasons for the decision and of other courses of action that might be available to the discloser under other laws of the Commonwealth by completing Form 4A and sending it to the discloser and
- b. the Ombudsman of that decision and the reasons by completing Form 6A and sending it to the relevant contact in the Ombudsman's office.

Procedures for investigators

Where the CEO or delegate has decided to commence an investigation into an internal disclosure, they may conduct the investigation as they think fit.

The CEO or delegate must be independent and unbiased in the matter. They must ensure that they do not have an actual or perceived conflict of interest.

The CEO or delegate may, for the purposes of the investigation, obtain information from such persons, and make such inquiries, as they think fit.

When conducting an investigation the CEO or delegate must ensure that a decision whether evidence is sufficient to prove a fact is made on the balance of probabilities.

The CEO or delegate, in conducting an investigation under these procedures, must comply with:

- a. the *Public Interest Disclosure Standard 2013*, and
- b. to the extent they are relevant to the investigation the Commonwealth Fraud Control Guidelines, and these procedures.

Interviewing witnesses

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 an internal disclosure, that person is informed of:

- a. the identity and function of each person conducting the interview, and
- b. the process of conducting an investigation, and
- c. the authority of the investigator under the PID Act to conduct an investigation, and
- d. the protections provided to the person by section 57 of the PID Act (subject to the qualifications detailed at sections 57(2)-(4) inclusive), and
- e. the person's duty:

- 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 incriminating themselves 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.

Notwithstanding any protections described in section 57 of the PID Act, where the interview relates to a witness' own conduct, they remain liable for that conduct.

Where the investigator conducts an interview as part of an investigation, at the end of the interview, the interviewee must be given an opportunity to make a final statement or comment or express a position. The investigator must include any final statement, comment or position in the record of the interview.

Where the investigator is aware of the discloser's identity and considers that it is necessary to reveal the discloser's identity to a witness, the investigator must consult with the discloser, where practicable, before proceeding.

Procedural fairness

Procedural fairness does not require that a person against whom allegations are made must be advised as soon as the disclosure is received or as soon as an investigation is commenced.

Procedural fairness may require that the discloser's identity be revealed to the person who is the subject of the disclosure.

Where the investigator in preparing the report of their investigation proposes to:

- a. make a finding of fact, or
- b. express an opinion that is adverse to the discloser, to a public official who is the subject of the disclosure or to another person

the investigator or delegate must give the person who is the subject of that proposed finding or opinion a copy of the evidence that is relevant to that proposed finding or opinion and must give the person a reasonable opportunity to comment on it.

Note: this does not apply where the investigation does not make substantive findings or express adverse opinions but instead simply recommends or decides that further investigation action should or should not be taken or will or will not be taken.

The investigator must ensure that a finding of fact in a report of an investigation under the PID Act is based on logically-probative evidence.

The investigator must ensure that the evidence that is relied on in an investigation is relevant. In broad terms, evidence is relevant to an investigation if it is of consequence to the matter under investigation and makes the existence of a fact more probable or less probable than it would be without the evidence.

Time limits

The investigator has 90 days from the date the disclosure was allocated in which to complete the investigation.

It is possible to seek one or more extensions of time from the Ombudsman.

A request to the Ombudsman for an extension of time must be made where an investigation has not been completed within 70 days of the date the disclosure was allocated.

The Ombudsman has indicated that an application for extension should include reasons why the investigation cannot be completed within the time limit, the views of the discloser and an outline of action taken to progress the investigation.

An investigation that is not completed within time does not become invalid.

Reports of investigations

In preparing a report of an investigation under the PID Act the investigator must comply with the PID Act, the *Public Interest Disclosure Standard 2013* and these procedures.

A report of an investigation under the PID Act must set out:

- a. the matters considered in the course of the investigation, and
- b. the duration of the investigation, and
- c. the investigator's findings (if any), and
- d. the action (if any) that has been, is being or is recommended to be taken, and
- e. any claims made about, and any evidence of, detrimental action taken against the discloser, and AITSL's response to those claims and that evidence

and, where relevant, a report must:

- a. identify whether there have been one or more instances of disclosable conduct, and
- b. identify any regulations, rules, administrative requirements or similar matters to which the disclosable conduct (if any) relates, and
- c. explain the steps taken to gather evidence, and
- d. set out a summary of the evidence, and
- e. set out any recommendations made based on that evidence.

Where an investigator has completed a report of an investigation under the PID Act, and where they have been given the discloser's contact details, the investigator must, as soon as practicable, advise the discloser in writing by completing Form 7:

- a. that the report has been completed, and
- b. whether the report was completed within the time limit provided for by the PID Act.

The investigator must, within a reasonable time of preparing a report of an investigation under the PID Act, give a copy of the report to the discloser. However, the investigator may delete from the copy of the report given to the discloser any material:

- a. that is likely to enable the identification of the discloser or another person, or
- b. 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*, or
 - having, or being required to have, a national security or other protective security classification, or
 - containing intelligence information.

Despite the above, the investigator must delete from the copy of a report given to the discloser any material which would result in the report contravening a designated publication restriction.

Confidentiality

The investigation of the disclosure is to 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 the disclosable conduct is not to be revealed except where this is reasonably necessary for the effective investigation of the disclosure (including because of the need to afford procedural fairness).

Any interviews conducted by an Authorised Officer or delegates (including investigators) are to be conducted in private.

Any interviews with the discloser are to be arranged so as to avoid the identification of the discloser by other staff of the agency.

Record keeping

Where an Authorised Officer is required to keep a record under these procedures, the record may be kept in hard copy or in an electronic form or in both. Access to these records must be restricted to the Authorised Officers, delegates (including investigators) or other employees in AITSL 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*).

Where a form is required to be sent under these procedures, a copy of the form must be kept.

All records made for the purposes of the PID Act in accordance with these procedures must be marked as 'in-confidence' and hard copies stored in the appropriate storage container.

Any email messages sent by Authorised Officers or delegates that contain identifying information must be clearly marked 'to be read by named addressee only'.

Where a person will cease being an Authorised Officer in AITSL (including because of resignation or movement to another agency), their PID records must be transferred to another Authorised Officer in AITSL.

Monitoring and Evaluation

Each Authorised Officer must provide a monthly report to the CEO 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). The report must also include any disclosures that have been allocated to the agency by another agency's Authorised Officer.

The CEO will appoint a delegate to collate the agency's report to the Ombudsman on disclosures made during the financial year (the monitoring delegate).

Each investigator must advise the monitoring delegate of every decision made by the investigator to investigate a disclosure during the financial year.

Each delegate of the CEO who takes action in response to a recommendation made in an investigation report must make a report of this action to the monitoring delegate.

The monitoring delegate must prepare the Agency's report for the CEO's consideration within the time specified by the CEO.

The CEO will send the Agency's report to the Ombudsman within the time requested by the Ombudsman or as otherwise agreed with the Ombudsman.

Legislative context

[Public Interest Disclosure Act 2013](#)

[Public Interest Disclosure Standard 2013](#)

Definitions

<p>Authorised Officer</p>	<p>Authorised Officers of AITSL are the Chair of the Audit and Risk Committee (Board Director); and Company Secretary. Other persons may be appointed as an Authorised Officer at any time by written notice from the Principal Officer.</p> <p>The Authorised Officer has a range of decision-making, notification and other responsibilities under the PID Act as outlined at Appendix A.</p>
<p>Disclosable Conduct</p>	<p>(1) Disclosable conduct is conduct:</p> <ul style="list-style-type: none"> (a) engaged in by an agency; or (b) engaged in by a public official, in connection with his or her position as a public official; or (c) engaged in by a contracted service provider for a Commonwealth contract, in connection with entering into, or giving effect to, that contract: <p>which is:</p> <p>1 Conduct that contravenes a law of the Commonwealth, a State or a Territory.</p> <p>2 Conduct, in a foreign country, that contravenes a law that:</p> <ul style="list-style-type: none"> (a) is in force in the foreign country; and (b) is applicable to the agency, public official or contracted service provider; and (c) corresponds to a law in force in the Australian Capital Territory. <p>3 Conduct that:</p> <ul style="list-style-type: none"> (a) perverts, or is engaged in for the purpose of perverting, or attempting to pervert, the course of justice; or (b) involves, or is engaged in for the purpose of, corruption of any other kind. <p>4 Conduct that constitutes maladministration, including conduct that:</p> <ul style="list-style-type: none"> (a) is based, in whole or in part, on improper motives; or (b) is unreasonable, unjust or oppressive; or (c) is negligent. <p>5 Conduct that is an abuse of public trust.</p> <p>6 Conduct that is:</p> <ul style="list-style-type: none"> (a) fabrication, falsification, plagiarism, or deception, in relation to: <ul style="list-style-type: none"> (i) proposing scientific research; or (ii) carrying out scientific research; or (iii) reporting the results of scientific research; or (b) misconduct relating to scientific analysis, scientific evaluation or the giving of scientific advice.

	<p>7 Conduct that results in the wastage of:</p> <p>(a) relevant money (within the meaning of the Public Governance, Performance and Accountability Act 2013); or</p> <p>(b) relevant property (within the meaning of that Act); or</p> <p>(c) money of a prescribed authority; or</p> <p>(d) property of a prescribed authority.</p> <p>8 Conduct that:</p> <p>(a) unreasonably results in a danger to the health or safety of one or more persons; or</p> <p>(b) unreasonably results in, or increases, a risk of danger to the health or safety of one or more persons.</p> <p>9 Conduct that:</p> <p>(a) results in a danger to the environment; or</p> <p>(b) results in, or increases, a risk of danger to the environment.</p> <p>10 Conduct of a kind prescribed by the PID rules.</p> <p>(2) Without limiting subsection (1), the following are also disclosable conduct:</p> <p>(a) conduct engaged in by a public official that involves, or is engaged in for the purpose of, the public official abusing his or her position as a public official;</p> <p>(b) conduct engaged in by a public official that could, if proved, give reasonable grounds for disciplinary action against the public official.</p> <p>(3) For the purposes of this section, it is immaterial:</p> <p>(a) whether conduct occurred before or after the commencement of this section; or</p> <p>(b) if an agency has engaged in conduct—whether the agency has ceased to exist after the conduct occurred; or</p> <p>(c) if a public official has engaged in conduct—whether the public official has ceased to be a public official after the conduct occurred; or</p> <p>(d) if a contracted service provider has engaged in conduct—whether the contracted service provider has ceased to be a contracted service provider after the conduct occurred.</p>
External disclosure	<p>A public interest disclosure made to any person, other than a foreign public official, if:</p> <ul style="list-style-type: none"> • an investigation was conducted under internal disclosure procedures and the public official reasonably believes the investigation or the agency response was inadequate, or the investigation was not completed within the required time (i.e. 90 days unless an extension is approved by the Ombudsman); and • the disclosure is not contrary to the public interest; and

	<ul style="list-style-type: none"> no more information is disclosed than is reasonably necessary.
Internal disclosure	<p>An internal disclosure is made when:</p> <ul style="list-style-type: none"> a person who is or has been a public official discloses to their manager, or an authorised officer of an agency (including the Commonwealth Ombudsman) information which tends to show, or the discloser believes on reasonable grounds tends to show, one or more instances of disclosable conduct.
Public Official	<p>Includes public servants (ongoing, non-ongoing and casual) and parliamentary service employees, service providers under a Commonwealth contract, statutory office holders, staff of Commonwealth companies and temporary employees engaged through a recruitment agency. A public official also includes any other person deemed by the authorised officer to be a public official for the purposes of the PID Act.</p>
Principal Officer	<p>Means the Chief Executive Officer of AITSL</p>

Related documents

FAQs for AITSL Employees

PID Act Flowchart – Disclosure to AITSL

Form 1 – Notice to discloser – Decision not to allocate

Form 2 – Notice of allocation of disclosure

Form 3 – Notice to discloser of allocation

Form 3A – Notice to discloser – Investigation powers

Form 4 – Notice to discloser – Decision not to investigate

Form 4A – Notice to discloser – Decision to cease investigation

Form 5 – Notice to discloser – Investigation of your disclosure

Form 6 – Notice to Ombudsman – Decision not to investigate

Form 6A – Notice to Ombudsman – Decision to cease investigation

Form 7 – Notice to discloser of completion of investigation

Version	Author	Date	Comment
Version 1	Company CEO	17 October 2014	New
Version 2	Company CEO	4 May 2017	Revised
Version 3	Company Secretary	18 January 2018	Updated AITSL website reference

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Appendix A – Roles and Responsibilities

Manager

A public official may make a disclosure to their Manager. A Manager includes any public official who manages the discloser. Managers have a key role in ensuring that the workplace culture supports the making of public interest disclosures. They can help to do so by:

- being knowledgeable about the PID Act and AITSL procedures, particularly in relation to confidentiality requirements
- being approachable to employees who wish to raise concerns
- holding awareness sessions or discussion forums for their employees
- ensuring employees undergo available training
- confronting any workplace prejudices about making a disclosure
- supporting an employee who they know has made a public interest disclosure and ensuring as far as reasonably practicable, they are protected from reprisal
- increasing management supervision of the workplace if necessary (e.g. if workplace conflict occurs because a disclosure has been made or an investigation is underway)
- ensuring identified problems in the workplace are corrected
- setting an example for employees.

Authorised Officer

Authorised officers have a range of decision-making, notification and other responsibilities under the PID Act, including:

- receiving disclosures from current or former public officials about disclosable conduct
- deeming a person to be a public official to facilitate the making of a public interest disclosure
- informing a person who may be unaware of the PID Act requirements that information that the authorised officer reasonably believes could concern disclosable conduct could be treated as an internal disclosure, explaining the requirements of the PID Act and advising the person of any designated publication restrictions (as defined in s. 8 of the PID Act) that may affect disclosure.
- assessing reported information to determine if there are no reasonable grounds to believe the information could be considered to be a public interest disclosure
- making any preliminary inquiries necessary to make an allocation decision
- allocating all or part of the disclosure to the Commission and/or another agency (with that agency's consent)
- informing the discloser and other relevant parties (e.g. Ombudsman and principal officer) of the allocation decision
- consenting to the allocation of a disclosure by an authorised officer of another agency

Public Official

The PID Act requires all public officials to use their best endeavours to assist the principal officer in the conduct of an investigation. They must also use their best endeavours to assist the Ombudsman or IGIS in their functions under the PID Act.

Beyond those specific responsibilities, all employees share the responsibility of ensuring the PID Act works effectively. Their role includes:

- reporting matters where there is evidence that shows or tends to show disclosable conduct
- identifying areas where there may be opportunities for wrongdoing to occur because of inadequate systems or procedures, and proactively raising those with management
- supporting employees who they know have made public interest disclosures

- keeping confidential the identity of a discloser and anyone against whom an allegation has been made, if they become aware of those matters
- not discussing the details of the disclosure with anyone who does not need to know as a part of the investigative procedure.

Principal Officer

Principal Officers have specific responsibilities under the PID Act, including:

- taking reasonable steps to protect public officials who belong to the agency from detriment or threats of detriment
- ensuring there are sufficient authorised officers to be readily accessible to public officials who belong to the agency and that public officials are aware of their identity
- notifying the discloser and the Ombudsman or IGIS as appropriate at various stages in handling a disclosure
- ensuring disclosures are properly investigated
- preparing an investigation report (or ensuring a report is prepared) and taking appropriate action in response to the report
- providing information and assistance to the Ombudsman and IGIS, including in relation to PID Act annual reporting.

Investigator

The investigation of a public interest disclosure under the PID Act is conducted as the principal officer sees fit, subject to the need to comply with PID standards in force under s 74 of the PID Act. The investigator should:

- be skilled in conducting investigations
- become familiar with the PID Act, especially the confidentiality requirements and the protections for disclosers
- ensure they do not have an actual or perceived conflict of interest relating to the disclosable conduct.